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Sl. No. A-54

Ct. No. 08

MAT 1443 of 2024

With

CAN 2 of 2024

CAN 3 of 2024

CAN 4 of 2024

CAN 5 of 2024

The State of West Bengal & anr.

Vs.

Kakali Mondal & ors.

Md. T. M. Siddiqui, Sr. Advocate

Mr. T. Chakraborty

Mr. A. Prasad

Md. S. S. Siddiqui

Ms. Kalpita Paul

..... for the appellants

Mr. Rabilal Maitra, Sr. advocate

Mr. Amlan Kumar Mukhrjee

Mr. Rajitlal Maitra

.... for the pvt. Respondents

Mr. Joydeep Kar, Sr. Advocate

Mr. Amitava Chaudhuri

Mr. N. Roy

Mr. Pradipta Siddhanta

....for the DPSC North 24 Parganas

Mr. L. K. Gupta, Sr. Advocate

Mr. Subir Sanyal

Mr. Dwarika Nath Mukherjee

Mr. Ratul Biswas

Mr. Somesh Kumar Ghosh

Mr. Surojit Mukherjee

.... for the applicant (CAN 3 of 2024)

A point is raised before us on the maintainability of the instant appeal at the behest of the appellants as the order impugned was passed on consent given at the time of disposal of the respective writ petitions. We had an occasion to peruse the impugned order which manifestly indicate that the disposal was secured on recording the consent given at the time of hearing of the writ petition at the behest of the DPSC. We invited the attention of the appellants to address us on the above

preliminary objection raised by the respective respondents on the maintainability of the said appeal to which the counsel for the appellants submits that there was no consent ever given for securing disposal of the respective writ petitions. In other words, it is contended that the relief as prayed for has been wrongly granted to the respective writ petitioners as the appellant gave consent in this regard.

On the other hand, the counsels appearing for the respective writ petitioners submits that the consent was in fact, given at the time of disposal of the respective writ petitions and it is preposterous to suggest that no consent was given. It is further submitted that the appellants, by engaging another set of lawyers, cannot resile from the consent given by another set of lawyers representing the appellants and, therefore, the appeal deserves dismissal.

On meaningful reading of the judgment and order, we find that learned single Judge proceeded to dispose of the matter not only on the basis of the consent given in an identical matters but also on consent given in the respective writ petitions which is now sought to be disputed by the appellants. We are conscious that the appeal against the consent order is not maintainable but we cannot overlook the fact that the moment, a litigant raises an issue that the consent has been wrongly recorded in the impugned order, he cannot be rendered remediless.

The reliance can be gainfully placed upon the judgment of the Apex Court in Case of State of **Maharashtra vs. Ramdas Shrinivas Nayek & anr.** reported in **(1982)2 SCC 463** wherein in an identical situation, the Apex Court held:

“4. When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an enquiry as to what transpired in the High Court. It is simply not done. Public policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. “Judgments cannot be treated as mere counters in the game of litigation.” We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the Judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the Judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well-settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the Judges, to call the attention of the very Judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

In view of the ratio as laid down in the above noted decision, it is not desirable by the appellate court to enter into such disputed arena as the alleged consent whether given or not cannot be regarded as an event happened before the appellate court.

We are conscious that a person cannot be rendered remediless keeping in mind the legal maxim *Ubi jus ibi remedium* but since the remedy is provided in the above noted decision, it is open to the appellants to approach the same Judge, who is available, to ventilate his grievance in this regard. In the event, such approach is made, we trust and hope that the learned Judge would decide the same in accordance with law.

In view of the above, the appeal is disposed of. The connected applications are also disposed of.

For obtaining protection, we hereby made clear that the disposal of the instant appeal shall not attract the doctrine of merger as this Court had no occasion to enter into the merit of the case.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)