

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

F.M.A. 842 of 2025
IA No: CAN 1 of 2024

Sri Samir Das
Vs.
The State of West Bengal and others

For the appellant : Mr. N.G. Sarkar
Mr. Devranjan Das
Mr. Partha Mukherjee

For the respondent no.10 : Mr. Subir Sanyal
Mr. Ratul Biswas
Mr. Shoham Sanyal

Heard on : 22.12.2025

Judgment on : 22.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against an order dated December 13, 2023 whereby the learned Single Judge recorded, while dismissing the writ petition of the present appellant for non-prosecution, that the petitioner sought to withdraw the writ petition in view of a previous withdrawal of a suit filed by the

writ petitioner on the ground of amicable settlement of disputes between the petitioner and the private respondents, without seeking liberty to sue afresh.

2. While moving the present appeal, learned counsel for the appellant repeatedly reiterates that the appellant had not sought to withdraw the writ petition before the writ court but merely on the premise of the previous withdrawal of a suit by the appellant, the writ petition was dismissed.
3. This court tried to point out several times that the learned Single Judge has observed categorically that the petitioner (present appellant) sought to withdraw the writ petition, on which premise the writ petition was dismissed for non-prosecution by the impugned order.
4. However, learned counsel for the appellant adamantly refutes such statement.
5. At this, the court requested learned counsel for the appellant to read out the impugned order.
6. Even while so reading out, learned counsel for the appellant deliberately omits to read out twice the sentence where it was recorded that “in view of the above, the petitioner seeks to withdraw the writ petition”.
7. Thereafter, during the course of passing the present order, learned counsel for the appellant seeks to explain his conduct by taking shelter under the fact that he is in some difficulty regarding his vision.

8. However, it is surprising to the court that the vision of the appellant's counsel and his Myopia are extremely selective.
9. Learned counsel clearly read twice the first two paragraphs and jumped over the sentence-in-question to the next paragraph on two occasions.
10. We are sorry that we cannot accept such pretext of myopic vision of learned counsel for the appellant in view of the selective nature of the same.
11. Since learned counsel for the appellant seeks to mislead the court repeatedly, we are of the opinion that heavy costs should be imposed on the appellant.
12. In any event, on merits also, this court cannot enter into the same, in view of the specific factual observation by the learned Single Judge that the petitioner sought to withdraw the writ petition, only on which premise the writ petition was dismissed for non-prosecution.
13. It is well-settled that if the facts which actually transpired before a court were erroneously recorded in the order, it is for the affected party to approach the self-same court, preferably the self-same learned Judge, for correction of the same.
14. An appeal against such erroneous recording of factual circumstances is illusory, since the appellate court is not in a position to ascertain the true state of affairs which transpired on the relevant date.

- 15.** Thus, FMA 842 of 2025 is dismissed on contest, thereby affirming the order dated December 13, 2023 passed in WPA No.14633 of 2023, with costs of Rs. 20,000/- to be paid by the appellant and/or the learned Advocate for the appellant to the respondent within a week from date.
- 16.** However, nothing in this order shall preclude the appellant from approaching the writ court, preferably the learned Single Judge herself who delivered the impugned order, praying for correction of the perceived erroneous recording of fact inasmuch as the appellant submits that the appellant did not seek to withdraw the writ petition on the relevant date.
- 17.** If such an application is filed, the same may be decided in accordance with law upon hearing both sides, without being influenced by any of the observations made above.
- 18.** Consequentially, CAN 1 of 2025 is also dismissed.
- 19.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

AD-30
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