

07.07.2025
Court No.13
Item No.25
pk

MAT 340 of 2025
CAN 1 of 2025
CAN 2 of 2025
Bhabatosh Mandal
Vs.
The State of West Bengal and Ors.

Mr. Rafikul Islam Sardar

... for the appellant.

Mr. Santanu Kumar Mitra

Mr. Amartya Pal

... for the State.

Mr. Uttam Kumar Bhattacharyya

... for the respondent nos. 2 and 3.

Re: CAN 2 of 2025

1. Affidavit of service filed in Court is taken on record.
2. Sufficient grounds are available to explain the delay of 21 days in filing the instant appeal. Hence, the delay is condoned.
3. Accordingly, CAN 2 of 2025 is allowed and disposed of.

Re: M.A.T. No. 340 of 2025

1. The appellant is aggrieved by an order dated 14.01.2025 passed by a Single Bench of this Court. By the impugned order, the writ petitioner was granted liberty to file a civil suit with regard to his allegation against the private respondents that later has effected construction over a common path way.
2. The writ petitioner has filed an earlier writ petition being WPA 24030 of 2022 which was disposed of by an order dated 16.11.2022 passed by a Single Bench of this

Court. In the said order dated 16.11.2022 (supra) it was recorded that T. S. 175 of 2022 for declaration and injunction was pending between the appellant/writ petitioner and his co-sharer. As to whether the pathway claimed by the writ petitioner constituted a common pathway or not was to be decided in the civil suit. Upon decision from the civil court, the writ petitioner was granted liberty to apply for cancellation of sanctioned plan in favour of the private respondents.

3. It appears that civil court has granted injunction in favour of the writ petitioner/appellant and the private respondents have effected construction of a boundary wall notwithstanding such injunction.

4. Since it is clear and explicit that in the earlier order dated 16.11.2022 (supra) the right of the writ petitioner in the pathway would have to be decided in the civil suit, the filing of fresh writ petition/WPA 23199 of 2024 before this Court is in gross abuse of process of law.

5. The Single Bench was generous enough to dispose of the writ petition by permitting the petitioner/appellant to avail civil remedies which he has already availed. The subject matter of the civil suit and the writ petition appear to be one and the same. Counsel for the appellant admits to the same.

6. In the backdrop, the decision of **Rampuriah Brothers Private Limited Vs. Calcutta Municipal Corporation** reported in **AIR 1988 Calcutta 370** would have no manner of application.

7. The writ petition and appeal are, therefore, in gross abuse of process of law.

8. Accordingly, the instant appeal is dismissed. In view of dismissal of the appeal, connected application being CAN 1 of 2025 is also dismissed.

9. In the facts, however, the appellant is warned against engaging in such frivolous litigation. In the event of any such conduct in future, exemplary and penal costs would be imposed on the appellant.

10. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)