

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

**MAT 2238 of 2023
IA NO: CAN/3/2025**

Smt. Saran Kaur & Anr.
vs.
The State of West Bengal & Ors.

For the Appellants : Mr. Allen Felix, Advocate

For the State : Mr. Jahar Dutta, Advocate
Mr. Bipin Ghosh, Advocate

Heard on : 07.01.2025

Judgment on : 07.01.2025

DEBANGSU BASAK, J.:-

1. CAN/3/2025 is an application seeking recall of the order dated December 23, 2024 passed by us.
2. By such order, we imposed cost of Rs.50,000/- payable to the West Bengal State Legal Services Authorities for the laxity of the appellants in filing the certified copy of the impugned order dated October 18, 2023 passed in WPA 25120 of 2023.

3. Learned advocate appearing for the appellants submits that, the Appellate Side Rules of the High Court does not provide for leave to file an appeal without the certified copy. He submits that the Rules are silent as to the requirement of filing the certified copy upon it being obtained after leave to file an appeal without certified copy is granted by the High Court.
4. Learned advocate appearing for the appellants relies upon an order dated August 5, 2024 passed in Special Leave Petition (Criminal) Diary No(s).30456/2024 (**Harsh Bhuwalka & Ors. Versus Sanjay Kumar Bajoria**). He submits that, the practice directions were issued by the Hon'ble Supreme Court which are relevant in the present case.
5. State respondents are represented.
6. In the facts of the present case, appellants assail an order dated October 18, 2023 passed in WPA 25120 of 2023 in this appeal. Leave to file the appeal without the certified copy was granted to the appellants on October 25, 2023. As on December 23, 2024, certified copy of the impugned judgment and order was not filed in the department.
7. Appellate Side Rules provides as follows:-

**“Order XLI
Appeals from Original Decrees**

- 1. Form of appeal. (1) What to accompany memorandum.** - *Every appeal shall be preferred in the form of memorandum signed by*

the appellant or his pleader and presented to the court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded :

Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.”

8. It is trite law that, filing the certified copy of the impugned order or judgment is mandatory. Non-filing of the same or the Court not noticing the non-filing of the same does not exempt the appellants from filing the certified copy of the impugned judgment or order.
9. Appellants contend that, since the High Court closed for the Puja Vacation subsequent to the passing of the impugned order, therefore, the appellants were not in a position to obtain certified copy at the time of filing of the Memorandum of Appeal.

10. We are not concerned with the conduct of the appellants at the time of obtaining the leave to file the appeal without the certified copy. We are concerned with their conduct subsequent to the leave being granted. We took into consideration the conduct of the appellants subsequent to such leave being granted while passing order dated December 23, 2024. The appellants subsequent to October 18, 2023 i.e, the date of the impugned order, did not file the certified copy of the impugned order till the December 23, 2024. A period in excess of one year lapsed between the date of the impugned order and the date when, the cost was imposed for the laxity on the part of the appellants.
11. ***Harsh Bhuwalka & Ors. (supra)*** was rendered by the Supreme Court in the context of Special Leave Petition directed against an order of the High Court filed without the certified copy. Rules relating to the filing of Special Leave Petition were considered. Nothing is placed on record to suggest that, our High Court Rules and the Rules of the Supreme Court relating to filing of Special Leave Petition are *pari material*.
12. We note that, leave to file the appeal without the certified copy was granted by the High Court. Such leave to file the appeal without the certified copy cannot be equated with exemption to file the certified copy at all.
13. In such circumstances, we find no reason to recall our order dated December 23, 2024.

14. CAN/3/2025 is dismissed.
15. List the appeal on **January 15, 2025.**

(Debangsu Basak, J.)

16. I agree.

(Md. Shabbar Rashidi, J.)

CHC