

**(2019) 08 CAL CK 0203**

**In the Calcutta High Court**

**Case No :** Civil Application (CAN) No. 6392, 7265, 7972, 7973 Of 2019 In  
Tender Of Mand Appl (MAT) No. 1184 Of 2018

Lal Babu Shaw

APPELLANT

Vs

Howrah Municipal Corporation And Ors

RESPONDENT

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**Date of Decision :** 16-08-2019

**Acts Referred:**

Howrah Municipal Corporation Act, 1980 — Section 177

**Citation :** (2019) 08 CAL CK 0203

**Hon'ble Judges :** Dipankar Datta, J;Saugata Bhattacharyya, J

**Bench :** Division Bench

**Advocate :** Aniruddha Chatterjee, Sounak Bhattacharya, N.C. Bihani, Bibek Jyoti Basu, Uttam Kumar De

**Final Decision :** Dismissed

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## **Judgement**

Re: CAN 7265 of 2019.

CAN 7265 of 2019 is an application praying for recall of order dated 12th July, 2019, whereby hearing of an application (CAN 6392 of 2019) for restoration of M.A.T. 1184 of 2018 and CAN 7972 of 2018 and CAN 7973 of 2018 filed therein was adjourned for a year for the reasons indicated therein.

We have heard the parties on the merits of CAN 7265 of 2019. Sufficient cause being shown, the order dated 12th July, 2019 stands recalled.

CAN 7265 of 2019, accordingly, is allowed.

Re: CAN 6392 of 2019.

CAN 6392 of 2019 is taken up for consideration. The parties have been heard and the averments in the application perused. Cause shown for non-appearance of the learned advocate before the co-ordinate Bench on 11th June, 2019 is sufficient. The order dated 11th June, 2019 is recalled. CAN 7973 of 2018 is restored to its file and number.

CAN 6392 of 2019 stands allowed.

Re: CAN 7973 of 2018.

CAN 7973 of 2018 is an application seeking leave to appeal as well as for condonation of 39 days' delay in preferring the appeal (M.A.T. 1184 of 2018).

We have heard learned advocates for the parties and perused the averments made in the application.

The appellant/applicant was not a party to the writ petition. He has now sought for leave to appeal by filing an independent application. Without being too technical and without insisting for an independent application for leave to appeal, we grant the prayer since the order under challenge dated 12th July, 2018, if implemented, would operate to his detriment and prejudice.

Cause shown for not preferring the appeal within the prescribed period of limitation is sufficient. The delay in preferring the appeal (M.A.T. 1184 of 2018) is condoned.

CAN 7973 of 2018 stands allowed. There shall be no order for costs.

Register the appeal, if it is otherwise in form.

Re: CAN 7972 of 2018.

This is an application for stay in an appeal which is directed against an order dated 12th July, 2018 passed by a learned Judge of this Court while disposing of W.P. 9161(W) of 2018. By the impugned order, the learned Judge directed the Howrah Municipal Corporation (hereafter the corporation) to implement its decision dated 19th January, 2018 in accordance with law by invoking Section 177 of the Howrah Municipal Corporation Act (hereafter the Act) within a fortnight from date.

Section 177 of the Act relates to the power of the corporation as well its commissioner to take action against unauthorised construction.

It is not in dispute that the petitioners in W.P. 9161(W) of 2018 had initiated an earlier round of litigation [W.P. 19853(W) of 2017] seeking a direction on the corporation to decide their allegation of unauthorised construction raised at premises no. 6, Kali Banerjee Lane, P.S. and District - Howrah (hereafter the said premises) by the private respondents in such writ petition.

W.P. 19853(W) of 2017 was disposed of on 21st August, 2017 by a learned Judge with a direction upon the corporation to take a decision on the allegation of unauthorised construction.

In compliance with such order, the corporation proceeded to pass an order on 19th January, 2018 holding that two floors of the building at the said premises had been constructed in clear deviation of the sanctioned plan. W.P. 9161(W) of 2018 was essentially filed seeking implementation of such decision.

Since the appellant/applicant was not a party before the learned Judge, his defence was not available to His Lordship.

Mr. Chatterjee, learned advocate appearing for the appellant/applicant contends that he has been inducted as a tenant by Ashok Shaw, Arun Shaw, Satish Shaw, Manoj Shaw and Rajesh Shaw (respondent nos. 14, 15 and 17 to 19 in the writ petition) upon valuable consideration without disclosing that the tenancy in the top floor of the building at the said premises was created in respect of an unauthorised construction. Since the land-lords of the appellant/ applicant were seeking to dispossess him, he had instituted a civil suit in the Court of the Civil Judge (Senior Division), 1st Court, Howrah, being Title Suit No. 45 of 2018. In such suit, an order of status quo in respect of possession, and nature and character of the suit property had been passed by the court and any order of demolition, if implemented, would render the appellant/applicant deprived of his right to protect his tenancy.

We have noted that the order of status quo was passed on consent, i.e., the consent of the landlords of the appellant/applicant in a suit where the corporation, a body corporate, has not been sued.

Be that as it may, despite being called upon to satisfy us that the construction in respect whereof the tenancy had been created is an authorised construction, Mr. Chatterjee has failed to place before us any document in that behalf. There being no material before us to hold that the construction is authorised and raised in terms of the building plan sanctioned by the corporation, merely because the appellant/applicant is not the person responsible for raising of such unauthorised construction, would not persuade us to make any order in favour of the appellant/ applicant for retention of such unauthorised construction. The decisions of the Supreme Court reported in (1999) 6 SCC 464 (M.I. Builders Private Limited -vs- Radhe Shyam Sahu and Ors.) and (2013) 5 SCC 336 (Dipak Kumar Mukherjee - vs- Kolkata Municipal Corporation and Ors.) are authorities for the proposition that no mercy ought to be shown by the writ court in respect of unauthorised construction.

We are of the firm and clear opinion that the learned Judge was perfectly justified in directing the corporation to proceed for implementation of the order of demolition, in accordance with law. There being no reason to interfere with such order, the appeal stands dismissed. The application for stay also stands dismissed. There shall be no order for costs.

Needless to observe, we have not dealt with any point touching the merits of the civil suit instituted by the appellant/applicant and the learned Judge shall be free to proceed in accordance with law.

Certified website copy of this order shall be provided to the appellant/applicant within 48 hours of putting in requisites therefor.