

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

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16140/2004

(From the judgement and order dated 19/01/2004 in FMAT No. 2454/1986 of the HIGH COURT OF CALCUTTA)

TRIPURESH MUKHERJEE & ANR.

Petitioner(s)

VERSUS

COMMNR.,COMMERCIAL TAXES,W.BENGAL & ORS.

Respondent(s)

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

and office report )

Date: 18/04/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. G.K. Banerjee, Sr.Adv.

Mr. S.H. Rao, Adv.

Mr. T.M. Singh, Adv.

Mr. Saurav Agrawal, Adv.

Ms. Ruby Singh Ahuja,Adv.

For Respondent(s)

Mr. Avijit Bhattacharjee,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The civil appeal is allowed, in terms of the signed order.

(N. Annapurna)

(V.P. Tyagi)

Court Master

Court M

aster

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2005

(Arising out of S.L.P.(C)No.16140/2004)

Tripuresh Mukherjee & Anr.  
Plaintiffs

...Appel

Versus

Commr., Commercial Taxes, W.Bengal & Ors.  
Respondents

...Respo

O R D E R

Leave granted.

Against the order dated 16th July, 1986 passed by a learned Single Judge in

Civil Order No.16828 W of 1985, the appellants have filed an appeal before the Division

Bench of the High Court, being F.M.A.T.No.2454 of 1986. The said appeal was

dismissed for default on 28th August, 2001. When the application seeking restoration of

the aforesaid appeal was filed, the impugned order was passed. It reads:

"Heard the learned counsel for the parties. Peruse d the

order of the learned Single Judge. We are of the opinion that there is no ground to interfere with the impugned order under appeal.

Accordingly, the appeal along with all the applicati ons is

dismissed."

It does appear that the contentions urged by the appellants against the judgment and

order of learned Single Judge dated 16th July, 1986 were not examined by the Division

Bench on merits. feel

In this view, without expressing any opinion on merits, we

that the aforesaid appeal, No.2454 of 1986, deserves to be heard on merits in accordance

with law.

Accordingly, we set aside the order dated 28th August, 2001 as also the

impugned order dismissing the application seeking recalling the order dismissing the

appeal on merits. The appeal shall be heard expeditiously since it is already about twenty

years old.

The civil appeal is allowed accordingly.

.....J.

(Y.K. SABHARWAL)

.....J.

(P.P. NAOLEKAR)

New Delhi,

April 18, 2005.