

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APDT/26/2024
WITH CS/8/2016

KARNANI MANSION RESIDENTS ASSOCIATION AND ANR
VS
KARNANI PROPERTIES LTD. AND ANR

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

And

The Hon'ble JUSTICE UDAY KUMAR

Date : 7th May, 2025.

APPEARANCE:

Mr. Rohit Banerjee, Adv.

Mr. Altamash Alim, Adv.

Mr. Saptarshi Bhattacharjee, Adv.

..for the appellant.

Mr. Sabyasachi Chaudhury, Sr. Adv.

Mr. Shounak Mukhopadhyay, Adv.

Mr. Neelesh Chowdhury, Adv.

Mr. A. Poddar, Adv.

..for the respondent.

The Court:-The present appeal arises out of a judgment passed by a learned Single Judge of this Court on July 03, 2024 in CS/8/2016.

The sole ground of challenge to the said judgment is that the learned Single Judge did not have determination to hear the matter on June 12, 2024, when it was last heard before passing judgment.

Learned Counsel appearing for the appellant places reliance on a Notification dated May 24, 2024 whereby the roster/determination of the Original Side as well as the Appellate Side was published by order of the Hon'ble the Chief Justice of this Court. As per the said determination/roster, the learned Single Judge in question did not have the

determination to hear suits of the year 2016 on the relevant date, that is, on June 12, 2024, on which the matter was last heard according to the appellant. As such, it is contended that the said judgment is vitiated by lack of jurisdiction.

Learned Counsel argues that the Chief Justice of a High Court, although “the first among equals” on the judicial side, is the sole repository of powers in the administrative side to assign duties and matters and to constitute the Benches of the said High Court.

In support of such contention, learned Counsel cites a Co-ordinate Bench Judgment of this Court in the matter of **Sohan Lal Baid Vs. State Of West Bengal and others** reported at **AIR 1990 Cal 168** where the proposition was laid down that the cardinal position cannot be overlooked that for the subject matter jurisdiction to be exercised, the case must be legally brought before the concerned Court having determination and that the judgment pronounced by the Court, when not invested with jurisdiction, is void. While coming to such conclusion, the Co-ordinate Bench took into consideration several statutes, inter alia referring to the High Court Act or the Charter Act, 1861, as well as the Letters Patent dated May 14, 1862 for the High Court of Judicature to be established in Bengal, apart from the Government of India Act, 1915 and the synonymous Act of 1935 as well as several precedents.

Learned Counsel for the appellant next cites a three-Judge Bench decision of the Hon’ble Supreme Court in the matter of **STATE OF RAJASTHAN Vs. PRAKASH CHAND AND OTHERS** reported at **(1998) 1 SCC 1**, whereby the Hon’ble Supreme Court, inter alia, relied on the judgment rendered in **Sohan Lal Baid** (supra) and came to the conclusion

that the administrative control of the Supreme Court vests in the Chief Justice of India and as such it is his prerogative to distribute business of the High Court, both judicial and administrative.

The jurisdiction of the Benches of the Supreme Court, it was reiterated, on assigning, is limited only to such cases as allotted by the said Bench by the Chief Justice or under his direction.

Learned Counsel next refers to a Five-Judge Bench decision of the Supreme Court in the matter of **CAMPAIGN FOR JUDICIAL ACCOUNTABILITY AND REFORMS Vs. UNION OF INDIA AND ANOTHER** reported at **(2018) 1 SCC 196** in support of the same proposition. The next judgment cited on behalf of the appellant is a Co-ordinate Bench of this Court in the matter of **Kolkata Municipal Corporation and Others Vs. Al-Sumama Agro Foods Pvt. Ltd. and Others** reported at **2021 SCC OnLine Cal 3028**. The Co-ordinate Bench, upon considering all the judgments in the field, reiterated that the Puisne Judges can only take up the work which is allotted to them by the Chief Justice or on his direction. No Judges or Bench of Judges can assume jurisdiction in a case in any High Court unless the case is allotted to him or them by the Chief Justice. It was held that the jurisdiction of the Puisne Judges in part-heard cases stems from the assignment of such case with the said Judge by the Chief Justice. That judge will have no jurisdiction to hear other matters. If a Judge or a Bench hears a matter which is not within his or its determination and passes an order therein, such order will be void for want of jurisdiction.

Lastly, learned Counsel cites another judgment of the Supreme Court in the matter of **Garden Reach Shipbuilders and Engineers Limited Vs. Grse Limited Workmens Union and Others** reported at **2025 SCC OnLine**

SC 582 where the self-same proposition pertaining to the Chief Justice being the “Master of the roster” was reiterated.

Learned Senior Counsel appearing for the respondents, while controverting the argument of the appellants, submits that the sole ground of challenge in the present appeal is the purported lack of determination of the learned Single Judge while passing the impugned judgment. It is contended by learned Senior Counsel that in the self-same Notification dated May 24, 2024 which is relied on by the appellants, an exception was carved out on the change of the roster in respect of the matters which are reserved for judgment or under the caption “CAV” or the matters which are part-heard.

It is contended that the hearing, in the present case, was concluded by the learned Single Judge long back, on April 24, 2024. Learned Single Judge, in his order dated April 24, 2024, had inter alia recorded that the plaintiff had made his arguments and written notes were also filed on behalf of the plaintiff. It was further recorded that a Special Officer had been appointed in the said case by an order dated January 18, 2016, who had filed a report. For the purpose of filing of such report, the matter was directed to be listed under the heading “To Be Mentioned” on May 09, 2024. On May 09, 2024, the learned Single Judge observed inter alia that the Special Officer was present in Court in person and filed his report after serving a copy to learned counsel for the plaintiff, which was taken on record. More importantly, the learned Single Judge recorded that learned counsel for the plaintiff had already concluded arguments and the Special Officer had submitted his report of the matter, which was marked as “CAV”, when certain clarifications were required by the learned Single Judge; for

such limited purpose, the matter was placed in the list at the behest of the learned Single Judge on June 12, 2024. On the said date, the matter was also marked as “CAV”.

Learned Senior Counsel appearing for the respondent submits that as such, although in the impugned judgment, the date of conclusion of the hearing was formally mentioned as June 12, 2024, the hearing had infact been concluded much earlier and on June 12, 2024, only a clarification was sought by the learned Single Judge and answered on behalf of the plaintiff.

Learned Senior Counsel appearing for the respondent next takes the Court through the previous orders of the learned Single Judge, in particular the order dated May 09, 2024, to insinuate the recalcitrant conduct of the defendant/ present appellant. It is pointed out that by the said order, it was recorded by the learned Single Judge that by an order dated September 1, 2023, GA/6/2022 was disposed of by extending the time for filing the written statement within a period of one week from date, subject to payment of costs of Rs. 20,000/-.

The plaintiff had informed in a communication dated September 06, 2023 that the plaintiff was not having an account and requested the defendant to pay the amount by way of cheque. The said communication was duly received by the defendant on September 06, 2023 but, it was recorded by the learned Single Judge, the defendant neither paid the amount nor had given any reply. The learned Single Judge recorded the contention of learned Counsel for the defendant who was present on February 09, 2024 that the defendant had tried to pay the amount of Rs.20,000/- by a cheque, which the plaintiff had refused to accept.

However, the learned Single Judge categorically recorded that counsel for the defendant had produced no document to show that the defendant had made any endeavour to comply with the order dated September 01, 2023. From the said act of the defendants, it was observed that it was crystal clear that the defendant had not complied with the order dated September 1, 2023 by paying the costs of Rs. 20,000/- and as such the learned Single Judge closed the liberty to file written statement and directed the matter to be placed in the list as an undefended suit.

As such, it is argued that the conduct of the defendant/ appellants has been deplorable at all relevant points of time.

Upon hearing learned counsel for the parties, we cannot but take note of certain salient aspects of the matter. First, in the very Notification dated May 24, 2024 which is relied on by the appellant, it was clearly mentioned in the first Note beneath the determination of the respective Benches that all matters on change of roster shall stand released and shall be posted before the Bench/ Benches as per the roster. However, an exception was carved out with regard to the matters which were reserved for judgment or under the caption "CAV" or the matters which were part-heard.

There is no manner of doubt, as reflected from the order dated May 09, 2024, that the learned Judge had already recorded on the said date that the argument of the plaintiff had been concluded and the Special Officer had also submitted his report and had marked the matter as CAV. The suit being posted as an undefended suit, there was no further scope of arguments by the defendant. Thus, the hearing had been concluded for all practical purposes.

Hence, at least two parameters of the exceptions, as noted in the first Note under the determination in the Notification dated May 24, 2024 were satisfied to the extent that the matter was reserved for judgment and also marked under the caption 'CAV'. It may further be noted that the said change of determination came only vide Notification dated May 24, 2024, that is, subsequent to the matter being marked as CAV and arguments being concluded on May 09, 2024, when the learned Single Judge undisputedly had the determination to take up the matter.

Thereafter, the learned Single Judge, of his own, put up the matter on the list on June 12, 2024, not under the heading "For Hearing" but under the heading "To Be Mentioned" for the limited purpose of seeking clarification which was addressed by the plaintiff and the matter was further marked as CAV.

The question which arises for consideration is whether merely by seeking clarification, the character of the matter as 'CAV' or as a matter 'reserved for judgment' is altered. In the opinion of this Court, the said query should be answered in the negative.

A matter being marked as 'CAV' (the short form of the Latin expression "Curia Advisari Vult") presupposes that the Court had reserved the matter for pondering over the same.

By being previously marked as 'CAV' at a point of time when the learned Single Judge had determination, the matter automatically came within the exception clause in the Notification dated May 24, 2024. The Hon'ble the Chief Justice himself had made it amply clear in the Notification that even in such matters, the concerned Court / Bench retained jurisdiction

and the matter would not be placed before the Bench which was newly conferred with such determination by the said Notification.

In fact, such a rider is fully in consonance with normal prudence since, after conclusion of arguments in the matter and it being heard completely, it would be palpable injustice to the litigant as well as the appearing counsel if the matter was to be placed for hearing afresh before a different learned Judge or Bench.

We are unable to agree with the contention of the appellant that posting of the matter under the heading “To Be Mentioned” after being marked as CAV altered the ‘CAV’ character of the matter. No further hearing was given to the plaintiff, even as recorded in the order dated June 12, 2024, but mere clarifications were sought and obtained to facilitate the Court in rendering a proper and complete judgment.

As such, there cannot be any quarrel with the fact that the matter had already been marked as CAV and retained its character as ‘CAV’ when the order dated June 12, 2024 was recorded. The categorization of the matter under the heading “To Be Mentioned” on the said date and the noting of the learned Judge himself that it was posted merely for clarification are tell-tale signs in that regard.

Thus, merely because in the impugned judgment, the last date of hearing was noted as June 12, 2024, it cannot be said that the learned Judge did not have determination on June 12, 2024 when the matter had already been marked previously as a CAV matter.

Hence, although there cannot be any quarrel with the proposition that the Chief Justice of a High Court is the “Master of the roster” and is supreme on allocation of determinations on the administrative side of the Court, the

said principle is not applicable in the present case, since as per the Notification of the Hon'ble the Chief Justice himself, CAV matters had been excluded and the suit-in-question having already been marked as CAV, the learned Single Judge retained determination and ultimately passed the impugned judgment of July 03, 2024.

Another aspect of the matter ought to be taken into account. The matter had already been placed in the category of "undefended suit" and the defendant did not have any further right of hearing due to its own act of having lost the opportunity to file the written statement even after being granted an extended lease of life by the suit court. Thus, in any event, even on June 12, 2024, the defendant/appellant did not have any right of hearing as such.

As such, the conduct of the learned Single Judge in enlisting the matter and seeking a minor clarification solely from the plaintiff also does not vitiate the said exercise otherwise.

Taking into consideration all the above aspects of the matter, we are of the view that the present appeal cannot be sustained and is harrasive in nature.

The sole ground of challenge raised in the present appeal is in fact flimsy and frivolous and cannot be a valid ground for a challenge in appeal.

Hence, we are of the view that substantive costs ought to be awarded against the appellant for the harassment caused to the plaintiff/respondent in being forced to contest the present frivolous appeal.

Accordingly, APDT/26/2024 is dismissed on contest with costs of Rs. 50,000/-, to be paid by the appellants to the respondent within four weeks from date.

Consequentially, GA/1/2024 stands disposed of as well.

(SABYASACHI BHATTACHARYYA, J.)

(UDAY KUMAR, J)

Arsad, AR(CR)