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26-06-2023  
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(Ct. no.06)

**IN THE HIGH COURT AT CALCUTTA  
Civil Appellate Jurisdiction  
Appellate Side**

**MAT/1135/2023  
+  
IA NO:CAN/1/2023**

**The District Magistrate of Howrah and Ors.  
Vs.  
Kashmira Begum Khan and Ors.**

Mr. Kalyan Bandopadhyay, Sr. Adv,  
Mr. Sirsanya Bandopadhyay, Adv.  
Mr. Shamim Ul Bari, Adv.  
Mr. Arka Kumar Nag, Adv.

... For the Appellants.

Mr. Bikash Ranjan Bhattacharya, Sr. Adv,  
Mr. Srijib Chakraborty, Adv.  
Mr. Sabyasachi Chatterjee, Adv.  
Mr. Sandipan Das, Adv.  
Mr. Sayon Banerjee, Adv.  
Mr. Badrul Karim, Adv.  
Mr. Kiron Sk., Adv.  
Mr. Dipankar Das, Adv.

... For the Writ Petitioners/Respondents.

Mr. Kishore Dutta, Sr. Adv.  
Ms. Sonal Sinha, Adv.  
Mr. Sujit Gupta, Adv.  
Mr. Sayak Dutta, Adv.  
Mr. Soumen Chatterjee, Adv.

..... For the Election Commission

**The Court:-**

In our order dated June 23, 2023, we had recorded the material facts of the case and the arguments of learned Counsel for the parties. To make the present judgment and order a complete and comprehensive one, we incorporate herein our earlier order:-

“This appeal is directed against an order dated June 21, 2023, passed by a learned Single Judge in WPA 14723 of 2023.

The two writ petitioners before the learned Single Judge appeared to be aspiring candidates for the upcoming Panchayet Elections. They approached the learned Single Judge, in the present round of litigation, with the grievance that the Panchayet Returning Officer has tampered with the documents that they filed along with their nominations. In particular, although they had filed the caste certificate, which was one of the necessary documents, at the stage of scrutiny, wrongfully it was held that caste certificate was not filed. Accordingly, their nominations were cancelled.

The learned Judge passed the impugned order observing as follows:

*“As it appears that the allegation of tampering has been brought against an officer who is responsible for conducting the election in a free and fair manner, accordingly, the said allegation is required to be enquired into by a competent independent authority.*

*The Joint Director of the CBI has been impleaded as respondent No.12 in the instant writ petition.*

*The Court directs the aforesaid respondent to conduct an enquiry to ascertain the allegations of the petitioners.*

*Submission has been made by the learned advocates appearing for the State Election Commission and the State respondents that the investigation ought to be conducted by the State authority and not by the CBI.*

*The aforesaid submission of the respondent authorities cannot be accepted.*

*As the officer against whom the allegation is made is acting according to the directives of the State respondents and is also responsible for conducting the election in a free and fair manner, it may not be possible for the State agency to act in an independent way.*

*For the purpose of maintaining independency and transparency in the process of investigation, the Court thinks it fit to direct the CBI to conduct the investigation and file a report before this Court.*

*The Panchayat Returning Officer, who videographed the entire incident is directed to properly maintain and preserve the footage and the instruments, equipments in which such footage was recorded and all the footage with the recording instruments and equipments from the date and time when the nominations were filed by the petitioners till the time the same was re2 scrutinized upon direction passed by the Court shall be handed over the respondent no.12 as and when sought for.*

*Let the investigation be conducted at the earliest but positively by 5th July, 2023.”*

Being aggrieved, the District Magistrate of Howrah and three other officers have come up in appeal before us.

We have heard Mr. Kalyan Bandopadhyay, learned Senior Advocate representing the appellants and Mr. Bikash Ranjan Bhattacharya, learned Senior Advocate representing the respondents/writ petitioners.

The crux of Mr. Bandopadhyay's argument has been that CBI enquiry cannot be ordered for the mere asking. Just because some allegations are made against the Officers in the Administration, the premier investigating agency of the country cannot be directed to conduct an enquiry. Any and every administrative lapse cannot be subjected to CBI enquiry.

This apart, Mr. Bandopadhyay has also drawn our attention to various documents to buttress his case that the writ petitioners did not file and could not have filed the caste certificate with their respective nominations. He also argued that the writ petitioners filed acknowledgment slips showing that their applications for OBC "A" certificate had been received by the competent authority and are pending. Learned Senior Counsel relied on the decision of a Coordinate Bench of this Court in the case of Director General of Police (WB) & Others Vs Gopal Kumar Agarwal & Anr. reported in 2020 SCC Online Cal 755. He also argued that the Panchayet Department of the State of West Bengal or the State of West Bengal itself has not been made a party in the writ petition. The writ petition is bad

for non-joinder of necessary parties. In this connection Mr. Bandopadhyay referred to the Rules of the Calcutta High Court relating to applications under Article 226 of the Constitution. Article 24 of the said Rules 12 reads as follows:-

“24. Where the respondent is the central Government, the Government of West Bengal or any other State or Corporate body, the Cause-title shall mention the person upon whom the Writ is to be served. e.g.-----

“The State of West Bengal, through.”.”

He also submitted that the appellants, against whom allegations have been made in the writ petition, were not individually served before the writ petition was moved and the impugned order obtained.

Mr. Bhattacharya, learned Senior Advocate appearing for the writ petitioners/respondents challenged the maintainability of the appeal. According to him, the learned Single Judge has decided nothing. The learned Judge has merely directed a preliminary enquiry to be held by CBI and to place the report before Court. This, by no stretch of imagination, can be said to be a judgment within the meaning of Clause 15 of the Letters Patent, 1865. In support of this point, Mr. Bhattacharya has relied on the following decisions:

- I. (1981) 4 SCC 8
- II. (2023) 1 SCC 634
- III. (2006) 5 SCC 399

Mr. Bhattacharya then argued that there is nothing in the impugned order by which the State can be legitimately aggrieved. It is significant that the State is trying to shy away from CBI enquiry. Learned Senior Counsel further submitted that the Writ Court has sufficient power to direct CBI enquiry in a fit case. In this connection, he relied on a decision of a Coordinate Bench of this Court rendered on June 15, 2023 in MAT 909 of 2023 (State of West Bengal Vs Soumen Nandy & Ors.).

Mr. Srijib Chakraborty, learned Advocate assisting Mr. Bhattacharya drew our attention to Sections 21 to 25 of the West Bengal Panchayat Elections Act, 2003. He submitted that it is not understood as to how the State has got hold of documents, which have been annexed to the appeal papers. Such documents are supposed to be in the exclusive custody of the State Election Commission.

As regards non-joinder of parties, learned Advocate for the respondents/writ petitioners submitted that this point was not urged before the learned Single Judge. If this point is not taken at the first instance, the same cannot be taken at a subsequent stage. He referred to Order 1 Rule 13 of the Code of Civil Procedure. He also said that since the Government of West Bengal has been made a party, non-joinder of any of the Officers shall be of no consequence.

In reply, Mr. Bandopadhyay submitted, on the point of maintainability, that the learned

Single Judge has recorded reasons for the order that is under challenge in this appeal. That would make the order a judgment within the meaning of Clause 15 of the Letters Patent.

Basically, two questions arise which we need to consider. Firstly, what are the circumstances in which a CBI enquiry may be justifiably directed by the Court? Secondly, whether or not the facts of the present case portray or depict one of such circumstances?

We propose to pass our order on 26.6.23 at 2 p.m. when the matter will be listed again along with MAT 1147 of 2023.

Since both parties have arguable cases, which require our careful consideration, let CBI not take any steps in terms of the impugned order till 26.6.2023.

Other portions of the impugned order shall remain untouched for the time being.”

We have given our anxious consideration to the rival contentions of the parties.

First, let us take up the point of maintainability of this appeal. Learned Senior Counsel for the respondents/writ petitioners has argued that this appeal is not maintainable since the order impugned is not a judgment within the meaning of Clause 15 of the Letters Patent. The leading authority on this point is the decision of the Hon'ble Supreme Court in the case of ***Shah Babulal Khimji v. Jayaben D. Kania & Anr.***,

**reported at (1981) 4 SCC 8.** In that decision the Hon'ble Apex Court has laid down that any and every order passed by the Court will not amount to a judgment within the meaning of Clause 15 of the Letters Patent. An order which decides some right of a party to the litigation and which has the trappings of finality would qualify as a judgment under Clause 15. The order may be a final order or even an interlocutory order. Those orders would be treated as judgments "which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned."

The decision in the case of **Shah Babulal Khimji** was followed by the Hon'ble Supreme Court in its recent decision in the case of **Shyam Sel & Power Limited & Anr. v. Shyam Steel Industries Limited, reported at (2023) 1 SCC 634.** In **Midnapore Peoples' Coop. Bank Ltd. & Ors. v. Chunilal Nanda & Ors., Reported at (2006) 5 SCC 399,** there is elaborate discussion on which orders amount to judgment and therefore open to intra court appeal. Again, the principles laid down in **Shah Babulal Khimji** were reiterated in this case.

In the facts of the present case, prayer (b) of the writ petition reads as follows:-

"b. A writ in the nature of Mandamus directing the Central Bureau of Investigation authorities their man agents and subordinates to register FIR against the alleged accused person and submit a detail progress report before this Hon'ble Court periodically."



By the impugned order, the learned Single Judge has, inter alia, passed a direction in aid of prayer (b). The learned Judge has directed the CBI to conduct an investigation and file a report. This, in our view, amounted to a final adjudication by the learned Judge on the issue as to whether or not a CBI investigation is called for in the facts of the case. It will be preposterous to say that the order does not affect the rights of the appellants who contend that this is not a case where CBI enquiry should have been directed by the learned Single Judge. Every citizen has a right to enjoy a peaceful life, not being hounded or interrogated by police excepting for good reason. Police interrogation infringes a citizen's right to privacy which has now been recognized as a fundamental right. Such right can be curtailed only when larger public interest or national interest so warrants.

In view of the aforesaid, in our considered opinion, the impugned order in so far as the same directs CBI investigation, amounts to a judgment within the meaning of Clause 15 of the Letters Patent. Hence, this intra Court appeal is maintainable.

It is now well settled that although the constitutional courts have power to direct CBI inquiry/investigation if the facts of a particular case so warrant, such power should be exercised sparingly, with caution and circumspection. CBI is the top investigating agency of the country. Its hands are full with issues involving national interest including security of the nation. It should not be over burdened with directions to

investigate matters which can be handled at the State level.

In the case of ***Director General of Police (W.B.) and Ors. v. Gopal Kumar Agarwal and Anr. & Manoj Kumar Bhalotia v. Director General of Police (W.B.) & Ors. reported at 2020 SCC OnLine Cal 735***, a decision Bench of this Court of which one of us (Arijit Banerjee J.) was a member, discussed the law on this subject in details by referring to decisions of the Hon'ble Supreme Court. It may be helpful to extract paragraphs 59 to 65 of the judgment in that case:-

**“59.** In *State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal* (supra) the complainant along with a large number of workers of a political party had been staying in several camps of that party at Garbeta, District- Midnapore, West Bengal. On 4 January, 2001, the complainant and few others decided to return to their homes from one such camp. When they reached the complainant's house, some miscreants, numbering 50-60, attacked them with fire arms and other explosives, which resulted in a number of casualties. The complainant managed to escape, hid himself, witnessed the carnage and later lodged a written complaint with the police. On 8 January, 2001, the Director General of Police, West Bengal directed CID to take over the investigation in the case. A writ petition under Article 226 of the Constitution was filed in the Calcutta High Court by the Committee for Protection of Democratic Rights, West Bengal in public

interest, alleging, *inter alia*, that although in the said incident 11 persons had died on 4 January, 2001 and more than three months had elapsed since the incident had taken place, yet except two persons, no other person named in FIR had been arrested; no serious attempt had been made to get the victims identified and the police had not been able to come to a definite conclusion whether the missing persons were dead or alive. It was alleged that since the police administration in the State was under the influence of the ruling party which was trying to hide the incident to save its image, the investigation in the incident may be handed over to CBI, an independent agency. The High Court felt that in the background of the case it had strong reservations about the impartiality and fairness in the investigation by the State Police because of the political fallout, and therefore, no useful purpose would be served in continuing with the investigation by the State investigating agency. It was further observed by the High Court that even if the investigation was conducted fairly and truthfully by the State Police, it would still be viewed with suspicion because of the allegation that all the assailants were members of the ruling party. Having regard to such circumstances, the High Court directed handing over of the investigation to the CBI. On the matter being carried to the Hon'ble Supreme Court, a Two Judge Bench observed that very important points of law were involved in that case including as to whether or not the High Court in exercise of power under Article 226 of the Constitution can direct the CBI to

conduct investigation into an alleged criminal incident occurring within the territorial jurisdiction of a State, without the consent of the State Government. The issue was referred to a Constitution Bench. While holding that the High Court had the power to so direct, the Constitution Bench observed as follows:

*“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. In so far as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it*

difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation & Rural Engg. Services, U.P. v. Sahngoo Ram Arya* : (2002) 5 SCC 521 this Court had said that an order directing an enquiry by CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by CBI or any other similar agency. We respectfully concur with these observations.” (Emphasis is ours)

**60.** The aforesaid decision was followed by the Hon'ble Supreme Court in *T.C.Thangaraj v. V. Engammal* (supra). In *K.V. Rajendran v. Superintendent of Police CBCID* (supra). At Paragraph 13 of the Judgment the Hon'ble Supreme Court observed as follows:

*“The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having ‘a fair,*

*honest and complete investigation’, and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. **Where the investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the Court, where the charge sheet has been filed, to proceed with the matter in accordance with law.** (Emphasis is ours) Under no circumstances, should the Court make any expression of its opinion on merit relating to any accusation against any individual. (Vide: Gudalure M.J. Cherian v. Union of India, (1992) 1 SCC 397; R.S. Sodhi v. State of U.P., 1994 Supp (1) SCC 143 : AIR 1994 SC 38; Punjab and Haryana Bar Association, Chandigarh through its Secretary v. State of Punjab, (1994) 1 SCC 616 : AIR 1994 SC 1023; Vineet Narain, v. Union of India, (1996) 2 SCC 199 : AIR 1996 SC 3386; Union of India v. Sushil Kumar Modi, (1996) 6 SCC 500 : AIR 1997 SC 314; Disha v. State of Gujarat, (2011) 13 SCC 337 : AIR 2011 SC 3168; Rajender Singh Pathania v. State (NCT of Delhi), (2011) 13 SCC 329; and State of Punjab v. Davinder Pal Singh Bhullar etc., (2011) 14 SCC 770 : AIR 2012 SC 364)”*

**61.** In *Vinay Tyagi v. Irshad Ali alias Deepak* : (2013) 5 SCC 762, at paragraph 43 of the reported Judgment, the Hon'ble Supreme Court observed that the superior Courts are vested with the power of transferring investigation from one agency to another,

provided the ends of justice demand such action. However, it is also a settled principle that this power has to be exercised by the superior Courts very sparingly and with correct circumspection.

**62.** In *Sujatha Ravi Kiran v. State of Kerala* (supra) the Hon'ble Supreme Court took into account the law laid down by that Court by the Constitution Bench in *Committee for Protection of Democratic Rights* (supra) and held that the facts of that case did not call for transfer of investigation to CBI.

**63.** In the recent decision of the Hon'ble Supreme Court in the case of *Shree Shree Ram Janki Ji Asthan Tapovan Mandir v. The State of Jharkhand* (supra) the issue involved was whether there was gross illegality in transfer of a land belonging to a deity. A Public Interest Litigation was instituted. The High Court at Jharkhand directed investigation into the matter by the CBI. The matter was carried to the Hon'ble Supreme Court. At Paragraph 20 of the Judgment, the Hon'ble Supreme Court observed as follows:

“It may be kept in mind that the public order (Entry 1) and the police (Entry 2) is a State subject falling in List II of the VII Schedule of the Constitution. It is a primary responsibility of the investigating agency of the State Police to investigate all offences which are committed within its jurisdiction. The investigations can be entrusted to Central Bureau of Investigation on satisfaction of the conditions as specified therein only in exceptional circumstances as

*laid down in State of West Bengal (supra) case. Such power cannot and should not be exercised in a routine manner without examining the complexities, nature of offence and some time the tardy progress in investigations involving high officials of the State Investigating agency itself.” (Emphasis is ours).*

**64.** In *Director, Central Bureau of Investigation v. Krishna Kumar Mishra* (supra), the High Court ordered the CBI to conduct investigation into the disappearance of a highly valuable imported technical equipment from Raja Ramanna Centre for Advanced Technology, Department of Atomic Energy, Indore. The CBI carried the matter to the Hon'ble Supreme Court. The order of the High Court was set aside. It was observed that while the jurisdiction of the High Court to order an investigation by CBI cannot be doubted, such jurisdiction is to be very sparingly exercised with great care and caution, keeping in mind that the premier investigation agency is primarily engaged in investigation of anticorruption cases and cases of vital importance for the nation. It was further observed that having regard to the nature of the work that the CBI is required to perform, the High Court was not justified in requiring the CBI to investigate into the matter and the High Court should have allowed the State Police to conduct and complete the further investigation ordered by the Learned Chief Judicial Magistrate. (Emphasis is ours).



**65.** In *Bimal Gurung v. Union of India* (supra) the Hon'ble Supreme Court after discussing its earlier decisions including the Constitution Bench decision in *State of West Bengal v. Committee for Protection of Democratic Rights* (supra) observed as follows:

*“The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Of Police, (2013) 12 SCC 480, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as : (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation prima facie is found to be tainted/biased.”*  
(Emphasis is ours).

The Hon'ble Apex Court has held that before directing CBI investigation against a person, the Court must be satisfied on the basis of material on record that there is a prima facie case against that person. In this connection one may refer to the observations of the Hon'ble Supreme Court at paragraph 71 of the judgment in the case of **State**

***of Punjab v. Davinder Pal Singh Bhullar & Ors.,  
reported at (2011) 14 SCC 770.***

“71. In *Minor Irrigation and Rural Engineering Services, U.P. & Ors. v. Sahngoo Ram Arya & Anr.*, AIR 2002 SC 2225, this Court placed reliance on its earlier judgment in *Common Cause, A Registered Society v. Union of India & Ors.*, (1999) 6 SCC 667 and held that before directing CBI to investigate, the Court must reach a conclusion on the basis of pleadings and material on record that a prima facie case is made out against the accused. The Court cannot direct CBI to investigate as to whether a person committed an offence as alleged or not. The Court cannot merely proceed on the basis of “ifs” and “buts” and think it appropriate that inquiry should be made by the CBI.” (Emphasis is ours).

In view of the law on the subject as discussed above, the direction of the learned Single Judge for CBI investigation cannot be sustained.

We have perused the material on record. In our considered opinion, the facts of this case do not call for CBI investigation immediately. While the writ petitioners say that their nominations were wrongfully cancelled, the appellants contend that such cancellation was justified since caste certificate was not submitted by the writ petitioners along with their nominations. The writ petitioners of course insist that they had submitted the caste certificate and their nomination papers have been tampered

with. The issue involved, in our opinion, is not of such a proportion as would require investigation by the premier investigating agency of the country. It is nobody's case that the persons against whom investigation has been ordered are highly influential members of the society or highly placed officers in police or are otherwise so powerful that the State police will not be in a position to conduct a fair, genuine and impartial investigation.

However, allegations, good, bad or indifferent, have been made by the writ petitioners as regards the returning officer tampering with their nomination papers and wrongful and motivated cancellation of their nominations. According to them, their constitutional rights to contest the Panchayat elections have been infringed. This, in our view, surely calls for an enquiry. The same however, can well be conducted by the State police. After all, public order and police are State subjects (See Entries 1 and 2 of the List II of Schedule VII to the Constitution.). Unless there are compelling circumstances to direct otherwise, the State police should be allowed to do the needful. We have no reasons to believe that just because the appellants are officers of the State, enquiry by the State police against them would be an eye wash. We are sure that if we direct the State police to conduct requisite enquiry in the matter, they will do so sincerely, impartially and in right earnest.

However, justice must not only be done but also must be seen to be done. To dispel any public perception or apprehension of the writ

petitions that enquiry by the State police will be a futile exercise, we appoint Justice Debi Prasad Dey (retired) a former Judge of this Court as a one man Commission under whose supervision the State Police shall conduct an enquiry as regards the allegations made by the writ petitioners in the present writ petition and a report shall be filed before the learned Single Judge for Her Ladyships consideration. For this purpose, the Commission shall be at liberty to examine and/or cause to be examined such persons as the Commission may deem it necessary.

Justice Dey has declined to accept any remuneration for acting as the one-man Commission as according to him, the assignment involves rendering social service in public interest. We deeply appreciate such gesture and express our gratitude to him for accepting this assignment. The State administration will provide all logistic support to Justice Dey including providing an air-conditioned office room, an air-conditioned motor car with chauffeur, a stenographer and such other facilities as may be reasonably necessary for carrying out the assignment. Needless to say, the State police shall extend full cooperation to Justice Dey. In fact, it is the State police which will have to conduct the enquiry under the supervision of the one-man Commission. We have no doubt in our mind that a fair, proper and unbiased enquiry will be held by the State police under the guidance and supervision of Justice Dey.

Let the enquiry be completed and the result thereof in the form of a comprehensive

report be placed before the learned Single Judge before whom the writ petition is pending. We feel that three weeks would be a sufficient time period for completing the enquiry and placing the report before the learned Single Judge. We notice that the learned Judge has directed the writ petition to be listed again on July 7, 2023. In view of this order, we request the learned Judge to defer the date of listing of the writ petition and direct the matter be listed on any date after three weeks from today. This will enable the learned Judge to consider the report of the enquiry and pass appropriate orders on the writ petition.

The order impugned in this appeal is set aside only to the extent that it directs CBI investigation/enquiry. The other portions of the order remain untouched.

We would like to clarify that we have not considered the merits of the respective cases of the parties i.e., whether or not the papers filed by the writ petitioners along with their nominations were incomplete and/or whether or not there was tampering with the nomination papers of the writ petitioners. This is a fact-finding exercise that the State police will carry out under the supervision of Justice Debi Prasad Dey Commission.

The parties and the Registrar General of this Court shall immediately communicate this order to Hon'ble Justice Debi Prasad Dey (retired).

The appeal and the connected application are disposed of on the above terms.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

**(Arijit Banerjee, J.)**

**(Apurba Sinha Ray, J.)**