

(2018) 10 CAL CK 0009
In the Calcutta High Court

Case No : C.A.N.5729, 5732, 5740, 5739 Of 2018, M.A.T. 733, 734 Of 2018

Md. Yousuf Ali Mollah @APPELLANT@Hash Ghutiary Sharif S.S.G.M.N.S.
Senior Madrasah & Ors

Date of Decision : 01-10-2018

Acts Referred:

Citation : (2018) 10 CAL CK 0009

Hon'ble Judges : Shekhar B. Saraf, J;Harish Tandon, J

Bench : Division Bench

Advocate : K. M. Hossain, T.P. Haldar

Final Decision : Disposed Off

Judgement

In Re : C.A.N. 5729 of 2018

This is an application for condonation of delay in filing the appeal (MAT 734 of 2018) within the statutory period of limitation. On perusal of the said

application, we find that sufficient cause has been made out in not filing the appeal within the period of limitation. Accordingly, the delay of 62 days in

preferring the appeal is condoned. The application bearing C.A.N. 5729 of 2018 is allowed. Let the said appeal be registered, if it is otherwise in form.

In Re : C.A.N. 5740 of 2018

This is an application for condonation of delay in filing the appeal (MAT 733 of 2018) within the statutory period of limitation. On perusal of the said

application, we find that sufficient cause has been made out in not filing the appeal within the period of limitation.

Accordingly, the delay of 59 days in preferring the appeal is condoned. The application bearing C.A.N. 5740 of 2018 is allowed. Let the said appeal be

registered, if it is otherwise in form. Both the appeals and applications are taken up for final disposal. The dispute pertains to the constitution of the

Managing Committee of Ghutiary Sharif S.S.G.M.N.S. Senior Madrasah at South 24 Parganas.

According to Mr. Ekramul Bari, learned advocate appearing for the appellant that the person claiming to be the constituents of the present Managing

Committee have no semblance of right and interest therein as the said Managing Committee has not been approved by the Board. Mr. Bari draws our

attention to the Memo dated 18th January, 2017 to counter the observations recorded in the impugned order that a decision to appoint the

Superintendent to administer and manage the affairs of the Senior Madrasah was not taken by the President alone but it was a collective decision of

the Board.

We have perused the documents annexed to the application for stay filed by the appellant wherefrom it appears that the challenge in the writ petition

was founded on two Memos dated 8th March, 2018 and 9th March, 2018 whereby and whereunder the District Inspector of School (S.E.), South 24

Parganas reinstated the Superintendent of the said Senior Madrasah and directed him to take charge thereof and submit the report pertaining to any

action to be taken in this regard. By Memo dated 8th March, 2018, the said authority thought it fit to appoint Drawing and Disbursement Officer of the

Madrasah and appointed Mr. Bishnupada Sarkar, the Assistant Inspector of School as Administrator and Drawing and Disbursement Officer of the

said school.

By the impugned order, the learned Single Bench though held that the appointment of Drawing and Disbursement Officer by the District Inspector of

School is strictly in terms of the provisions contained under Rule 26 (3) of the relevant Rules, yet the memo appointing the Drawing and Disbursement

Officer was directed to remain stayed. However, the learned Single Bench directed the Board to take an independent decision whether or not to

appoint an administrator or a an ad-hoc committee after giving opportunity of hearing to Mr. Bhattacharya's client and till such decision was

taken, the Board should not give effect to the decision appointing the administrator.

Admittedly, in absence of any order of stay of the operation of the impugned order, the Board acted on the basis of the interim order impugned in the

instant appeal and have taken a decision and approved the Managing Committee

during the pendency of the appeal.

Mr. Bari, the learned advocate appearing for the appellant seeks leave to file a supplementary affidavit annexing the aforesaid decisions and the

consequential steps that have been taken in this regard. Such leave is granted. Let the supplementary affidavit filed today be taken on record.

It is not in dispute that the entire dispute centres around the validity or legality of the Managing Committee to run and administer the Senior Madrasah.

Though Mr. Bhattacharya's client claims to have been validly constituted under the relevant Rules having all powers to manage and administer the

said school, it has been seriously disputed by Mr. Bari.

Now, during the pendency of the appeal an approval has come from the Board in terms of the interim order passed by the learned Single Bench and,

therefore, this Court feels that the entire issue must be placed before the learned Single Bench to take a decision thereupon. Liberty is granted to Mr.

Bari's client to file an application for amendment of the writ petition incorporating the subsequent events challenging the decision of the Board in

granting approval to the alleged Managing Committee.

The learned Single Bench is requested to dispose of the writ petition as expeditiously as possible after permitting the respondents to exchange

affidavits within a short period of time. The apprehension of Mr. Bari that if we do not interfere with the impugned order, it would stand in the way of

his client at the time of final disposal of the writ petition is unfounded, misplaced and not sustainable. It is somewhat settled law that the observations

recorded at the interlocutory stage, more particularly at an ad interim stage, is mere tentative and does not have any binding effect at the time of final

disposal of the case on merits. Both the appeals and applications are disposed of.