

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

F.M.A. 133 of 2024

CAN 4 of 2025

**Mr. Rathendra Raman, Chairman,
The Board of Trustees for
the Syama Prasad Mookherjee Port**

Vs.

Hindustan Steelworks Construction Ltd. & Ors.

For the appellant in FMA 133/24 : Mr. Subhankar Nag,
& respondent no. 1 in CAN 4/25 Ms. Debarati Das,
Mr. Saptarshi Kar.

For the applicant in CAN 4 of 2025 : Sardar Amjad Ali, Sr. Adv.
Mr. Bijoy Adhikari,
Mr. Supriyo Ghosh.

Judgment on : September 22, 2025.

Madhuresh Prasad, J.:

1. The respondents above named are the applicants in CAN 4 of 2025. Prayer in the application is for recall for an order dated 02.01.2024 passed in IA No. CAN 1 of 2023 in MAT 2357 of 2023. The learned Senior Advocate for the applicant Mr. Ali appeared on behalf of the applicant.
2. It is submitted by Mr. Ali that the application (CAN 1 of 2023) was initially listed before a co-ordinate Bench on 11.12.2023 having determination to take up mandamus/ writ appeal and applications. Since the present appeal is a mandamus appeal and CAN 1 of 2023 was an application in a

mandamus appeal, the co-ordinate Bench had the determination to take up the writ appeal including application/s irrespective of classification. However, the Bench was pleased to release the matter on 11.12.2023, due to lack of determination. In support of his submission that the co-ordinate Bench dealing with the matter had the determination, he has annexed a copy of the daily cause list dated 11.12.2023. He submitted that when the co-ordinate Bench released the matter, then as per normal procedure an order of assignment was required to be issued by the Hon'ble the Chief Justice for listing of the matter before a Bench.

3. The matter thereafter appeared in the cause list of the Division Bench presided over by the Hon'ble the Chief Justice (hereinafter referred to as DB-I) on 02.01.2024. After hearing the parties, DB-I passed an order dated 02.01.2024 staying the order dated 22.11.2023 passed by the learned Single Judge.
4. It is submitted by the learned Senior Advocate that listing of the matter before the DB-I was without any order of assignment by the Hon'ble the Chief Justice. Even though the Hon'ble the Chief Justice is the master of roster, nonetheless an assignment was required to be notified before the matter could have been taken up by any Bench, including DB-I, being presided by the Chief Justice. There being no such assignment or direction for listing of the matter before DB-I, hearing of the writ/ mandamus appeal and application, by DB-I, and the order dated 02.01.2024 passed thereon is a nullity and void.
5. He submits that the High Court is a Court of record and interest of justice demands that the order dated 02.01.2024 passed in CAN 1 of 2023 by DB-I,

being without jurisdiction, and a nullity in the eyes of law, may not be allowed to continue in the records. Therefore, the application for recall of the order dated 02.01.2024 is fit to be allowed, and appropriate orders may be passed for recalling the order dated 02.01.2024 in MAT 2357 of 2023 (subsequently numbered as FMA 133 of 2024) and I.A. No. CAN 1 of 2023, so as to render conscionable justice. Mr. Ali relied upon decision of a Division Bench of this Court in the case of ***Sohan Lal Baid vs. State of West Bengal and Others*** reported in ***AIR 1990 Cal 168***. He also relied upon decision of the Apex Court, in the case of ***Sushil Kumar Mehta vs. Gobind Ram Bohra (Dead) Through His LRS.*** reported in ***(1990) 1 SCC 193, Campaign for Judicial Accountability and Reforms vs. Union of India and Another*** reported in ***(2018) 1 SCC 196*** and ***Garden Reach Shipbuilders and Engineers Limited vs. GRSE Limited Workmens union and Others*** reported in ***2025 SCC OnLine SC 582***.

6. Referring to decision in the case of ***Sohan Lal Baid*** (supra) he submits that the Hon'ble the Chief Justice of High Court has the constitutional power to determine which Judge is to sit alone and which Judge/s to constitute the several Division Courts. The assignment of judicial business amongst judges, whether sitting singly or in Division Court, is entrusted by law to the Hon'ble the Chief Justice. A Judge/ Judges, including the Chief Justice derive jurisdiction to deal with and decide the case or class of cases assigned to them only by virtue of determination made by the Hon'ble the Chief Justice. This power of deciding the roster is derived not only from the provisions of Sections 108(2) of the Government of India Act 1915 but also inheres in the Chief Justice. The Chief Justice is the master of roster. He has

full power and authority in this regard. Affirming this position the Apex Court recently in the case of ***Garden Reach Shipbuilders and Engineers Limited*** (supra) has held:

“9. In the light of the law laid down by the High Court itself in Sohan Lal Baid v. State of West Bengal, as approved by a three-Judge Bench of this Court in State of Rajasthan v. Prakash Chand which has subsequently been approved by a Constitution Bench in Campaign for Judicial Accountability and Reforms v. Union of India, as well as Rule 26 (supra), we hold that any order which a bench - comprising of two judges or a single judge - may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, such an order is without jurisdiction. In other words, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the primus inter pares, has been vested with the power and authority to set the roster, as articulated in Sohan Lal Baid (supra), and such roster is final and binding on all the ‘Companion Justices’ of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction.”

7. He has also referred to decision in the case of ***Campaign for Judicial Accountability and Reforms*** (supra) considered in the above noted passage from the report of the case of ***Garden Reach Shipbuilders and Engineers Limited*** (supra). He, therefore, lays great emphasis on the legal proposition that in absence of any notified assignment/ determination, the DB-I was lacking the determination to take up the mandamus appeal. He referred to a copy of the cause list dated 02.01.2024, i.e. the date on which the matter was taken up and order passed by the DB-I, to submit that the appeal was listed for admission as a contempt appeal. He goes to the extent of submitting that it was listed under such an inappropriate heading only because DB-I had determination for hearing “*Appeal under Section 19(1) (a) of the Contempt of Court’s Act.*”
8. He submits that such listing of the matter under an undue and inappropriate heading before DB-I, which lacked determination to hear

writ appeals cannot be countenanced. Therefore, the order passed by DB-I on 02.01.2024 is without jurisdiction and needs to be taken out from the records by recalling the order.

9. Mr. Mitra, the learned Senior Advocate for the appellant/ respondent in the CAN 4 of 2025 submits that the appeal was filed as a mandamus appeal.

When the matter CAN 1 of 2023 was listed before the co-ordinate Bench on 11.12.2023, the Division Bench released the matter because it was of the view that it did not have jurisdiction to deal with the appeal, which was substantially in respect of an order passed in exercise of contempt jurisdiction. The order dated 11.12.2023 of the co-ordinate Bench, releasing the matter was not challenged by the applicants.

10. Thereafter it was listed before DB-I. Before DB-I also the present applicant appeared without any objection and made submissions on merits of the matter. It, therefore, does not lie in the mouth of the respondent/ applicant to now contend that it was wrongly listed and considered by DB-I.

11. He submitted that a brief background of the case is required to be seen for appreciating the perspective in which the present application for recall has been filed.

12. The present applicant was the writ petitioner in WPA No. 15475 of 2023. The writ petitioners had a lease of 30 years in respect of 5 sites within the Port area, for installation and operation of weigh bridges. The writ petitioner was aggrieved by steps taken by the port authorities for initiating a tender process inviting fresh bids for the same work, tender of which was to be opened. In the proceedings dated 25.09.2023 in WPA No.

15475 of 2023 the port authorities took a stand which was recorded in the order dated 25.09.2023 as follows:

“Mr. Abhrajit Mitra, learned senior counsel appearing on behalf of the SPMP, Kolkata, on the other hand, submits that the letter dated November 20, 2013 cites in unqualified term that the lease granted to the petitioner was for 10 years. However, it is submitted by him that the tender in question does not involved the land sites and 5 number of weighbridges for which lease was granted in favour of the petitioner. By the impugned tender the interest of the petitioner will not be hampered and the SPMP, Kolkata shall take necessary action of removal of the petitioner in due process of law.”

13. Thereafter port authorities proceeded to pursue eviction of the writ petitioner/ applicant. The Estate Officer passed an eviction order dated 04.12.2024 in proceeding number 2087, 2087D of 2024. The same was put to challenge by filing a writ petition bearing WPA No. 29578 of 2024 by the present applicant. This writ petition was dismissed on 21.01.2025, as the writ Court found no reason to interfere with the reasoned order of the Estate Officer directing the eviction of the writ petitioner. Thereafter possession was also taken from the writ petitioner.
14. The writ petitioners thereafter filed an appeal against the order dated 21.01.2025 passed in WPA No. 29578 of 2024. The appeal was numbered as MAT 123 of 2025 and the same was also dismissed, but reserving the liberty granted to the writ petitioner by the learned Single Judge to prefer a statutory appeal against the order passed by the Estate Officer. MAT 123 of 2025 was dismissed on 23.04.2025.
15. This order of the Division Bench was assailed by the writ petitioner before the Apex Court. The Special Leave Petition bearing No. SLP(C) 21997 of 2025 filed by the writ petitioners was dismissed on 18.08.2025.

16. The writ petitioners had filed the writ petition WPA No. 15475 of 2023 wherein it was claimed that the Port authorities were required to take a decision for grant of 30-year lease, subject to Central Government notification.
17. The present appeal arises out of an order dated 22.11.2023, passed by the learned Single Judge in CPAN 1553 of 2023, filed alleging violation of an undertaking recorded in the order dated 25.09.2023 in WPA No. 15475 of 2023. Operative part of order dated 22.11.2023 reads:

"In view of the foregoing reasons and discussions, this Court is of the firm view that, the parties shall maintain an order of status-quo as on September 25, 2023 over and in respect of the said land sites and the five numbers of Weighbridges to the extent of the issues and subject matter involved in the interlocutory application being CAN 1 of 2023 in so far as the subject tender process is concerned which is also the subject matter of CAN 1 of 2023.

With the above observations and directions, this contempt proceeding being C.P.A.N. 1553 of 2023 stands dropped and closed.

Consequently, the contempt application being CPAN 1553 of 2023 stands disposed of, without any order as to costs."

18. Relevant extract of order dated 25.09.2023 has been quoted above wherein the present respondents stand that they shall take necessary action for removal of the petitioner in due process of law was recorded. That stand taken before the writ Court on 25.09.2023 has since translated into reality. As taken note of above an eviction order was passed against the present applicant by the Estate Officer on 04.12.2024, which was not interfered by the writ Court in WPA No. 29578 of 2024. The appeal against the same bearing MAT 123 of 2025 was also dismissed. The Apex Court also was pleased to dismiss the Special Leave Petition filed against the order passed in MAT 123 of 2025. In the meantime, the applicant has also

been evicted from the premises and possession taken by the present appellants.

19. The present application has thus been filed in an infructuous proceeding with an oblique motive that by resorting to such submissions regarding order of DB-I being without jurisdiction the writ petitioner would succeed in getting the order recalled. Then the same would enable them to resuscitate an otherwise dead issue. He submits that the appellants have gone to the extent of making allegations that the matter was listed before DB-I by placing it under an inappropriate heading (contempt appeal) because there was no assignment for listing of mandamus appeal before DB-I. Such submissions are blatantly false, and otherwise also unsustainable. A bare perusal of the daily cause list dated 02.01.2024 of DB-I would show that DB-I had determination to hear out *"Any other matter, irrespective of classification, as directed by Hon'ble the Chief Justice."*
20. It is clear from the cause list that irrespective of classification of the case a matter could be listed before the DB-I as directed by the Hon'ble the Chief Justice. Since DB-I had the determination to take up any other matter irrespective of classification, the matter has rightly been listed before DB-I upon direction of the Hon'ble the Chief Justice. Mr. Mitra, learned Senior Advocate has thus submitted that filing of the CAN application is nothing but a factually and legally unsustainable act of desperation and, therefore, deserves to be dismissed.
21. At this juncture, Mr. Ali learned Senior Advocate for the applicant submitted that the applicants are not aware of any such direction being issued by the Hon'ble the Chief Justice for listing of the matter before DB-I.

We find such submission to be an afterthought, as no such ground was raised in the CAN. The specific case made out in the application is that DB-I did not have the determination for listing of the mandamus appeal, let alone to hear out the appeal, or to pass order or the application filed therein.

22. We have considered the rival submissions. Mr. Ali learned Senior Advocate was repeatedly harping on the cause list dated 02.01.2024 to submit that the mandamus appeal had been listed as an appeal under the contempt of Court Act only to bring the case within the determination of DB-I to be notified in the daily cause list dated 02.01.2024.

23. We, however, find force in the submission of Mr. Abhrajit Mitra learned Senior Advocate that there is no factual premise for such a submission. From a bare reading of the daily cause list of DB-I dated 02.01.2024, we find that DB-I had determination on 02.01.2024, to take up and hear out any matter irrespective of classification. Therefore, submission advanced by Mr. Ali that DB-I presided by the Chief Justice did not have determination to take up the mandamus appeal and application is devoid of any substance and fit to be rejected.

24. In so far as various decisions relied upon by Mr. Ali including decisions in the case of ***Sohan Lal Baid*** (supra), ***Campaign for Judicial Accountability and Reforms*** (supra) and ***Garden Reach Shipbuilders and Engineers Limited*** (supra) we find that the decisions have settled the legal position regarding the Chief Justice of the High Court being the *primus inter pares*, being vested with the power and authority to set the roster. In the present case, the roster was set and notified by the Chief Justice in the daily cause

list dated 02.01.2024 giving DB-I, the Bench presided by the Chief Justice, the jurisdiction to entertain any other matter irrespective of classification and, therefore, factually there is no occasion whatsoever to say that DB-I was lacking in determination to consider the mandamus appeal on 02.01.2024.

25. At this juncture we would also take notice of the background in which having lost before the learned Single Judge, Division Bench and before the Hon'ble Apex Court, the applicant has resorted to filing of a recall application. The submission made by the applicants regarding listing of the same as a contempt appeal because DB-I had only jurisdiction to hear contempt appeal and not mandamus appeal, is factually and legally unsustainable. We find no merit in the recall application. The same is dismissed.

26. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties on completion of usual formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

Later

At this juncture, the learned counsel, Mr. Adhikari for the applicant seeks direction for maintaining *status quo*. Having regard to the nature of reliefs sought in the CAN application disposed of by the present order, we find no scope for passing an order of *status quo*. Prayer is rejected.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)