

11.06.2026
Court No. 12
Item No. 10
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 957 of 2026
I.A. No : CAN 1 of 2026
CAN 2 of 2026
CAN 3 of 2026

Md. Rehan
Vs.
Asraf Hossain & Anr.

Mr. Ranjit Chatterjee,
Mr. Arijit Dey
.....for the appellant.

Mr. Achintya Kr. Banerjee,
Mr. Anand Fermania,
Ms. Indumouli Banerjee,
Mr. Wasim Rony,
Mr. Adip Narayan Banerjee
....for the respondent no. 1.
Mr. Gopal Chandra Das,
Mr. Atis Kumar Biswas
....for the K.M.C.

Re : CAN 2 of 2026

- 1) CAN 2 of 2026 is an application for condonation of delay of 60 days in preferring the appeal and the application for leave to file an appeal.
- 2) Considering the fact that the appellant was not a party either to the writ petition from which the contempt arose or in the contempt proceeding, the delay is condoned. The order impugned before us, had come to the knowledge of the appellant belatedly.
- 3) Under such circumstances, the explanations provided in Paragraphs 4 and 5 are adequate and sufficient.
- 4) CAN 2 of 2026 is allowed.
- 5) The Special Leave petition is regularized.

Re : CAN 1 of 2026

6) CAN 1 of 2026 is an application for leave to appeal.

7) Considering the fact that the order impugned before us affects the right of the appellant, who claims to be owner of the premises, the Special Leave application is maintainable and is allowed.

8) The appeal is accordingly regularized.

Re : MAT 957 of 2026

9) The appeal arises out of an order dated March 12, 2026 passed in CPAN 382 of 2024 arising out of W.P.A. 19489 of 2023.

10) By the order impugned, the Commissioner of Police and the Deputy Commissioner of Police, North Division were directed to provide police help and assistance to the men and agents of the Corporation, to ensure that the unauthorized construction was demolished without any further delay.

11) Mr. Chatterjee, learned advocate for the appellant submits that the contempt proceeding was a fall out of a writ petition in which an order was passed by the learned single Judge to the following effect :-

“The Executive Engineer(C)/Building is directed to take necessary steps for dealing with such unauthorized construction in accordance with law at the earliest but positively within a period of twelve weeks from the date of communication of this order.”

12) It is contended that the appellant was not made a party to the proceeding. The appellant claims to be the recorded thika tenant in respect of the premise. No notice was ever

served, no proceeding had ever been initiated. The appellant claims to have inherited the premise from his mother.

13) In writ petition, Her Lordship had directed the Corporation to proceed in accordance with law. Her Lordship only recorded that sometime in 2016 a stop work notice had been given and the police authorities had also registered a case against the wrongdoers pursuant to the complaint lodged by the Corporation. Police cases were registered against one Md. Anowar and Md. Firoz and charge-sheets were submitted against the accused persons.

14) However, from the order passed in the writ petition, we do not find that any demolition proceeding had been initiated in respect of the premises in question in 2016.

15) Challenging violation of the order of Her Lordship, the respondent no. 1 preferred the contempt application. In the contempt application reports were filed by an engineer of the Corporation, indicating that the construction was unauthorized. This gave rise to the direction for demolition.

16) Mr. Das, learned advocate for the Corporation has been unable to satisfy us that pursuant to the order dated September 26, 2023, the Executive Engineer (Building) had taken necessary steps with regard to the unauthorized construction in accordance with law.

17) The law provides for a mechanism for initiation of a demolition proceeding and for passing an order of demolition upon hearing the person responsible for such construction as also the complainant in this regard.

18) The order from which the contempt has arisen does not reflect that any report of any engineer had been filed before the writ Court indicating the nature of the unauthorized construction or that such construction was detected to be unauthorized in the presence of the appellant. By such time, the appellant was already a recorded thika tenant in respect of the premises in question.

19) It appears that the Corporation went directly to the learned Executive Magistrate and sought for orders under Section 584 of the Kolkata Municipal Corporation Act. The Executive Magistrate passed an order directing demolition, which has been stayed by a revisional Court. This fact was not brought to the notice of the learned single Judge who has passed the order impugned.

20) Mr. Das has relied upon a demolition order passed in 2016, in respect of the appellant's father.

21) However, the order of Her Lordship in the writ petition does not reflect that the Corporation was asked to act on the basis of the demolition proceeding of 2016, which had been initiated against the father of the appellant.

22) Rather, Her Lordship had directed the authority to proceed in accordance with law. The Corporation has failed to demonstrate that demolition proceeding had been taken out in terms of the order passed by the writ Court. Moreover, the order of demolition of 2016, was sought to be executed through the executive Magistrate and the order has been stayed by the revisional Court.

23) Mr. Fermania, learned advocate for the respondent no. 1 produces an affidavit, in which the appellant had admitted that there had been unauthorized construction.

24) However, such affidavit is not on record and in any event we do not find that the Corporation has also acted on the basis of such affidavit.

25) The law has to be followed and we are of the considered opinion that the unauthorized construction cannot be allowed to continue. Demolition must take effect. However, such demolition can only be effected upon compliance of the statutory requirement, which we find to be absent.

26) Under such circumstances, the demolition will remain stayed for five weeks. If the Corporation satisfies Her Lordship that demolition proceeding had been initiated on the basis of the order passed in the petition WPA 19489 of 2023, necessary order for demolition may be passed. The other remedies of the appellant are left open.

27) Accordingly, the appeal and the connected application are disposed of.

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

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)