

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

Petition(s) for Special Leave to Appeal (Civil) No.4894/2000

(From the judgement and order dated 31/01/2000 in SAO 51/98
of The HIGH COURT OF DELHI AT N. DELHI)

M/S. SARDAR ESTATES

Petitioner (s)

VERSUS

ATMA RAM PROPERTIES (P) LTD. & ORS.

Respondent (s)

(With prayer for interim relief)
(For Final Disposal)

Date : 08/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.P. MISRA
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. Jaspal Singh, Sr. Adv.
Mr. R.S. Suri, Adv.
Mr. V.K. Shailendra, Adv.

For Respondent (s) Mr. D.A. Dave, Sr. Adv.
Mr. P.H. Parekh, Adv.
Mr. L.K. Garg, Adv.
Mr. Rohit Mammen Alex, Adv.

R 4 Mr. Jaspreet Gogia, Adv.
Mr. Vipin Gogia, Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.
The appeal is dismissed as withdrawn in terms of the
signed order.

.SP1

Sarita (V.P. Tyagi) @@
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COURT MASTER@@
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(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7185 OF 2000@@
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(Arising out of S.L.P.(C)No. 4894/2000)

M/S. SARDAR ESTATES

..APPELLANT (S)

VERSUS

ATMA RAM PROPERTIES (P) LTD. & ORS.

...RESPONDENT (S)

O R D E R@@
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.....L.....I.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.
Heard learned counsel for the parties.

At the outside, preliminary objection was raised on behalf of the respondents that the appellant has concealed the material fact before this Court which itself disentitles him from granting any discretionary relief under Article 136 of the Constitution of India. For that he refers to the List of dates and Synopsis of the case where it is recorded that the High Court dismissed the second appeal of the appellant without addressing itself to the question of law raised therein, challenging the maintainability of the eviction petition and the jurisdiction exercised by the courts below in view of the amendment to Section (3) of the Delhi Rent Control Act.

The submission is, in fact what is concealed by the appellant is that the High Court has decided the very question as a preliminary issue on the 13th August, 1999 which is also a part of the record before us. On that date, it is true, the court has recorded the submission of Mr. Luthera regarding the Amendment of Delhi Rent Control Act including the fact that the Rent Controller have no jurisdiction to pass the orders. In fact, after considering the argument, the order concludes thus :

.....L....I....T.....T.....T.....T.....T.....J
.SP1

" On the judgment which was pronounced by learned Rent Controller prior to Parripati Chandrasekharrao's case (supra) on the basis of proceedings instituted under the Act before the amending Act of 1988 came into force, the Rent Controller cannot be stated to proceeded without jurisdiction."

.....L....I.....T.....T.....T.....T.....T.....J
.SP2

After recording thereof, the controversy centres round the next and the last sentence of the said order which is to the following effect :

.....L....I....T.....T.....T.....T.....T.....J
.SP1

"Mr. Luther, at this stage, prays for some time to argue the matter."

.....L....I.....T.....T.....T.....T.....T.....J
.SP2

The submission on behalf of the respondents based on this last line recorded is that this shows preliminary objection has been decided and counsel lost time to argue the case itself on merit on other grounds. Learned counsel for the appellant, on the other hand, submits that after the said decision what is recorded in the said order shows only that some more argument was to be made on the preliminary issue itself. We do not find this controversy being raised or recorded anywhere in the impugned order. In fact, the learned counsel for the appellant also states he has stated in the special leave petition itself to the following effect of the fact what happened on the 13th August, 1999 :

.....L....I.....T.....T.....T.....T.....T.....J
.SP1

"The Hon'ble High Court adjourned the matter to be heard on a subsequent date."

.....L....I.....T.....T.....T.....T.....T.....J
.SP2

Thus the submission is and the controversy raised by the appellant is, it was really adjourned for the next date. However, it is not possible for us to enter into this controversy in the absence of anything in the order itself. It is also submitted on behalf of the appellant that the matter was argued before Hon'ble Madan B. Lokur, J. on 31st January, 2000 on preliminary point but was not decided by the High Court. In view of these facts learned counsel for the appellant states appellant shall be seeking review of the order in the High Court itself. Thus he seeks to withdraw this appeal to file review before the High Court. Accordingly, the appeal is dismissed as withdrawn. However, it is without prejudice to the rights of the parties to raise issue, if any, in the review which is permissible under law apart from the aforesaid point.

.SP1

.....J.~
(A.P. MISRA)

New Delhi,
December 8, 2000.

.....J.~
(DORAISWAMY RAJU)