

03.07.2025
Item No.7
Court No.01
S.Bag(AR(CR))

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri**

**MAT/81/2024
IA NO: CAN/2/2025, CAN/3/2025
SAHIRUDDIN MD@SAHIR UDDIN MD.
VS
THE STATE OF WEST BENGAL AND ORS**

Mr. Anirban Banerjee, Adv.
Mr. Soumyojit Laskar, Adv.
...of the petitioner

Mr. Subir Kumar Saha, Ld. AGP
Mr. Sandip Guha Roy, Adv.
...for the State respondents

By an order dated 30th June, 2025, the petitioner was directed to effect service of this application and the connected appeal on the respondent State.

Despite such categorical directions, the appellant has deliberately chosen not to effect service and seeks an adjournment. The prayer for adjournment is considered and rejected.

CAN/2/2025 is an application for recalling an order dated 8th January, 2025 dismissing the appeal for default

CAN/3/2025 is an application under section 5 of the Limitation Act, 1963 seeking condonation of the delay in filing this application for restoration.

A perusal of the above application would show that the appellant has neither been serious nor diligent in proceeding with this appeal. Nevertheless, in view of the broad and liberal

approach in such matters, CAN/2/2025 stands allowed alongwith CAN/3/2025.

By consent of the parties, the writ petition is taken up for hearing. The State respondents are also represented and do not object to the main proceeding being taken up for hearing.

By the impugned order dated 22nd February, 2024, the instant writ petition had been dismissed on the ground that the disputes sought to be raised in the writ petition demand an elaborate and factual enquiry into the question of illegal encroachment. Admittedly, the parties are brothers and the writ petitioner has filed this petition complaining of the private respondent wrongfully possessing and enjoying land which is belongs to the Public Works Department.

In this background, the learned Single Judge has after considering the facts and circumstances of the case and the disputes raised exercised discretion in dismissing the writ petition on the ground that the same was not maintainable and that the petitioner file an appropriate proceeding before the Civil Court.

There has been no adjudication on the merits of the case and the Learned Single Judge has remanded the petitioner to avail of the available alternative civil remedy.

An examination of the impugned order demonstrates that the discretion which has been exercised by the Trial Court is neither perverse nor capricious nor in contravention of any law.

Upon appreciation of the facts and circumstances, and keeping in mind that the petitioner and the private respondent are brothers, the Trial Court dismissed the writ petition on the ground of maintainability directing the parties to file a Civil Suit.

We do not find any illegality nor perversity nor any other ground to interfere with the impugned order. The discretion exercised by the Trial Court in the facts and circumstances of the case is reasonable and cannot be described to warrant interference.

In such view of the matter, MAT/81/2024 stands dismissed.

However, there shall be no order as to costs.

(RAVI KRISHAN KAPUR, J.)

(MD. SHABBAR RASHIDI, J.)