

16.04.2026  
SL No.3  
Court No.12  
(gc)

**MAT 1778 of 2023**  
**CAN 1 of 2023**  
**CAN 2 of 2023**  
**CAN 3 of 2023**

**Hitesh Sharma**  
**Vs.**  
**Sabyasachi Mullick Chowdhury & Ors.**

Mr. Siddhartha Banerjee,  
Mr. Rahul Karmakar,  
Mr. Abhisek Baran Das

...for the Appellant.

Mr. Rupak Ghosh,  
Mr. Vishwarup Acharyya

...for the Respondent No.1

Ms. Soumi Guha Thakurta,  
Ms. Raima Ganguly,

...for the Respondent No.4/CPCB.

Mr. Ankit Sureka,  
Mr. Asis Dutta

...for the Respondent No.10.

Mr. Amal Kumar Sen, Ld. A.A.G.,  
Mr. Benazir Ahmed,  
Mr. Partha Sarathi Pal

...for the State.

**Re: CAN 1 of 2023**

1. This is an application for condonation of delay.  
There is a delay of 132 days in preferring the appeal and the application for leave to appeal.
2. We are satisfied with the explanations offered in paragraphs 12 to 22 of the said application. The appellant has made out sufficient grounds for condonation of delay.
3. Accordingly, the delay of 132 days is condoned.
4. CAN 1 of 2023 is, accordingly, allowed and disposed of.

5. The appeal is regularized.

**Re: CAN 3 of 2023**

6. This is an application for leave to appeal, since the applicant/appellant was not a party to the writ petition.

7. Considering the prayer of the applicant, we grant leave to file the appeal.

8. Accordingly, the same is allowed and disposed of.

**Re: MAT 1778 of 2023  
CAN 2 of 2023**

9. The appellant is aggrieved by an order dated March 30, 2023 passed in WPA 21710 of 2022. The appellant wanted to be added in the writ petition on the ground that the recommendation for demolition of an alleged illegal construction affected the right of the appellant as his construction was also covered by the said recommendation.

10. The writ petition had been filed with prayers connected to the order of the National Green Tribunal.

11. The appellant was not a party before the National Green Tribunal (NGT) and was not represented when the order dated January 3, 2022 was passed. The Kolkata Municipal Corporation had also issued

a notice seeking to cancel the sanction plan of the appellant.

12. The learned Judge recorded that the appellant had filed an appeal before the Hon'ble Supreme Court from the order of NGT and also filed a writ petition against the notice of the KMC. Her Lordship observed that, as the appellant had already chosen the forum by challenging the order of the NGT and had also filed an independent writ petition against the notice of the KMC, there was no further need to add the appellant as a party in the writ petition, WPA No.21710 of 2022.

13. Mr. Ghosh, learned Advocate appearing on behalf of the applicant before the NGT and the writ petitioner in WPA 21710 of 2022, submits that pursuant to the order of the Hon'ble Apex Court dated April 24, 2023, the remedy of the appellant lies before the NGT. We are also informed that the writ petition along with the appeal therefrom have been relegated to the NGT. It has been urged that the appellant is not interested to pursue the remedy before the NGT, but is trying to protect an illegal construction by filing applications before this court.

14. The Hon'ble Apex Court had categorically held that the appellant will be at liberty to approach the NGT with all his grievances. The Tribunal was

directed to look into the tenability of the grievances on merits before passing an order thereon. Once the Hon'ble Apex Court had clarified that the appellant should be given an opportunity to make his submissions on the recommendation of the eight-member committee as also the order of the NGT on merits, before the NGT, we are of the considered view that the appellant has to be heard before any further action is taken. The matter is pending before the NGT. NGT will permit the appellant to address on the merits of the recommendation of the eight-member committee and the decision of the NGT.

15. Such exercise is requested to be completed by the NGT within four weeks from the date of communication of this order. It is also true that if the construction was contrary to law, the same cannot be protected. However, in view of the order of the Hon'ble Apex Court, before any other decision is taken on the basis of the recommendation, the grievances of the appellant/petitioner shall be heard and decided by passing of an appropriate order of the NGT.

16. The order of Her Lordship was passed at a time when the appellant had approached the Hon'ble Apex Court and had filed a writ petition also. Thus,

Her Lordship, while dismissing the application, was of the view that the grievances of the petitioner could be agitated adequately before the chosen forum. Under such circumstances, the order impugned does not call for any interference, but in the changed circumstances, when Hon'ble Apex Court has recognized the right of the appellant to ventilate his grievances with regard to the recommendation of eight-member committee, we permit the appellant to file a fresh application for addition of party in the pending writ proceeding i.e., WP 21710 of 2022.

17. Accordingly, the appeal and the connected application, being CAN 2 of 2023, are disposed of.
18. This liberty is in addition to the direction upon the appellant to show his bona fide and pursue his remedy before the NGT in a vigilant manner.
19. There shall be no order as to costs.
20. Parties are to act on the server copy of this order.

**(Shampa Sarkar, J.)**

**(Ajay Kumar Gupta, J.)**