

30.06.2026
Court No. 12
Item No. 03
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 395 of 2026
IA No : CAN 1 of 2026
CAN 2 of 2026
In
W.P.A. 5603 of 2024

**Mukherjee Associates, represented by its
partner, Dipyaman Mukherjee**
-Versus-

The State of West Bengal & Ors.

Mr. Rahul Karmakar,
Mr. Syamantak Banerjee,
Mr. Rahul Singh,
Mr. Sounak Mukherjee
.....for the appellant.

Mr. D. N. Ray, Ld. G.P.,
Ms. Susmita Saha Dutta, AGP,
Ms. Tanusree Ghosh
....for the State.

Re : CAN 1 of 2026

- 1) CAN 1 of 2026 is an application for condonation of delay of 20 days in preferring the appeal.
- 2) Considering the averments made in paragraphs 9 to 11, we are satisfied that the delay has been sufficiently explained.
- 3) The delay stands condoned.
- 4) The appeal stands registered.
- 5) Accordingly, CAN 1 of 2026 is allowed.

Re : MAT 395 of 2026

- 6) The appeal arises out of a judgment and order dated December 5, 2025 passed in W.P.A. 5603 of 2024.
- 7) The writ petitioner is the appellant before us.

8) Upon hearing the respective parties and upon perusal of the records, His Lordship arrived at a specific finding that, the writ petitioner/appellant could not justify that the work had been completed to the satisfaction of the respondents.

9) His Lordship found that, there was a dispute between the parties with regard to the mode and manner in which the work was executed by the appellant.

10) Although, a prayer was made by the appellant that, payment for the work already executed should be directed, His Lordship was of the view that the disputed questions of fact which had arisen would not permit grant of an extraordinary writ of Mandamus. According to His Lordship, the writ Court could not embark upon an enquiry into factual disputes with regard to execution of the work. Although the writ petition was dismissed, His Lordship clarified that the order would not stand in the way, if the appellant approached the appropriate forum.

11) Mr. Karmakar, learned advocate for the appellant submits that the work was completed and the project is in operation. The construction made by the appellant was put to use by the employer. Under such circumstances, the question of withholding the payment did not arise.

12) We find that His Lordship considered such submission of Mr. Karmakar and came to a specific finding that on September 11, 2022 a show cause was issued to the appellant with regard to the mode and manner in which the

work was executed. The relevant portion of the show cause notice is extracted below :-

“Considering the attached self-explanatory note sheet of the Assistant Engineer and Junior Engineer in charge of the work “Construction of SUH Building within Bhadreswar Municipality” it is clearly evident that you are not only giving lame excuse but intentionally and will fully passing the buck in order to hide your mischief.

You are hereby directed to submit a copy of site order book with clearly mentioning the date of issuance by the Engineer in Charge where instruction at site is to be given. Qualified technical personal supposed to be present at site to take instruction from EIC or his sub ordinate technical person. Hence in order to assess the technical capability of your representative to understand the instruction given by representative of EIC, you are directed to furnish technical qualifications of the representatives present at site at different dates as mentioned by concerned AE & JE in the attached note sheet. It seems that without qualified technical personal you not only compromising the quality of construction but also jeopardize the time bound priority project of Government. Hence you are hereby directed to show cause why any penal action as per clause 2 of the contract agreement is not taken against you within 3 days from the date of issuance of this memo.

Treat it as extremely urgent.”

13) Paragraph 4 of the order impugned before us further clarifies that, on September 27, 2022 also the appellant was called upon by the employer to take measures to complete the work. Under such circumstances, His Lordship was of the opinion that, there was no

conclusive proof that the work had been executed in its entirety. The appellant tried to make out a case of execution of works which were beyond the tender terms. This was a disputed question, which could not be decided by the writ court. Another show cause notice was issued on May 30, 2023, calling upon the appellant to rectify the defects. As many as 24 rectifications had been directed to be carried out.

14) We are not in a position to interfere with the order impugned. The scope of interference in an intra-court appeal is limited. Unless the order of the learned single Judge suffers from any legal infirmity, or error apparent on the face of the records or the order is based on extraneous materials or suffers from non-consideration of material evidence, the order cannot be interfered with. There is no perversity in the order.

15) Under such circumstances, the appeal and the connected applications are dismissed.

16) Further, we find that Clause 25 of the contract provides for settlement of disputes through arbitration. Although it is contended by Mr. Karmakar that the named arbitrator, who is an officer of the department can no longer be an arbitrator, this point can be taken care of by the appropriate forum. The appellant can take appropriate steps, by invoking arbitration and thereafter seeking appointment of the arbitrator in accordance with law. As these proceedings had been pending before this Court for some time, the appellant may cite such reason for the purpose of condonation of delay in approaching the appropriate forum.

17) The appellant shall be at liberty to take appropriate steps.

18) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Smita Das De, J.)