

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A. No.4 IN

Petition(s) for Special Leave to Appeal (Civil) No(s).8717/2010

(From the judgement and order dated 16/03/2010 in CO No. 565/2010
of The HIGH COURT OF CALCUTTA)

TAPOSIDDHA ROY Petitioner(s)

VERSUS

INDIAN OVERSEAS BANK & ORS. Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned
Judgment,directions and prayer for interim relief)

Date: 31/05/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE C.K. PRASAD
(VACATION BENCH)

For Petitioner(s) None for the petitioner.

For Respondent(s) Mr. Karan Khanna, Adv.
Mr. Ram Swarup Sharma,Adv.

UPON hearing counsel the Court made the following
ORDER

This matter has been listed today for
consideration of I.A. No.4 of 2010 filed on behalf of
respondent No.1 - Indian Overseas Bank for grant of the
following substantive reliefs:

A. This Hon'ble Court be graciously
pleased to allow the Respondent Bank to
appropriate the above mentioned drafts

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in para 2 amounting to Rs.1,23,50,000/-
photo copies of which have already been
submitted by the Ld. Counsel for the
Respondent Bank with this Hon'ble Court
on the date of hearing namely
13.05.2010, on the basis of the photo
copies held by them.

B. The Petitioner be further directed
to make balance payment of the total
outstanding dues recoverable by the
Bank amounting to Rs.3.61 crores plus
interest and this money may be directed
to be paid by the Petitioner by 31st
July, 2010 as committed by the
Petitioner in the SLP before the next
date of hearing in the month of August,
2010 so that the Bank may release the

original title deeds of the property within 2 days as directed by this Hon'ble Court vide order dated 13.05.2010.

C. The huge cost incurred by the Respondent Bank in litigation on account of omission and commission of acts on the part of the Petitioner may also be directed to be paid to the Respondent Bank."

From the record of the case it is borne out that the petitioner has also filed I.A. No.3 of 2010 through Shri Sudarshan Rajan, Advocate for grant of permission to him to make the entire payment of Rs.1,33,50,000/-, which is the highest bid amount for the subject property within seven working days to respondent No.1 Bank with a direction to the latter to release the title documents of the subject property bearing No.5/6, Bally Ganj Place, Kolkata.

Shri Sudarshan Rajan, who had earlier appeared on behalf of the petitioner and who has also filed I.A. No. 3 of 2010 says that his client has taken

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away the brief from him and he has no instructions to appear on his behalf.

We have heard Shri Karan Khanna, learned counsel for respondent No.1 and carefully perused the record.

Before proceeding further, we may take cognizance of letter dated 29.5.2010 sent by one Kusumlata Saraogi to Manager, Indian Overseas Bank, Lal Bazar Branch, Kolkata, a copy of which was received by the registry of this Court on 29.5.2010 by fax at 12.57 p.m. In that letter, Kusumlata Saraogi has mentioned that the demand drafts SI No. 615416 to 615429 were sent for cancellation and immediate deposit of the amount in her savings bank account.

On 13.5.2010, this Court had, after hearing learned counsel for the parties made the following order:

"Mr. B.A. Khan, learned senior counsel appearing for the petitioner states on instructions from the petitioner, who is present in court, that an amount of Rs.1,23,50,000/- has been deposited with the first respondent Bank. Learned counsel prays that the said respondent may now be directed to return the original title deeds of the residential property bearing No.5/6 Bali Ganj Place, Calcutta, to the petitioner.

Learned counsel appearing for the bank states that though copies of bank drafts have been supplied to him but as per his instructions the said amount is yet to be received in the bank. Learned counsel opposes the prayer for release of the title deeds till full payment in terms of the settlement arrived at is received by the bank.

In view of the above, we direct that on payment of the final instalment in terms of the settlement by the petitioner with the respondent bank, the original title deeds of the aforementioned property shall be released to the petitioner within two days of the receipt of the payment.16

In the meanwhile, a photocopy of the title deeds shall be supplied to the petitioner.

List the matter for further directions in the month of August, 2010.

The amount of Rs.10 lakhs along with interest accrued thereon deposited in this Court shall be released to respondent No.1 through their counsel."

In I.A. No.4 of 2010 and affidavit dated 19.5.2010 of Shri G.S. Thiara, Chief Manager of respondent No.1, (the affidavit was filed on 25.5.2010) it has been averred that the demand drafts of Rs.1,23,50,000/- of which a mention was made in the Court's order dated 13.5.2010 were taken away by the petitioner and the same have not been actually deposited with the Bank. According to respondent No.1, the statement made by the learned senior counsel on 13.5.2010 was factually incorrect and misleading.

From what we have mentioned above, it is clear that by making misleading statement, the petitioner succeeded in persuading the Court to pass an order in its favour. This conduct of the petitioner is sufficient to disentitle him to any relief under Article 136 of the Constitution of India.

Consequently, the special leave petition is dismissed. I.A. No.4 of 2010 filed by respondent No.1 is disposed of as infructuous. As a sequel to this,

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I.A. No.3 of 2010 is also disposed of as having become infructuous.

Interim orders passed earlier shall stand automatically vacated.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master