

03. 28.03.2024
Court No.6
(Tanmoy)

MAT/589/2024

**SHYAMAL KUMAR BANIK AND ORS.
VS
MRS. LOLITA LEKHA (NEE MAJUMDER) ANR ORS.**

**WITH
IA NO: CAN/1/2024, CAN/2/2024**

Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv.,
Mr. Debashis Banerjee, Adv.,
Mr. Rakesh Jana, Adv.

...for the applicants/appellants.

Mr. Pratik Majumdar, Adv.,
Mr. Abul Mullick, Adv.,
Mr. Snehasish Dey, Adv.

...for the respondent/
writ petitioner.

Mr. Sk. Md. Galib, Adv.,
Mrs. Ashmita Chakrabarty, Adv.

...for the State.

Mr. Alak Kr. Ghosh, Adv.,
Mr. Anand Farmania, Adv.

...for Kolkata Municipal Corporation.

Affidavit of service filed in Court today be kept with
the records.

In Re: IA No: CAN/1/2024

The respondent no.1 herein (Mrs. Lolita Lekha),
approached a learned Judge of this Court by filing the
present writ petition, praying for orders which would
have the effect of removal of certain stall owners who
have been running their business from the pavement of
Kolkata Municipal Corporation (in short, 'KMC'),
adjacent to the concerned property. Since such stall
owners were not impleaded as party-respondents in the
writ petition, they filed an application for addition of
party before the learned Single Judge.

On March 4, 2024, the learned Judge passed the following order:

“The writ petition is taken up for consideration in presence of the learned advocates representing the petitioner and the Kolkata Municipal Corporation.

An application being CAN 4 of 2024 is also on board. The said application has been taken out as it has been submitted on behalf of the applicants by the stall owners who were directed to be removed by this Court.

Since Mr. Alak Kr. Ghosh, learned advocate representing the Kolkata Municipal Corporation has prayed for 1 (one) week time to obtain instructions whether stall owners have removed the stalls or not pursuant to the order passed by this Court previously, hearing of this writ petition stands adjourned till Monday next, 11th March, 2024.”

Being aggrieved, the stall owners, whose application for impleadment was pending before the learned Single Judge, came up before a co-ordinate Bench by filing MAT 474 of 2024 along with an application for leave to prefer appeal. That Bench granted the stall owners leave to prefer appeal. Thereafter, the appeal was disposed of by the following order:-

“... The order appealed against has decided nothing. It has only directed learned advocate for Kolkata Municipal Corporation to obtain instructions “whether stall owners have removed the stalls or not pursuant to the order passed by this Court previously, hearing of this writ petition stands adjourned till Monday next, 11th March, 2024”.

Learned advocate for the appellants says that the appellants are vitally affected by the order directing removal of the stall owners. They should be heard before any order is passed on the writ petition which may affect them.

To our query as to whether the appellants hold requisite license for running their stalls, learned advocate said that applications have been made to the concerned authority, but no license has yet been granted.

Be that as it may, since the appellants had made an application before the learned Single Judge, we request the

learned Judge to dispose of that application prior to passing any substantive order on the writ petition, which may adversely affect the present appellants. We clarify that we are not putting any kind of seal of approval on the running of the stalls by the appellants. The learned Single Judge is requested to decide the matter in accordance with law..."

It appears that on March 11, 2024, the writ petition and the connected application had also been listed before the learned Single Judge. The learned Judge recorded an order on that date, which reads as follows:-

"The writ petition is taken up for consideration pursuant to the order dated 4th March, 2024 in presence of the learned advocates representing the parties.

Mr. Alak Kr. Ghosh, learned advocate representing Kolkata Municipal Corporation has submitted a report prepared by Executive Engineer (Civil), Br-X, KMC signed on 11th March, 2024 and the same is taken on record.

On perusal of the said report it appears that though notice has been issued to the stall owners for removal of their belongings and vacate the space in question, but the stall owners have not followed such notice by vacating the space as a result whereof according to the corporation police force will be required for taking appropriate steps to vacate the space in question. Corporation is apprehending that there might be commotion in an around the locality when the eviction drive will be taken by corporation with the help of police authority that may hamper the final examinations which are going on in three different schools in the area in question.

Final examinations under CBSE as well as ICSE and ISC examination and Higher Secondary Examination are going on. Considering the academic interest of the students KMC as well as concerned police authority are directed to take steps to vacate the space in question by evicting the stall owners after 3rd April, 2024 since according to the report filed on behalf of the KMC all final examinations will be over by 3rd April, 2024. KMC is granted another three weeks time to be counted from 3rd April, 2024 for taking necessary steps in order to vacate the space in question.

Hearing of this matter stands adjourned.

List the matter under the same heading for further consideration on 29th April, 2024."

Being aggrieved, the stall owners intend to prefer appeal against the said order and have filed this application for leave to prefer appeal.

Having heard Mr. Bhattacharya, learned Senior Counsel representing the applicants in this application, we are of the view that the applicants have sufficient *locus standi* to prefer appeal against the order dated March 11, 2024. Accordingly, we grant leave to them to prefer appeal.

The application being IA No: CAN/1/2024 is accordingly disposed of.

In Re: MAT 589/2024
With
IA No: CAN/2/2024

It appears that before the Division Bench passed its order on March 11, 2024, the writ petition and the connected applications were taken up by the learned Single Judge and the order that is impugned in this appeal, was passed. Ideally, the present appellants should have mentioned the matter before the learned Single Judge and drawn His Lordship's attention to the order of the Division Bench. It does not appear that the same was done as the order impugned does not even refer to the order of the Division Bench.

We are not very happy with the conduct of the appellants. There is no error or deficiency on the part of the learned Single Judge since in our understanding, the

Division Bench order dated March 11, 2024, was not placed or could not have been placed before the learned Judge before His Lordship passed the order dated March 11, 2024.

However, since a co-ordinate Bench has passed an order requesting the learned Single Judge to grant an audience to the appellants herein by disposing of their application for addition of party prior to passing any substantive order on the writ petition which may adversely affect them, we request the learned Single Judge to give effect to the Division Bench order dated March 11, 2024. Parties will be at liberty to draw to the learned Judge's attention that order of the Division Bench as also the present order. We further request the learned Single Judge to dispose of the appellants' application for addition of party prior to April 29, 2024, when, we are told, the matter has been made returnable by the learned Judge.

Since the appellants herein are to be heard by the learned Single Judge before any adverse order is passed, no steps for removal of the appellants be taken till the learned Judge decides the application of the appellants for addition of party.

Mr. Majumdar, learned Advocate for the respondent/writ petitioner, prays for leave to file affidavit-in-opposition to the application for addition of party made by the present appellants before the learned

Single Judge. Let such affidavit be filed within a week from date (04.04.2024). Reply thereto, if any, be filed by April 8, 2024. Parties will be at liberty to mention the matter before the learned Single Judge thereafter.

The appeal being MAT 589 of 2024 and the connected application being IA No: CAN/2/2024 are disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Supratim Bhattacharya, J.)