

ITEM NO.8

COURT NO.3

SECTION X

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).7384/2007

(From the judgement and order dated 05/12/2006 in WP No. 1450/2006
of The HIGH COURT OF UTTARANCHAL AT NAINITAL)

YUNUS

Petitioner(s)

VERSUS

U.P.FINANCIAL CORP.& ORS.

Respondent(s)

(With appln(s) for impleadment and prayer for interim relief)

WITH SLP(C) NO. 18745-18746 of 2007

[U.P. FINANCIAL CORPORATION & ANR. VS. M/S HARIDWAR
ASBESTOS & CEMENT PROD. & ORS.]

(With prayer for interim relief)

Date: 30/07/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE DEEPAK VERMA

For Petitioner(s)

Mr. Ajit Kumar Pande, Adv.

in SLP © 7384/07

Mr. Pradeep Kumar Yadav, Adv.

in SLP © 18745-46/07

Mr. Shrish Kumar Misra, Adv.

For Impleader

Mr. Arun Kumar Beriwal, Adv.(NP)

For Respondent(s)

Mr. Shrish Kumar Misra ,Adv.

in SLP 7384/07

in SLP 18745-46/07

Mr. Arun Kumar Beriwal, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The appeals are allowed with costs. Counsel's fee payable to the
appellants is assessed at Rs. 50,000/- in each of the appeals.

CA No.. /2009 @ SLP(C) 7384/2007

(KALYANI GUPTA)
SR. P.A.

(PUSHAP LATA
BHARDWAJ)
COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE.)

CA No.. /2009 @ SLP(C) 7384/2007

CIVIL APPEAL NO. 5060 OF 2009
ARISING OUT OF S.L.P. (C) NO. 7384 OF 2007

YUNUS APPELLANT

VERSUS

U.P. FINANCIAL CORP. & ORS. RESPONDENTS

WITH

CIVIL APPEAL NO. 5061-5062 OF 2009
ARISING OUT OF S.L.P. (C) NO. 18745-18746 OF 2007

U.P. FINANCIAL CORPORATION & ANR. APPELLANTS

VERSUS

M/S HARIDWAR ASBESTOS & CEMENT PROD.
& ORS. RESPONDENTS

ORDER

Leave granted.

The application for impleadment is dismissed as not pressed.

These two appeals demonstrate as to how the High Court imposed its own terms and conditions on the parties and passing judgments not on reasons and rationality but at its own whims and caprice and thereafter recording that the CA No.. /2009 @ SLP(C) 7384/2007

parties had arrived at one time settlement in terms of the said judgment. The reasons why we are pointing out the same is that in the first part of the judgment the High Court issued certain directions in favour of a factory owner and thereby set aside the auction sale on the premise that he shall make a payment of a sum of Rs. 2,92,000/- along with 9% interest and the auctioned property including the plants and machineries shall be handed over to him. It is neither in doubt nor in dispute that the factory premises belonging to the owner had been put on auction. Two writ petitions were filed before the

High Court of Uttaranchal at Nainital. We do not know on what basis the High Court proceeded to deliver its judgment and issued the directions.

The auction sale has to be set aside if any known ground exists thereafter such a ground has to be made out by the borrower. A Writ Court may not be the appropriate forum.

We, therefore, deprecate the practice in which the High Court has proceeded to record its judgment and issued directions. We also do not approve that after the judgments are delivered, the following should have been recorded:-

CA No.. /2009 @ SLP(C) 7384/2007 "In terms of the above, both parties have

arrived at this one time settlement before this court and they have also signed on the order sheet in this regard."

We, therefore, set aside the impugned judgment and remand the matter to the High Court for consideration of the matter afresh.

The appeals are allowed with costs. Counsel's fee payable to the appellants is assessed at Rs. 50,000/- in each of the appeals.

.....J
[S.B. SINHA]

.....J
[DEEPAK VERMA]

NEW DELHI
JULY 30, 2009.