

ITEM NO.4

COURT NO.8

SECTION IIA

S U P R E M E C O U R T O F
R E C O R D O F P R O C E E D I N G S

I N D I A

Petition(s) for Special Leave to Appeal (Crl.) No(s). 778/2012
(Arising out of impugned final judgment and order dated 19/07/2011
in CRA Nos. 450,451 and 452 of 2007 passed by the High Court of
Judicature at Bombay)

HARINARAYAN G. BAJAJ

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA & ANR

Respondent(s)

WITH SLP(Crl) No. 6725-6727/2011
(With appln.(s) for exemption from filing OT, stay and Office
Report)

Date : 13/08/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s)

Mr. Shekhar Naphade, Sr. Adv.
Mr. Gaurav Goel, Adv.
Mr. Vivek Jain, Adv.
Mr. Mahesh Agrawal, Adv.
Mr. E. C. Agrawala, Adv.

For Respondent(s)

Mr. B.H. Marlaparle, Sr. Adv.
Mr. Ishwari Prasad A. Bagaria, Adv.
Mr. Santosh Paul, Adv.
Mr. Arvind Gupta, Adv.
Ms. Arti Singh, Adv.

Mr. A.P. Mayee, Adv.
Ms. Charudatta Mahindrakar, Adv.
Mr. A. Selvin Raja, Adv.
Ms. Sonia S. Chillarge, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Signature Not Verified

Digitally signed by
Naveen Kumar
Date: 2014.08.14
16:03:58 IST

Heard in part.

Reason:

The petitioner, Mr. Harinarayan G. Bajaj, instituted a
complaint under Section 200 Cr.P.C. against the fou
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persons, namely, Mr. Pramod Banka, Mr. Vijay Kumar
Agarwal, Mr. Naval Sharma and Smt. Rani Agarwal. The
learned Metropolitan Magistrate, 40th Court, Girgaum,

Mumbai took cognizance and issued process for an offence punishable under Section 406 of I.P.C. challenged by the accused persons but the same did not meet with success.

The said order was

After taking cognizance, the complainant led evidence for framing of charge and examined three witnesses. Thereafter, the learned Magistrate framed charge against Mr. Vijay Kumar Agarwal and discharged other accused persons. Being aggrieved by the aforesaid order, the complainant preferred criminal revision no. 529/2007 before the Sessions Court, Greater Bombay. At the revisional stage, at the behest of the complainant, the name of Mr. Naval Sharma was deleted. Therefore, the relief sought in revision was confined to three accused persons. The learned Sessions Judge overturned the order passed by the learned Magistrate and directed charge to be framed against all the three accused persons under Section 409/34 I.P.C.

Being dissatisfied with the aforesaid order, the accused persons approached the High Court in Criminal Revision Application Nos. 450-452/2007. The High Court set aside the order passed by the Sessions Judge and restored that of the Magistrate.

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At this juncture, it is necessary to state how the criminal proceeding commenced. The Petitioner herein had pledged 19,000 shares of a company viz. Sesa Goa Ltd. with Creative Outerwear Ltd. The agreement was signed by Mr. Vijay Agarwal as the Director of the company. It is not in dispute that the shares were pledged to avail a loan of Rs.50 lakhs. It is also not in dispute that the loan amount of Rs.50 lakhs was returned to the company along with interest and the company, through its functionaries, returned 15,000 shares. There is no controversy with regard to the return of 15,000 shares. The cavil really

remains as regards the return of 4000 shares.

During the pendency of the criminal case, the complainant filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 before the High Court of Bombay and on 01.02.2010, the sole Arbitrator was appointed. For some reason, the arbitration could not continue. Learned senior counsel appearing for both the sides very fairly stated that the said arbitration proceeding has been suspended by the learned Arbitrator on 06.07.2010.

In the course of hearing, a suggestion was given to Mr. Naphade and Mr. Marlaparle, learned senior counsel appearing for the parties whether they would like to go for arbitration again, as there is an arbitration clause in the agreement. Learned senior counsel, after obtaining

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instructions from their respective Advocates-on-record, namely, Mr. E.C. Agrawala and Ms. Arti Singh and also from their respective parties, agreed for arbitration. On a further suggestion being given, they also accepted that it will be appropriate if the arbitration is held by a retired Judge of this Court at the Delhi Arbitration Centre, situate in the Delhi High Court Campus. Needless to say, when the arbitration is held by an Arbitrator at the Delhi Arbitration Centre, the learned Arbitrator as well as the parties shall be guided by the Delhi High Court Arbitration Centre (Arbitration Proceedings) Rules and Delhi High Court Arbitration Centre (Arbitrators' Fees) Rules.

Mr. Naphade and Mr. Marlaparle, learned senior counsels fairly agreed that Justice R.V. Raveendran, formerly a Judge of this Court be appointed as the sole Arbitrator.

Learned counsel for the parties agreed that they will file the pleadings that were filed before the previous

Arbitrator within three weeks, so that it would be treated

that the pleadings are complete.

The Coordinator of the

Arbitration Centre shall take note of that and accordingly

proceed in accordance with the Rules.

We request the

learned Arbitrator to expedite the proceedings of the

arbitration as the parties have expressed to cooperate

with the proceedings. The parties are directed to not to

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seek any adjournments and conclude their respective

evidence and arguments within four to five hearing.

The Registry is directed to communicate the order of

this Court to Justice R.V. Raveendran (Retd.) at his

present address.

During the pendency of the arbitration proceeding,

there shall be stay of further proceedings in Case No.

19/S of 2003 pending before the Metropolitan Magistrate,

40th Court, Girgaum.

Needless to say, the earlier arbitration proceeding

which was conducted by the previous Arbitrator, stands

terminated by this order.

After the learned Arbitrator passes an award, counsel

for the parties shall file the same before this Court and

thereafter it will be taken up for further hearing.

However, it is hereby abundantly made clear that the

position is accepted by the learned counsel for the

parties that after the award is passed, the criminal

proceeding before the learned Magistrate shall be quashed

and parties shall take the route of assail to award as

provided under Arbitration and Conciliation Act, 1996.

Let the matters be listed on 08.12.2014 for further hearing.

(NAVEEN KUMAR)
COURT MASTER

(RENUKA SADANA)
COURT MASTER