

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).5256/2006

(From the judgement and order dated 07/04/2005 in SCA No. 1188/2004 of
The HIGH COURT OF GUJARAT AT AHMEDABAD)

JOGADIA POLYMERS PVT. LTD

Petitioner(s)

VERSUS

BHAVNAGAR DIST. COOP BANK & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and directions)

WITH SLP(C) NO. 5258 of 2006

(With appln. for C/delay in filing SLP and clarification and office report)

Date: 08/02/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ALTAMAS KABIR

HON'BLE MR. JUSTICE J.M. PANCHAL

For Petitioner(s)

Ms. Meenakshi Arora,Adv.

For Respondent(s)

Mr. K. Radhakrishnan,Sr.Addv.

Ms. Binu Tamta,Adv.

Mr. Sushil Kumar,Adv.

Mr. Nagendra Rai,Sr.Adv.

Mr. Rajesh Pathak,Adv.

Mr. K.B. Upadhyay,Adv.

Mr. S.R. Setia,Adv.

Mr. Amar Dave,Adv.

Mr. E.C. Agrawala ,Adv

Mr. Mahesh Agrawala,Adv.

Mr. Rishi Agrawala,Adv.

Mr. Gaurav Goel,Adv.

Mr. Amit Sharma,Adv.

Ms. Neha Aggarwal,Adv.

Mr. Vijay Hansaria,Sr.Adv.

Mr. Anil Kumar Sangal ,Adv.

Mr. Nalin sangal,Adv.

Ms. Bheloti Pasrija,Adv.

Mr. Amit Sharma,Adv.

Mr. Suchit Mohanty,Adv.

Mr. Anupam Lal Das ,Adv

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Ms. Shilpa Singh,Adv.

Mr. B. Krishna Prasad,Adv.

UPON hearing counsel the Court made the following
ORDER

Let this matter be listed after six months.
I.A. Nos. 3 and 4 are disposed of in terms of the signed order.

(Ganga Thakur)
P.S. to Registrar

(Usha Sharma)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.5256 of 2006

JOGADIA POLYMERS PVT. LTD.

...PETITIONER (S)

VERSUS

BHAVNAGAR DISTRIC COOPERATIVE BANK & ORS.
RESPONDENT(S)

...

With SLP(C) No. 5258/06

ORDER

The Special Leave Petition was filed challenging the Judgment and Order dated 7th April,2005, passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No.1188/04 dismissing the same.

As will appear from the materials on record, the subject matter of the dispute is a Ship, M.V. Palanga, which is at present beached at Alang Shipyard, Village Sosiya, Alang, Bhavnagar.

During the pendency of the Special Leave Petition, in view of the deteriorating condition of the Ship certain interim directions had been given for sale and dismantling of the ship on submissions made on behalf of the petitioner.

On 3rd March,2006, on the submissions made on behalf of the petitioners, that the Ship could be broken under the supervision of a person nominated by the Court, notice was issued on the Special Leave Petition. Subsequent to the said order, on 25th April,2007, the Court passed the following Order :-

"After some discussion, it appears that it may be possible to dispose of the matter at this stage. Counsel for the petitioner submits that the best value that one can get for the ship in question, having regard to the facts and circumstances of the case, is about Rs. 3 Crores out of which

a sum of approximately Rs.25.30 lacs would be spent on breaking the ship. The petitioner submits that the ship may be directed to be sold after inviting tenders. If no one is willing to offer more than Rs.2.7 Crores, the petitioner may be permitted to break the ship and sell it off. In case there is a better offer than Rs.2.7 Crores and the petitioner and the bidder wish to improve their offer, the ship may be sold for the highest price offered.

For this purpose, we may have to direct the D.R.T. to appoint a person who shall take necessary steps in the matter. Counsel for the petitioner also prays for some time to seek instruction as to the nature of security that it may furnish and the time within which such security shall be furnished so that the payment is secured. The amount of Rs.2.7 Crores shall be deposited by the petitioner after the ship is broken and sold within the period specified.

It is expected that the breaking of the ship may take about two months, depending upon weather conditions.

The question of ownership of the ship may be gone into later."

By a subsequent Order passed on 16th May,2007, the Debts Recovery Tribunal, Ahmedabad, was permitted to hold a public auction for sale of the ship after advertising such sale. The reserve price for the said public auction was fixed at Rs.2.7 Crores, which was the amount which the petitioner had offered to pay for the Ship. It was also directed that the proceeds of the auction sale would be deposited by the Tribunal in an interest-bearing fixed deposit with the State Bank of India, Ahmedabad, which deposit would be for an initial period of six months. The Tribunal was directed to hold auction within a period of two months from the date of the Order and to submit a report after the completion of the auction sale.

From the report, as submitted by the Debts Recovery Tribunal, Ahmedabad, it appears that Court Receiver was appointed for the purpose of taking all steps for auction and disposal of the Ship. From the report it also appears that after complying with all the formalities, no bidders were available for the sale of the ship in question.

In the ultimate analysis, it appears that the ship could not be sold in terms of the direction given by this Court earlier. Having regard to the above, this I.A. has been filed on behalf of the petitioner for leave to allow the petitioner to dismantle the ship subject to:

- (i) Recovery of costs towards the ship breaking;
- (ii) The proceeds recovered from the sale of scrap to be deposited with the Court Receiver and used towards defrayment of customs duties, payment to Alang Ship-breaking yard, towards rent of Plot No.144-145, along with payment of the dues of State Bank of Bikaner and Jaipur and the Bhavnagar District

Cooperative Bank.

At this juncture, it may be stated that Mr. Amit Sharma, learned counsel appearing for respondent No.4, Charotar Nagrik Sahkari Bank Ltd., stated that it also has certain claims against the respondent No.2.

One of the other prayers in this I.A., is to appoint a Receiver to oversee the ship-breaking and to ensure the recovery of the proceeds from the sale of scrap and after adjustment of cost of ship-breaking, to deposit the remaining amount with the Court Receiver who shall invest the same in an interest bearing fixed deposit account.

Having heard learned counsel for the respective parties and also having regard to the practical aspect of the matter, we are of the view that the ship is required to be sold as early as possible so that its value does not fall further.

Accordingly, on the suggestion made on behalf of the petitioner, which is accepted by all the respective parties, we appoint a Committee which is to consist of a representative of the petitioner, one representative of each of the three Banks in question and the Official Receiver of this Court, to oversee the dismantling of the ship which is to be conducted by the petitioner. The petitioner shall deposit an initial sum of Rs.25 lacs towards the cost of ship-breaking with the Official Receiver who shall deposit the same in an interest bearing fixed deposit account with the State Bank of India, Ahmedabad Branch. The Committee and the petitioner shall mutually fix the date and time when the work of dismantling of the ship can be commenced. The said ship, being M.V. Palanga, is to be dismantled in terms of this Order.

The Court Receiver shall act as Chairman of the Committee and shall take whatever steps that are necessary for the purpose of overseeing the ship-breaking and sale of the scrap recovered from the dismantled ship. The Committee shall also ensure that the amounts received are deposited with the Court Receiver who shall invest the same in interest bearing fixed deposit accounts and keep the same renewed until further orders of this Court.

The petitioner shall deposit the above-mentioned amount of Rs.25 lacs with the Court Receiver within 15 days from date at a

meeting to be convened for the said purpose and to take a further decision regarding the procedure to be adopted for the dismantling of the ship.

This Order is being passed on the understanding that the petitioner abides by its original offer of paying Rs. 2.7 Crores as price of the Ship. It is also stated on behalf of the petitioner that if the sale proceeds do not cover the price offered by the petitioner, the balance amount shall be deposited by the petitioner with the Court Receiver before the matter is listed.

Let this matter be listed after six months.

I.A. No.3 is disposed of accordingly.

I.A. No.4 is also disposed of in terms of this Order.

.....J.
(ALTAMAS KABIR)

.....J
(J.M. PANCHAL)

New Delhi,
February 8, 2008.