

12.06.2026
Court No. 12
ML 91
June 2026
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

M.A.T. 1718 of 2025
I.A. No : CAN 1 of 2025

Prabir Kumar Patra
Vs.
Sri Ranjan Dasgupta & Ors.

Mr. Sounak Sen,
Mr. Nilarnab Paul
.....for the appellant.

Mr. Shiv Shankar Banerjee,
Mr. Adhip Narayan Banerjee,
Mr. Siddhartha Chamria
....for the respondent nos. 1 & 2.

- 1) Respondent nos. 1 and 2 have refused service. Affidavit-of-service is taken on record. Refusal is a good service.
- 2) The appeal arises out of an order dated August 28, 2017 passed in W.P. 13818 (W) of 2017.
- 3) By the order impugned, the learned Court restrained the society from insisting upon payment of penalty by the respondent nos. 1 and 2 / writ petitioners, on account of delayed payment of the amounts due. Her Lordship further directed possession of the flats should be given to the writ petitioners. Such order was passed, relying upon an order of the Joint Registrar of Cooperative Societies dated February 8, 2017, by which the society was directed that no charge of penal interest on the amount due should be made. Steps must be taken to amend the bye-laws of the society, in

accordance with the West Bengal Cooperative Societies Act, 2006 and the West Bengal Cooperative Societies Rules, 2011. Thereafter, a report be submitted showing compliance. The issue went up to the Registrar of Co-operative societies, when the Cooperative society had incorporated a provision for charge of penalty and interest in its bye-laws according to the old Act. The Joint Registrar held as follows :-

i) Housing societies are non-profit making organisation.

ii) No provision is made in the WBCS Act 2006, WBCS Rules, 2011 and the bye-laws thereunder regarding the charging of penal interest on due amount.

iii) Society appeared in a hearing on 20.10.16 in the chamber of the undersigned where the society was asked not to charge penal interest on due amount.

iv) Provision of penal interest as made in the existing bye-laws of the society contradicts the provision of WBCS Acts, 2006. Provision in this regard under existing Acts shall prevail over the provision of the bye-laws of the society.

4) The writ petitioners challenged the inaction of the society to amend the bye-laws as per the order of the Joint Registrar and inaction to hand over the flats on the ground that penalty and interest had not been paid by them.

5) Her Lordship, by applying the order of the Joint Registrar, passed the direction upon the

society and also directed the society to complete the process of amendment of the bye-laws.

6) Aggrieved by the aforementioned order, an appeal was filed being MAT 1700 of 2017. By an order dated December 6, 2017, a coordinate Bench directed that the society should ensure completion of all the unfinished work in respect of the flats, subject to payment by the respondent nos. 1 and 2 in terms of the demand raised by the cooperative society on the basis of bye-laws No. 82 of the Airport Authority Employees Cooperative Housing Society Limited. Clause 82 of the bye-laws is quoted below :-

82. A member in arrear after thirty days from the date of notice shall pay interest at two paise per rupee per month on the outstanding.

7) The appeal was finally disposed of by another coordinate Bench, by an order dated September 19, 2025.

8) Counsel for the Secretary submitted before their Lordship that steps were being taken to dispense with the claim for penal interest against the respondent nos. 1 and 2. It was further submitted that two flats had already been registered in the name of the respondent nos. 1 and 2. There were no instructions from the society as to whether the bye-laws has been amended. Paragraph 4 of the order records that the society had taken steps to settle the matter amicably and not demand penal interest from the two writ petitioners. It was further submitted before their Lordships

that all the matters were required to be settled amicably.

9) An application was filed by the appellant before Their Lordships seeking leave to prefer the appeal. The application was regularized by the coordinate Bench upon considering the appellant to be a party respondent in the writ petition, but the grievance of the appellant was neither discussed nor decided in the said appeal.

10) It appears from the tenor of the order of the Division Bench that, the appellant sought to espouse the cause of those members who had been charged interest and penalty prior to the matter being decided by the learned Single Judge. However, Their Lordship recorded that there was serious doubt as to whether the appellant could espouse the cause of other members who had paid the penal interest. Those members were silent on the issue.

11) Under such circumstances, the order of the coordinate Bench disposing of the appeal with the above observations, had attained finality and further challenge to the order passed by the learned single Judge in the writ petition cannot be maintained.

12) We cannot sit in appeal over the order of the coordinate Bench, neither can we take into consideration subsequent facts, which are sought to be urged before us.

13) Any further challenge to the order of the learned Single Judge will be barred by the principles of constructive res judicata and issue estoppel.

14) However, if the appellant has any other grievance against the society or the manner in

which the society has treated the appellant, or any grievance against the respondent nos. 1 and 2 vis-à-vis his rights, a dispute may be raised in accordance with law.

15) With the above observations, the appeal and the connected application are disposed of.

16) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)