

March 19, 2026
Sl. No.15
Court No.1
s.biswas

MAT 168 of 2026
With
CAN 1 of 2026
CAN 2 of 2026

Molla Morsed Ali @ Molla Morshed
vs.
The State of West Bengal and others

Mr. Keshab Chandra Das
Mr. Biplab Adak
Ms. Aparajita Mondal

... for the appellant

Dictated by Partha Sarathi Sen, J.

1. The subject matter of the instant appeal is the order dated 13.03.2025 as passed by the learned Single Bench in WPA 4753 of 2025.
2. By the impugned order, learned Single Bench declined to entertain the said writ petition with the finding that a civil suit over the self-same property with regard to the construction is pending before the jurisdictional Civil Judge (Junior Division).
3. At the time of the hearing, leaned counsel appearing on behalf of the appellant/writ petitioner submits before this court that the finding of the learned Trial Court in the impugned order is faulty inasmuch as

no case has been made out on behalf of the private respondent before the writ court that the construction as sought to be raised by the writ petitioner violates their independent right, title and interest.

4. We have perused the entire materials as placed before this court. On perusal of the annexures to the stay application, we find that before the jurisdictional Civil Judge (Junior Division), the present writ petitioner has filed a suit for declaration and permanent injunction and for other ancillary reliefs with various prayers out of which one prayer is for permanent injunction against the defendants for raising any type of hindrance regarding further construction in the suit plot therein which is also involved in the aforementioned writ petition.

5. We thus find that the learned Single Judge has rightly noticed that since on account of self-same prayer the present writ petitioner has already approached

common law forum, the writ petition is not maintainable.

6. In our considered view, the decision as has arrived at by the learned Single Bench while disposing of the said writ petition is perfectly justified inasmuch as with the self-same prayer, the writ petitioner has already instituted a civil suit.
7. It further appears to us that the subject matter as involved in the said writ petition involves disputed questions of facts which require to be adjudicated by trial on evidence which machinery a writ court lacks.
8. In view of the observation made hereinabove, we find no reason to interfere with the order impugned.
9. With the aforementioned observation, the instant appeal along with pending interlocutory applications are dismissed.

(Sujoy Paul, C.J.)

(Partha Sarathi Sen, J.)

