

(2011) 09 CAL CK 0133
In the Calcutta High Court
Case No : W.P.L.R.T. No. 166 of 2011

Pradip Maity and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114, 33
Limitation Act, 1963 — Section 5
West Bengal Land Reforms and Tenancy Tribunal Act, 1997 — Section 10, 6

Citation : (2012) 1 CALLT 391 : (2012) 5 CHN 305

Hon'ble Judges : Pratap Kumar Ray, J;Md. Abdul Ghani, J

Bench : Division Bench

Advocate : Gurupada Das, for the Appellant;Chandi Charan De and Mr. Sk. Md. Galib for the State, for the Respondent

Final Decision : Dismissed

Judgement

Pratap Kumar Ray, J.—Heard learned Advocates appearing for the parties. Assailing the order dated 22nd July, 2011 passed in O.A. No. 1561 of 2011 (LRTT) by the West Bengal Land Reforms and Tenancy Tribunal, this writ application has been filed.

2. The impugned order reads such:

22.07.11.- Learned Counsel on behalf of the applicants is present.

Learned Government Representative is also present.

Applicants have filed affidavit-of-service annexing certain documents. Let it be kept with the record.

On the submission of the Learned Counsel application dated 24/06/2011 u/s 10 and 6 of the West Bengal Land Reforms & Tenancy Tribunal Act, 1997 filed by the applicants is deemed to be treated as withdrawn with a liberty to the applicants to prefer appeal in respect of the order dated 15/03/2001 passed in R.A.L. Case

No. 112/80-81 before the Appellate Authority within a period of sixty days from the date of receiving certified copy of this order.

Appellate Authority shall entertain the appeal condoning delay on the basis of an application u/s 5 of the Limitation Act, if the same is filed within the aforesaid period and hear out and dispose of the appeal on merit, after hearing all the interested parties in accordance with law within a period of six months from the date of filing the appeal.

O.A. No. 1561/2011 (LRTT) is, thus disposed of....

3. On a bare reading of impugned order, it appears that original applicants that is present writ petitioners prayed before learned Tribunal below to withdraw their original application with liberty to prefer an appeal. On the basis of such submission, learned Tribunal below passed an order directing Appellate Authority to condone the delay and to hear the matter on merit.

4. It is the submission of learned Advocate for writ petitioners that no submission made to withdraw the original application. In paragraph 14 of writ application, such contention has been made, which, however, has been affirmed in the affidavit portion as humble submission before this Court. Even we consider the submission as a true state of affairs, we cannot entertain the same in view of judicial pronouncement by settling the law that recording of a finding by Court of Law in the order-sheet is to be considered as true state of affairs by Higher Court and no affidavit and no oral submission could be accepted to contradict the same. This principle is originated from Privy Council case long back and consistently has been followed by different Courts, including our Apex Court. In the case AIR 1926 136 (Privy Council) Lord Atkinson held "we are bound to accept the statement of Judges recorded in their judgments, as to what transpired in Court. We cannot allow the statements of Judges to be contradicted by statements at the bar or by affidavit or other evidence. If the Judges say in their judgments that something was done, said or admitted before them, that has to be last word on the subject and remedy to call attention of that Court on such issue". This view earlier was passed by Lord Buckmaster in the case *Madhusudan v. Chandrabati* reported in 21 CWN 897. In the case *Sarat Chandra v. Bibhabati Debi* reported in AIR 1922 (Cal.) 584. Sir Asutosh Mukherjee held "in such cases litigant to apply the judge without delay praying rectification or review of judgment". Same view was taken in the case *The King Emperor Vs. Barendra Kumar Ghose*, . The Apex Court passed the same view in the case *State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another*, by holding "Judges record is conclusive, neither lawyer nor the litigant may claim to contradict it except before the judges himself but nowhere else". Same view reiterated by Apex Court in the cases *Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others*, *Shankar K. Mandal and Others Vs. State of Bihar and Others*, , *Central Bank of India Vs. Vrajlal Kapurchand Gandhi and Another*, , *Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others*, , a judgment of 3-Judges Bench and *D.P. Chadha v. Trijubi Narayan*

Mishra reported in (2001) 2 SCC 221, a judgment of 3-Judges Bench. The latest view of Apex Court confirming the said principle is in the case Mount Carmel School Society Vs. D.D.A., , where the Court considered the issue on statutory provision of sections 33 and 114 of the Code of Civil Procedure, 1908, by holding, inter alia, that record made by a judge to be accepted and correct; question whether a particular plea raised, but that not dealt with by judge concerned, comes within the remedy available by review.

5. In view of aforesaid settled legal position, we cannot accept the contention made in paragraph 14 of writ application whereby it is contended that writ petitioners did not submit any prayer to withdraw the original application, which is contradictory to the finding recorded by learned Tribunal below in the impugned order. As such, the writ application stands dismissed.

There will be no order as to cost.

Let affidavit of compliance as filed by State respondents be kept with the record.

Md. Abdul Ghani, J.

I agree.