

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Shampa Sarkar

And

The Hon'ble Justice Hiranmay Bhattacharyya

FMAT 269 of 2024
With
IA NO: CAN 1 of 2024
CAN 2 of 2024, CAN 3 of 2024
Shri Praveen Jain And Anr.
vs.
Tulsan Properties Private Limited And Anr.

For the Appellants : Mr. Harsh Tiwari, Adv.
 Mr. Bhupendra Gupta, Adv.

For the Respondent : Mr. Meghajit Mukherjee, Adv.
 Ms. Brinda Sen Gupta, Adv.
 Ms. Srijeeta Gupta, Adv.
 Ms. Sonia Da, Adv.

Hearing Concluded on : May 22, 2025
 Judgement on : July 03, 2025

DEBANGSU BASAK, J.:-

1. By an order dated November 20, 2024 passed in FMAT 269 of 2024, a Division Bench made the present reference on the question of law framed by it which is as follows:-

“Whether an order passed by a Bench of this Court not being conferred with determination by virtue of the roster fixed by the Hon'ble the Chief Justice is vitiated by inherent lack of jurisdiction so as to

render the order so passed a nullity in the eye of law or void ab initio.”

2. The Hon’ble The Chief Justice has, in terms of such order dated November 20, 2024 passed in FMAT 269 of 2024, constituted this Bench to consider such questions of law.

3. At the hearing of the reference, learned Advocate for the appearing parties have submitted that the question framed in the reference is covered by the ratio of ***2025 SCC Online SC 582 (Garden Reach Shipbuilders and Engineers Limited. vs. Grse Limited Workmens Union and Others)***.

4. The order of reference has been passed in FMAT 269 of 2024. Appellants in FMAT 296 of 2024 have claimed that they are the owners of a particular immovable property by virtue of a registered deed of conveyance dated June 23, 2023. The appellants have claimed themselves to be members of the tenant’s association of the building in which the immovable property is situated. The appellants being concerned with the maintenance of the building, had participated in a meeting of the association when, the appellants came to learn about certain facts. Appellants had learnt about Title Suit no. 2602 of 2023 in which an interim order was passed. Appellant had filed a Civil Suit being Title Suit no. 1037 of 2024. In such

Civil Suit, appellants had filed an application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908. Learned Judge had declined to grant ad interim relief to the appellants. Appellants had thereafter preferred an appeal from the refusal to grant ad interim relief being FMAT 269 of 2024 in which the order of reference has been made.

5. By the order dated November 4, 2024, passed in FMAT 269 of 2024 the Division Bench, has admitted the appeal under Order XLI Rule 11 of Code of Civil Procedure, 1908 and directed that the same to be heard on the question of law framed.

6. The private respondent in such appeal had applied for vacating of the order dated November 4, 2024 on the ground that when such order admitting the appeal was passed, the Division Bench did not have the requisite determination to consider an application under Order XLI Rule 11 of the Code of Civil Procedure, 1908 to admit the appeal.

7. The Division Bench making the reference, has considered the issue as to whether the earlier order passed by the Bench on November 4, 2024 recording that the appeal be deemed to be admitted under Order XLI Rule 11 of the Code of Civil Procedure, 1908 and should be heard on the question

framed therein, is a nullity and ought to be recalled on such ground.

8. While deciding such issue the Division Bench has noted various authorities cited at the Bar. After discussing the authorities on such issue, the Division Bench making the reference has observed that on November 4, 2024, when the appeal was taken up for hearing it was not brought to the notice of the Bench and also due to bona fide inadvertence, the Bench overlooked the fact that it did not have determination to take up Order XLI Rule 11 matters after the year 2020. After noticing the same, the Division Bench has held that, since the lack of jurisdiction was not inherent or implicit, the order dated November 4, 2024 cannot be labelled as void ab initio or a nullity in the eye of law due to lack of jurisdiction but at best irregular. It has noticed the distinction between jurisdiction and determination. It has noticed the contrary view of another Division Bench rendered in ***Manu/WB/0961/2021 (The Kolkata Municipal Corporation and Ors. vs. AI-Sumama Agro Foods Private. Limited. and Others.)***

9. Having refused to recall its earlier order dated November 4, 2024 despite noticing the fact that on such date,

it did not have requisite determination to consider an appeal filed after 2020, the Division Bench made the reference. It has differed with the view of the other Division Bench rendering ***AI-Sumama Agro Foods Private Limited & Ors. (supra)*** with regard to the validity of the order passed by a Court not having requisite jurisdiction.

10. *AI-Sumama Agro Foods Private Limited & Ors. (supra)*, in an appeal directed against an order passed by the learned Single Judge has considered the issue as to whether, the learned Single Judge disposing of the writ petition by the order impugned therein possessed adequate jurisdiction in view of the allocation of business by the Hon'ble The Chief Justice at that relevant point of time or not. It has held that, the Chief Justice of a High Court alone has the power and authority to allocate particular types of cases to particular Judges. The jurisdiction of a Puisne Judge to hear a particular case stems from the allotment of such case to that Judge by the Chief Justice. That Judge will have no jurisdiction to hear any other matter. If a Judge hears a matter which is not within his determination and passes an order therein such order will be void for want of jurisdiction.

11. *AI-Sumama Agro Foods Private Limited & Ors.*

(supra) in the facts and circumstances of that case has held that, on the day when the writ petition was disposed of, the learned Single Judge was without determination and therefore, the order of the learned Single Judge was a nullity for inherent lack of jurisdiction.

12. Supreme Court in *Garden Reach Shipbuilders and*

Engineers Limited (supra) has considered the issue as to whether judicial discipline and propriety in the light of Rule 26 of the Rules framed by the High Court at Calcutta under Article 225 of the Constitution in relation to applications under Article 226 thereof and the powers of the Hon'ble The Chief Justice of the High Court as the master of the roaster, was maintained in the facts of that case or not.

13. In the facts of *Garden Reach Shipbuilders and*

Engineers Limited (supra), a writ petition had been heard along with an appeal with the consent of the parties appearing in the appeal and the writ petition.

14. *Garden Reach Shipbuilders and Engineers Limited*

(supra) has noted that, since the Division Bench hearing the writ petition was not vested with the determination to hear the writ petition which was to be heard by a learned Single Judge,

in accordance with the allocation of business by the Hon'ble the Chief Justice the order passed by the Division Bench in the writ petition was a nullity.

15. It has held as follows:-

“9. In the light of the law laid down by the High Court itself in Sohan Lal Baid v. State of West Bengal, as approved by a three-Judge Bench of this Court in State of Rajasthan v. Prakash Chand which has subsequently been approved by a Constitution Bench in Campaign for Judicial Accountability and Reforms v. Union of India, as well as Rule 26 (supra), we hold that any order which a bench - comprising of two judges or a single judge - may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, such an order is without jurisdiction. In other words, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the primus inter pares, has been vested with the power and authority to set the roster, as articulated in Sohan Lal Baid (supra), and such roster is final and binding on all the ‘Companion Justices’ of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction.”

16. Division Bench rendering the present reference did not have requisite determination to consider a prayer under Order XLI Rule 11 of the Code of Civil Procedure, 1908, on November 4, 2024. It has acknowledged the same in the order making the reference. It has proceeded on the basis that on November

4, 2024 factum of lack of jurisdiction was not brought to the notice of the Division Bench, due to bona fide inadvertence such fact was overlooked and that the lack of subtle distinction between admission and hearing of First Appeals in the determination then existing may have resulted in the error.

17. *AI Sumama Agro Foods Pvt. Ltd. & Ors. (supra) has noticed All India Reporter 1990 Cal 168 (Sohan Lal Baid vs. State of West Bengal & Ors.), AIR 1982 SC 1198 (State of Maharashtra vs. Narayan Shamrao Puranik), AIR 1982 SC 1198 (State of Maharashtra vs. Narayan Shamrao Puranik), 1986 Volume 6 SCC 587 (Inder Mani vs. Matheswari Prasad), (1998) 1 SCC 1 (State of Rajasthan vs. Prakash Chand & Ors.), (2010) SCC OnLine ALL 1740 (Smt. Maya Dixit & Ors. Vs. State of U.P.),*

18. These authorities both by the High Court and by the Supreme Court have held that, a Single Bench or a Division Bench derives jurisdiction to deal with and decide the cases or class of cases assigned to them by virtue of determination made by the Hon'ble The Chief Justice. ***Sohan Lal Baid (supra)*** has held that, the power of the Hon'ble The Chief Justice of a High Court to allocate business to a Bench is

derived not only from the provision of Section 108(2) of the Government of India Act, 1915 but it also inheres in the Chief Justice of a High Court.

19. The authorities noted in ***AI-Sumama Agro Foods Products Ltd. & Ors. (supra)*** have held that, no Judge or Bench of Judges will assume jurisdiction unless the case is allotted to him or them under orders of the Chief Justice. Chief Justice of a High Court has been recognised to be the master of the roster. Chief Justice has the prerogative to constitute Benches of the Court and allot cases to the Benches so constituted.

20. The Division Bench in FMAT 269 of 2024 has noticed that the distinction between the expression “jurisdiction” and “determination” and held that, the later being only technical and administrative allocation whereas the former hits at the root of the power exercised by the Court. It has noticed that, jurisdiction is not conferred by the roster alone but is vested in a Court in terms of a statute and Letters Patent of a Chartered High Court. It has noticed that different Benches ultimately act as the Chartered High Court and that powers of the different Benches are conceived of by the Letters Patent. It has also noticed that jurisdiction is conferred jointly by the

Code of Civil Procedure, Appellate Side Rules as also the Bengal, Agra and Assam Civil Courts Act.

21. The Division Bench making the present reference, has clarified that, it does not question the proposition that the Chief Justice is the Master of the Roster and matters cannot be taken up indiscriminately by Benches without having determination given by Hon'ble the Chief Justice.

22. The Division Bench making the present reference, was not conferred with the determination by the Hon'ble the Chief Justice to hear the appeal for the purpose of its admission under Order XLI Rule 11 of the Code of Civil Procedure, 1908 when it has so done. Jurisdiction no doubt of the Court is conferred by the provisions of law attracted or applicable. The jurisdiction of the High Court in admitting the appeal under consideration by the Division Bench making the present reference is not questioned.

23. However, the question is whether, due to the Hon'ble The Chief Justice not allocating the requisite determination to that Bench on November 4, 2024 when such Bench exercised powers to admit the appeal under Order XLI Rule 11 of the Code of Civil Procedure, 1908, was such Division Bench with requisite jurisdiction or not. On the strength of the **Garden**

Reach Shipbuilders and Engineers Limited (supra) it has to be held that the Bench making the reference was without jurisdiction at the material point of time when it has purported to exercise powers of admission of a First Appeal under Order XLI Rule 11 of the Code of Civil Procedure, 1908.

24. While the High Court has the jurisdiction to admit and dispose of a matter, individual Benches either sitting Singly or in a Division Bench or otherwise, can assume jurisdiction over the subject matter only in accordance with the allocation of business by the Hon'ble The Chief Justice on the principles of Master of Roster. High Court's jurisdiction to decide the lis may not be questioned. However, exercise of jurisdiction in an individual case outside determination can be questioned in the event, such Bench assumes jurisdiction beyond the allocation of business by the Hon'ble The Chief Justice. It is in this context that the order of that individual Bench is said to be a nullity and void ab initio not because the High Court did not have jurisdiction but because that individual Bench was not allocated such business.

25. In view of the proposition of law laid down in paragraph 9 of ***Garden Reach Shipbuilders and Engineers Limited. (supra)*** the reference is answered by holding that, an

order passed by a Bench of the High Court not been conferred with the determination by virtue of the roster fixed by the Hon'ble The Chief Justice, is vitiated by inherent lack of jurisdiction so as to render the order so passed a nullity in the eye of law and void ab initio.

26. Reference is answered accordingly.

[DEBANGSU BASAK, J.]

27. I agree.

[SHAMPA SARKAR, J.]

28. I agree.

[HIRANMAY BHATTACHARYYA, J.]