

22.06.2026
Court No. 12
Item 26
Cp

M.A.T. 984 of 2026
With
CAN 1 of 2026
With
CAN 2 of 2026
With
CAN 3 of 2026

Sk. Rafiqul Islam & Anr.
Vs.
Dulal Chandra Das & Anr.

Mr. Kishor Dutta, Sr. Advocate
Mr. Indrajit Bhattacharjee
Mr. Subhayan Barik
.....for the appellants.

Mr. Debabrata Roy
Mr. Manojit Pal
Ms. Sahina Parvin
.....for the private respondent.

Mr. Raghunath Chakraborty
Mr. Rahul Singh
.....for the Maheshtala Municipality.

1. CAN 3 of 2026 is an application for condonation of delay of 101 days in preferring the appeal against an order dated March 5, 2026, passed in CPAN No. 873 of 2024. By the order impugned, the learned Judge made certain observations on the findings of the municipality with regard to the nature and extent of unauthorized construction and the directed the municipality to deal with the said unauthorized construction. As the appellants

were not parties to the said contempt proceeding, they were unaware of the order impugned. Hence, there was delay in filing the appeal. The appellants were unaware of the order until the demolition proceeding was reached to its logical conclusion by an order dated June 5, 2026. The appellants were communicated with the order of demolition on June 8, 2026. The notice indicated that the demolition would take place from June 12, 2026. As the appellants acquired knowledge of the pending contempt application on June 8, 2026, we find sufficient reason to condone the delay in preferring the appeal.

2. Under such circumstances, the explanations given by the appellants as to why the delay had occurred in filing the appeal are satisfactory and the delay is condoned.
3. CAN 3 of 2026 is allowed.
4. CAN 2 of 2026 is an application for leave to appeal from the order dated March 5, 2026, passed in CPAN 873 of 2024. As the appellants were not parties to the contempt application, this application for leave to appeal has been filed. The order impugned is likely to cause prejudice to the appellants. Accordingly, leave is granted to prefer the appeal.

5. CAN 2 of 2026 is hereby allowed.

6. The appeal is registered.

7. Mr. Dutta, learned senior advocate appearing on behalf of the appellants, submits that the observations in the order dated March 5, 2026, which are quoted below, would adversely affect the statutory appeal which the appellants want to file as against the order of demolition. Such observations of Her Ladyship are quoted below:

“1. The photographs produced by the learned advocate representing the petitioner in support of the submission that the construction is an absolutely new one, be retained with the records.

2. On a perusal of the photographs it is very clear that the construction is a new one and the same was in progress on the day the photographs were taken. The extract of the minutes and the proceeding of the 55th board meeting of the councilors of the Maheshtala Municipality dated 25th November, 2025 clearly records that the persons responsible for making unauthorized construction failed to produce any sanction plan either from the panchayat or the municipality.”

8. It is submitted that the appellants have a statutory right of appeal and as such the order impugned should be interfered with, by setting aside the above observations.

9. Mr. Roy, learned advocate for the writ petitioner, submits that, when unauthorized construction had been detected by the municipality, nothing

further remains to be decided in the statutory appeal, which the appellants seek to prefer. He further submits that the Hon'ble Apex Court had time and again held that, no unauthorized construction shall be permitted to remain. They must be demolished. It is also contended by him that the parent order from which the contempt proceeding had arisen was challenged by the appellants in MAT 1842 of 2024. The appeal was dismissed for default. Further challenge to the entire proceeding would be barred by law.

10. The parent order was passed by Her Ladyship on November 17, 2023 in WPA 18082 of 2023. Mr. Roy appeared before Her Ladyship on behalf of the writ petitioner and submitted that the appellants and others had raised several constructions over L.R. Dag No.71, in Mouza – Makhalhati, under Maheshtala Municipality, Ward No.5. Her Ladyship disposed of the writ petition directing the Maheshtala Municipality to dispose of the representation of the writ petitioner, after giving reasonable opportunity of hearing to all. Her Ladyship further directed that, if the municipality found that there had been unauthorized construction, steps should be taken in accordance with law.

11. Admittedly, when the municipality found unauthorized construction, the only treatment that could be given to such construction was to demolish the same, unless the order was set aside or modified by a superior forum. Section 218(3) of the West Bengal Municipal Act grants an opportunity to the person aggrieved by the order passed by the municipality to prefer a statutory appeal. Thus, the propriety of the order of the Municipality will be decided by the appeal court. The right of statutory appeal cannot be denied by a court of law. The right of the appellants to seek justice has been recognized by the statute and the appellants have a right to proceed against the demolition order by filing an appeal.
12. The contention of Mr. Dutta that the observations of Her Ladyship and the factual findings will adversely affect the right of appeal and will prejudice the proposed appeal, is a valid submission. The learned Civil Judge (Junior Division) is the appellate authority and there is a likelihood that the said court may be influenced by the observations of the High Court. The doctrine of issue of estoppel may also be applied by the court.
13. The contempt application was not an extension of the writ proceeding. Thus, the observations in the

order impugned should be restricted to the said proceeding. The appellants are entitled to an independent hearing of the appeal which they propose to file, and the appeal court should not be influenced by such observations..

14. Mr. Roy's contention that once the earlier appeal was dismissed for default, further right of appeal goes, is not accepted. The earlier appeal was filed upon the appellants being aggrieved by the direction upon the municipality to dispose of the representation of the writ petitioner with regard to the allegation of unauthorized construction and to deal with such unauthorized construction in accordance with law. Such order was challenged in the appeal. Dismissal of the said appeal for default, did not amount to an adjudication on the merits of the appeal and the issues involved. In the absence of adjudication of the issues, the subsequent statutory appeal will not be barred by the principles of res judicata or issue estoppel. The scope of the two appeals are separate and distinct.

15. Secondly, Her Ladyship's direction was upon the municipality to take steps in accordance with law with regard to unauthorized construction. Parties were heard. Parties were also present during inspection. After the procedure was completed,

unauthorized construction was detected. The appellants have a right of appeal and it appears that the order dated June 5, 2026, was also communicated to the parties.

16. The question which now arises is whether any protection should be given to the appellant in view of the fact that the contempt application is likely to be taken up soon. Upon balancing the convenience and inconvenience we are of the view that a limited protection should be granted in favour of the appellants, thereby, restraining demolition of the construction. If the construction is not demolished for a month, neither the municipality nor the writ petitioner will suffer any serious loss or prejudice. If the appellants are not successful in obtaining an order of stay of demolition, the said demolition can take place even after a month. On the contrary, if the demolition takes place immediately, the right to prefer an appeal gets extinguished and the appellants will suffer irreparable loss and injury, which will render the situation completely irreversible.

17. Under such circumstances, the demolition shall be stayed for a period of one month from receipt of a copy of this order. If the appellants are not in a

position to obtain any protective order within a month from the date of communication of this order to the municipality, the municipality will act and proceed according to law.

18. Mr. Ray's contention that this court has stretched the statutory period of appeal, is misconceived. The order of demolition has been passed on June 5, 2026 and the period of 30 days has not yet expired.

19. This order shall not be construed as an opinion of this bench on the merits of the appeal. All issues will be decided by the appeal court independently. We just make it clear that observations in the contempt proceeding shall be restrained to the contempt proceeding itself and shall not influence the learned court.

20. Accordingly, the appeal and the connected application being CAN 1 of 2026 are disposed of.

21. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)