

(1986) 07 CAL CK 0006

Calcutta High Court

Case No: F. M. A. T. No. 2188 of 1986

Prasanta Kumar Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: July 29, 1986

Citation: 91 CWN 587

Hon'ble Judges: Paritosh Kumar Mukherjee, J; J.N. Roy, J

Bench: Division Bench

Advocate: M.P. Banerjee and Chhabi Mukherjee, for the Appellant; A.P. Chatterjee and P.S. Bose, for the Respondent

Judgement

G.N. Ray, J.

Against the clarification of the order dated 19th May, 1986 by an order passed on 16th July, 1986, the instant appeal has been preferred and this application for stay has been made in Connection with the said appeal. It appears that in a writ proceeding concerning C.O.6066(W) of 1986, a prayer for interim order was made by the writ petitioner and interim order was made and was extended until the hearing of the application. When the said application was called, the counsel for the writ petitioner was not present and it appears from the order-sheet that an order was recorded to the effect "Let the matter go out of list". The petitioner thereafter proceeded on the footing that since the interim order which was passed and extended subsequently was not vacated by any further order and on 19th May, 1986 the application went out of list, the interim order was continuing. As it appeared to the petitioner that the interim order was violated by the respondents deliberately, he made an application for contempt of court for violating the said interim order and it appears that a notice of the said contempt application has been issued. Thereafter, the respondents in the said writ petition after being served with the contempt application mentioned the matter to the learned trial Judge and it is the case of the appellant that the matter thereafter appeared for orders in the list with notice to the writ petitioner. It is the case of the appellant petitioner in the instant

application that the learned counsel of the petitioner was not allowed to make submission but the order dated 19th May, 1986 was modified by the learned Judge by an order passed on 16th July, 1986 to this effect-

It is clarified that the order dated the 19th May, 1986 has not recorded the order correctly. There is a definite recollection on the part of this Court that this Court vacated the interim order on the submissions of Mr. Bose & Mr. Bhattacharya. Let it be recorded that the interim order stands vacated since 19th May, 1986.

Prayer for stay made but refused.

2. Mr. Banerjee, learned counsel appearing in support of this application for stay of the said order dated 16th July, 1986 has strenuously argued that the order dated 19th May, 1986 which was recorded in the order-sheet should not have been varied or corrected simply on the basis of the recollection of the learned Judge, more so, when sufficient time had lapsed and various other consequences have taken place on the basis of the order since gone down in the order sheet. He has contended that if the order is corrected on 16th July, 1986 by way of clarification as has been done by the learned Judge, the petitioner in the writ petition will be put to a difficult position because he had no opportunity to prefer any appeal against the said order vacating the interim order within time because such an order had not been recorded in the order and as such he had no occasion to know that the order was something else. Mr. Banerjee has also contended that the court should also take serious note of the fact that "To err is human" and the learned Judges are not exceptions to the said malady of human frailty. He has contended that after lapse of considerable time it becomes very difficult for the learned Judge to remember facts correctly and in all probabilities it is not possible for the learned Judge to recollect what order was passed in a particular case, more so, when there was no contested hearing and for that reason there was no special occasion to remember. He has submitted that if simply on the basis of the recollection of the learned Judge an order is corrected at a later stage there is every likelihood that such correction is not done on a proper footing thereby causing injustice to a party against whom the subsequent correction is made. He has, therefore, contended that the said order dated 16th July, 1986 which virtually replaced the order dated 19th May, 1986 as gone down in the record, should be set aside by this court by allowing the appeal. We are, however, unable to accept the said contention of Mr. Banerjee. It is true that "To err is human" and Judges are not infallible. But it appears to us that when order has been wrongly noted by the officer of the court and has gone down in the order book wrongly and the attention of the Judge is drawn to such incorrect recording of the order, the learned Judge has not only the power to correct the incorrect order, but in our view, he has also the duty to do that. It is true that with the lapse of time when various orders are being passed by a learned Judge in different matters, it is often very difficult for the learned Judge to recollect what particular order was passed in a particular matter, more so, when there was no contested hearing and by

that process, there was any special occasion to remember the order passed in the said occasion to remember the order passed in the said proceeding. But if for any reason, the learned Judge recollects such event and on such basis corrects the order wrongly gone down in the order book, we do not think there will be any occasion for the Appeal Court to take a contrary view and or set aside the said order. There is no manner of doubt that before making the correction, the learned Judge must have considered the facts in the proper perspective and he had definitely remembered the order actually passed by him but wrongly gone down in the order book and it is only on that score, he has corrected the same.

3. In the aforesaid circumstances, this application fails and is dismissed.

4. Mr. Banerjee has made a prayer that this appeal may be treated as a substantive appeal against the order vacating the interim injunction as noted in the order dated 16th July, 1986 by correcting the earlier order since gone down in the order sheet and he has also submitted that since the petitioner had no occasion to prefer an appeal from the order dated 19th May, 1986, as stands corrected by the subsequent order within the period of limitation, the delay in preferring the period of limitation, the delay in preferring the appeal should be condoned on the oral prayer of the learned counsel. In the special facts and circumstances of the case, we allow this oral prayer for condonation of delay and this appeal is treated as presented within time from the order dated 19th May, 1986 as stands corrected by the subsequent order dated 16th July, 1986. The learned Counsel is given liberty to amend the cause title and the prayer of the memorandum of appeal.

5. Liberty is given to the appellant petitioner to file a proper stay application in the instant appeal.

6. The allegations made in the stay application since disposed of by this order are not admitted by the respondents who have not filed any affidavit to the said application. In view of the finding made by the learned Judge that the order passed on 19th May, 1986 had not gone down correctly in the order sheet it appears to us that the matter requires proper investigation as to how the incorrect order had gone down and we feel that the matter should be properly enquired by the Registrar, Appellate Side of this Court or the Additional Registrar (1) as to how such incorrect recording had been made by the concerned court officer or assistant Court Officer as the case may be. Suitable steps should be taken on the basis of the findings in the said enquiry against the erring officer.