

25.06.2026
SL No.3
Court No.12
(Cp/gc)

MAT 1016 of 2026
CAN 1 of 2026
CAN 2 of 2026
CAN 3 of 2026

Mosiur Rahaman Mallick
VS
Ataur Rahman & Anr.

Mr. Sourav Sen, Sr. Adv.,
Ms. Adrisnata Chakraborty,
Mr. Subhayan Barik

... for the Appellant.

Mr. Moloy Roy Choudhury

...for the Respondent no. 2.

Mr. Alok Kumar Ghosh, Sr. Adv.

...for the KMC.

1. None appears on behalf of the Kolkata Municipal Corporation, despite service.
2. Mr. Alok Kumar Ghosh, learned Senior Advocate who usually appears for the Kolkata Municipal Corporation, has been requested by us to enter appearance in this matter. His appointment shall be regularized by the KMC accordingly.
3. Service is effected upon Mr. Ghosh.
4. CAN 2 of 2026 is an application for condonation of delay in filing the appeal.
5. The appeal arises out of an order dated May 14, 2026 passed in CPAN 1151 of 2024. By the order impugned, Her Lordship directed the Municipal Commissioner, Kolkata Municipal Corporation to be present before Her Lordship, through virtual mode.

6. The contempt application was filed by the writ petitioner in WPA 7664 of 2023. The Corporation was directed to take steps in accordance with law. The writ petitioner had made an allegation that, despite multiple representations before the Corporation, the Corporation did not take steps.
7. Upon such direction being passed in the writ petition, a hearing was held by the Special Officer (Building). In the paragraph 2 of the order impugned, Her Lordship records that the said demolition order was not served upon the parties.
8. However, in view of the delay in compliance of Her Lordship's order, personal appearance of the Municipal Commissioner through virtual mode was directed. The appellant before this Court is not a party to the contempt application. It is alleged that, when the authorities proceeded to demolish the building, the appellant came to know of the order of Her Lordship and filed an appeal along with an application for leave to appeal.
9. Considering the above facts and the averments in paragraphs 8 and 9 of the application for condonation of delay, we are satisfied that the delay has been sufficiently explained.
10. The delay is, thus, condoned.
11. Accordingly, the application for condonation of delay is allowed.

12. CAN 3 of 2026 is an application for leave to appeal. We find from the order impugned before this Court that the order impugned does not affect the right of the appellant to prefer an appeal from the order of the Special Officer (Building). No direction for demolition has been passed.
13. Mr. Sen, learned Senior Advocate submits that, on the basis of the said order, the demolition had commenced.
14. We are of the view that, if any coercive steps are taken by the corporation without serving a copy of the order of the Special Officer (Building) to the appellant and without allowing the appellant the statutory period to prefer an appeal, in that event, the remedy of the appellant would be to challenge such action by filing a separate writ petition before the appropriate court.
15. In any event, whether the appellant has any locus to maintain the writ petition or not, will be decided by the writ court. The law provides for a statutory appeal. The time limit to prefer an appeal is 30 days.
16. It is submitted by Mr. Sen that, as the copy of the order was not served upon his client, the period of limitation had not started to run.
17. These issues shall be adjudicated by the appropriate court. We are of the view that the appellant always has a liberty to take recourse to law, if permissible in the facts and circumstances.

18. Under such circumstances, we do not propose to grant any leave to prefer this appeal, inasmuch as, the order impugned does not direct demolition.
19. Mr. Ghosh, learned senior advocate for the corporation submits that the appeal papers do not clarify whether the appellant was the person responsible for the unauthorized construction or whether he was merely a tenant or person in occupation. We are of the view that, such objection will be decided at the appropriate stage.
20. Accordingly, the application for leave to appeal being CAN 3 of 2026 is dismissed.
21. Under such circumstances, the appeal and the connected application being CAN 1 of 2026 are also dismissed.
22. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)