

Prabhat Kumar Mahapatra Vs. The Calcutta Municipal Corporation and Ors.

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Court : Kolkata

Decided On : Feb-23-2017

Judge : Debangsu Basak

Appellant : Prabhat Kumar Mahapatra

Respondent : The Calcutta Municipal Corporation and Ors.

Judgement :

ORDER

SHEET IN THE HIGH COURT AT CALCUTTA ORIGINAL SIDE GA No.573 of 2017 RVWO No.11 of 2017 PRABHAT KUMAR MAHAPATRA Versus THE CALCUTTA MUNICIPAL CORPORATION & ORS.GA No.578 of 2017 RVWO No.11 of 2017 PRABHAT KUMAR MAHAPATRA Versus THE CALCUTTA MUNICIPAL CORPORATION & ORS.BEFORE: The Hon'ble JUSTICE DEBANGSU BASAK Date : 23rd February, 2017.

Appearance: Mr.Arik Banerjee, Adv.Mr.Avirup Mondal, Adv.Mr.Mohiuddin Sk., Adv.Mr.Rajib Mullick, Adv.Mr.Rakesh Sarekar, Adv.For the petitioner.

Mr.Alok Kumar Ghosh, Adv.Mr.S.K.Debnath, Adv.For K.M.C.The Court :- The review petition along with the stay application in the review and the application for condonation of delay are all taken up together.

GA No.573 of 2017 is an application for condonation of delay.

The delay is of 70 days in making and filing the review application.

The explanation given is that, the petitioner had preferred an appeal against the composite order dealing with an application the present writ petition and another writ petition.

Since the order was passed by the Honble Appeal Court in respect of one of the writ petitions, the petitioner did not prefer an appeal in respect of second writ petition.

In such appeal the petitioner was given the liberty to apply for review.

Consequently, the petitioner has preferred the review application.

The causes shown in the application are accepted as sufficient.

The delay is condoned.

GA No.573 of 2017 is allowed.

No order as to costs.

GA No.578 of 2017 is an application for review being RVWO No.11 of 2017.

They are taken up together for consideration.

Learned Advocate for the petitioner refers to the order dated November 8, 2016 dismissing the application being GA No.1242 of 2016 for recording the death of the original petitioner and for consequential substitution.

He refers to the order dated December 15, 2016 passed by the Honble Appeal Court in respect of WP No.2467 of 2002 and submits that, since the Honble Appeal Court has granted liberty to apply for review, the petitioner has been advised to make the application for review in WP No.1039 of 1989.

He submits that, during the consideration of GA No.1242 of 2016 made in WP No.1039 of 1989, relevant facts with regard to such proceedings could not be produced before the Court including an order passed by the Court.

Such order shows that, the Court had noted the death of the original petitioner and had directed its substitution.

However, the consequential amendments have not been carried out.

The present application, if allowed, will permit the rectification of such errors. He seeks necessary orders directing amendments.

Learned Counsel appearing for the Corporation Authority opposes the review application and the stay application made therein.

He refers to the order dated November 8, 2016 and submits that, no appeal was carried against such order in relation to GA No.1242 of 2016 made in WP No.1039 of 1989.

The only appeal was in respect of WP No.2467 of 2002.

Since the appeal was limited to such writ petition, the same order need not be read in respect of WP No.1039 of 1989 to permit the petitioner to apply for review.

I have considered the rival contentions of the parties and the materials made available on record.

The original petitioner is dead.

The original petitioner had died on November 20, 1996.

The writ petition is pending since 1989.

It appears from the records made available now in the review application that, the death of the original petitioner was noted by the order dated September 10, 2002 passed as application made in WP No.1039 of 1989 and a direction was issued for amendment of the cause title thereof.

The amendment has not been carried out.

The order dated September 10, 2002 was not placed on November 8, 2016.

An application for recording the death of the original petitioner and consequent being GA No.1242 of 2016 made in WP No.1039 of 1989 was dismissed by November 8, 2016 as the WP No.1039 of 1989 was found to have abated in view of no steps being taken for substitution of the original petitioner.

By such order another writ petition was dealt with also.

An appeal was carried against such portion of the order dated November 8, 2016 which relates to the other writ petition.

Apparently, no appeal was carried in respect of the order dated November 8, 2016 in relation to GA No.1242 of 2016 made in WP No.1039 of 1989.

The fact that, the petitioner did not prefer an appeal does not preclude him from applying for review of such order, once it makes out sufficient cause for the review.

Moreover, in the appeal from the order dated November 8, 2016 relating to the other writ petition, the Division Bench was of the view that, the dismissal of the appeal shall not prejudice to the rights of the appellant in seeking review of the order of the learned Single Judge.

Sufficient materials were not placed before the Court to substitute that the petitioner had taken steps for recording the death of the original petitioner and for consequent amendment when the order dated November 8, 2016 passed by the Court.

Apparently, the learned Advocate appearing on that date was not adequately equipped.

The client should not be made to suffer the consequence of non-placement of such order.

In such circumstances, I allowed the review application.

The petitioner seeks amendment of the writ petition being WP No.1039 of 1989 consequent to the death of the original writ petitioner.

The petitioner seeks amendments consequent upon the death of the original petitioner.

The petitioner has not prayed for amendment of the writ petition in the application for stay.

Learned Advocate for the petitioner submits that, once the order dated November 8, 2016 is reviewed and the application being GA No.1242 of 2016 is allowed, the same will take care of the proposed amendments.

It is admitted at the bar that, the amendments proposed in GA No.1242 of 2016 are not correct.

Therefore, the question of granting an order in terms of prayers made [a].to [g].of GA No.1242 of 2016 does not arise.

It is not for the Court to travel beyond the prayers sought for and make out a third case for the parties.

In such circumstances, I am constrained not to grant any order directing of WP No.1039 of 1989 amendment in the review application.

GA No.578 of 2017 is disposed of.

No order as to costs.

WP No.1039 of 1989 continues to remain dismissed as abated.

The Department will record it to be so.

(DEBANGSU BASAK, J.) snn.

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