

29.04.2025
Court No.652
Item No.2
sudipta

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

C.O. 4100 of 2023

**Kolkata Metropolitan Development Authority (KMDA)
Vs.
SMS Limited (erstwhile known as SMS Infrastructure
Limited)**

Mr. Ashok Kumar Banerjee, Sr. Adv.
Mr. Naba Kumar Das,
Mr. Pathik Bandhu Banerjee.

...for the petitioner/KMDA

Mr. Shourjyo Mukherjee,
Mr. Vishwarup Acharyya,
Mr. Akash Dutta.

...for the opposite party/plaintiff

1. The present petition has been filed with the
following prayer:

a) Rule calling the Plaintiff/Respondent to Show Cause as to why the Impugned Order dated September 15, 2023 passed by Sri Neyaz Alam, Learned Judge, Commercial Court, Rajarhat, North 24 Parganas should not be set aside and/or quashed;

b) Make the Rule absolute, if no cause or insufficient cause is shown;

c) Pending hearing the Rule, Stay the operation of the Impugned Order dated September 15, 2023 passed by Sri Neyaz Alam, Learned Judge, Commercial Court, Rajarhat, North 24 Parganas till Disposal of the Application;

d) Costs;

e) Any other Direction(s)/Order(s) as Your Lordship may deem fit, proper for the ends of justice;

2. At the outset, Mr. Ashok Kumar Banerjee, learned senior advocate, with Mr. Naba Kumar Das for the petitioner/KMDA submits on instructions that the

petitioner is ready to deposit the costs as imposed by the learned Trial Court by the impugned order dated 15th of September, 2023. Learned senior counsel further submits that the petitioner may be allowed to contest the suit filed by the respondent/plaintiff on merits and appropriate directions may be issued to the learned Trial Court for completion the proceedings expeditiously.

3. Learned counsel for the respondent/plaintiff submits that the suit was filed in the year 2018 and it has already been 7 years. Learned counsel submits that in fact the petitioner/KMDA had been delaying the matter and now when it is at the stage of final arguments, permitting the petitioner to contest the suit, would turn a clock back to the initial stage of completion of the pleadings.
4. This Court has considered the submissions. The Constitutional Courts have time and again stated that there should be endeavour to decide the case on merits except in the exceptional circumstances, where the opposite party fails to take part in the proceedings deliberately with a mala fide intention. In the present case vide the impugned order, learned Trial Court vacated the ex parte order against the petitioner/KMDA dated 9th of August, 2019 subject to the cost of Rs.1,00,000/-. This

was challenged by the Authority. However, now the better sense has prevailed upon the Authority and they are ready to deposit the costs.

5. In view of the submissions made, the petition is disposed of with a direction that the KMDA shall deposit the costs payable to the plaintiff/respondent within a period of one week. Pursuant to the deposit of cost, the matter shall be removed from the ex parte board. Learned Trial Court shall conduct the proceeding expeditiously and conclude the same preferably on or before 31st of July, 2025 and in any case, before 30th September of 2025. Both parties undertake that they shall not take any unnecessary adjournment. If any further costs have been imposed by the learned Trial Court on either of the party, this order will not come into the way and the party shall pay the costs as directed.

6. The petition stands disposed of.

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

(Dinesh Kumar Sharma, J.)