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C.A.No. 5484-5485 OF 2000

ITEM NO. 102

COURT NO.9

SECTION XVI

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

CIVIL APPEAL NOS. 5484-5485 OF 2000

SUDERA ENTERPRISES PVT. LTD. .. APPELLANT
VERSUS

PARMANAND AGARWAL & ORS. .. RESPONDENTS
(With appln.(s) for amendment of cause title and directions and
with office report)

[WITH I.A.Nos. 5-6 & 9-18 - FOR AMENDMENT OF CAUSE TITLE AND
PERMISSION TO FILE ADDL. DOCUMENTS AND DISCHARGE OF RECEIVER
& DIRECTIONS AND OFFICE REPORT]

DATE: 03/09/2003 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For appellant (s)Dr. A.M. Singhvi, Sr.Adv.
Mr. Shahid Rizvi, Adv.
Mr. Amit Bhandari, Adv.
Mr. Abhijeet Chatterjee, Adv.
for Ms. Sarla Chandra, Adv.

For respondent (s)Mr. P. Chidambaram, Sr.Adv.
Nos.1 to 3Mr. K.V. Vishwanathan, Adv.
Mr. A. Agarwalla, Adv.
for Mr. K.V. Vijayakumar, Adv.

CESCMr. Chanchal Kumar Ganguli, Adv.

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

Dr. A.M. Singhvi, learned Senior counsel for the appellant started his arguments at 11.25 a. m. and concluded at 12.25. Then, Mr. K.V. Vishwanathan, learned counsel for the respondents made his submissions for 20 minutes. After that, Mr. P. Chidambaram, learned Senior counsel for the respondents made his submissions for 20 minutes. Thereafter, Dr. A.M. Singhvi again made his submissions in reply for 15 minutes. The appeals are disposed of with no order as to costs in terms of the signed order. I.A. Nos.5 and 6 seeking amendment of the cause title stand allowed. I.A. Nos.9-18 are permitted to be withdrawn.

Sarita(Shelly Sengupta)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 5484-5485 OF 2000

SUDERA ENTERPRISES PVT. LTD.

APPELLANT

VERSUS

O R D E R

Heard learned Senior counsel for the parties on either side.

The respondent Nos.1 to 3 herein filed Suit No.601/89 against the appellant seeking (i) decree for perpetual injunction restraining the appellant from making any upward revision of rent on the basis of increases in the rate of electricity charges by the defendant No.2 in the suit, i.e., Calcutta Electricity Supply Corporation ('CESC' for short), (ii) decree for perpetual injunction restraining the appellant from making any upward revision of the air-conditioning charges on the basis of the increase in the rate of electricity charges by CESC, and (iii) decree for perpetual injunction restraining the appellant from making any upward revision of rent or air-conditioning charges in

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reliance upon the clauses of the tenancy agreement and for some other reliefs. In the said suit, on the basis of an application made for interim injunction, order was passed on 29.1.1990 on terms and conditions mentioned therein. On 8.8.1995 in the same suit, an order was passed on the basis of the application made by the appellant permitting it to withdraw rupees thirty five lacs on its furnishing Bank Guarantee to the satisfaction of the Registrar of the original side of the High Court. Again on another application made by the appellant in the same suit, order was passed on 5.12.1995 modifying the order dated 8.8.1995 so as to permit the appellant to withdraw the sum of rupees thirty five lacs on furnishing personal security instead of Bank Guarantee. Respondent Nos. 1 to 3, who are plaintiffs in the suit, filed Appeal Nos. 464-465/95 before the Division Bench of the High Court challenging the correctness and validity of the orders dated 8.8.1995 and 5.12.1995. In those appeals, an interim order was passed by the Division Bench on 7.1.1997. The said order came to be challenged by the plaintiffs in the suit before this Court contending that chart indicating the calculations of payment furnished by the

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appellant herein was accepted by the Court and direction was given, but, that was done without giving opportunity to the respondent Nos.1-3 herein. This Court, on 17.2.1997 disposed of the appeals remanding the cases to the High Court for passing fresh orders in the light of the observations made in the said order. Thereafter, the Special Bench of the High Court disposed of the afore-mentioned Appeal Nos.464-465/1995 by the impugned order. Hence, these appeals by the defendants in the original suit.

During the course of the hearing, it is brought to our notice that the Rent Controller fixed fair rent after making inquiry and after hearing the parties in respect of 41 tenants out of 76 tenants, who are the members of the respondent No.3 - Association. Aggrieved by the order of the Rent Controller, the appellant filed appeal before the Appellate Authority. The Appellate Authority affirmed the order passed by the Rent Controller fixing the fair rent. Not satisfied with the said order of the Appellate Authority, the appellant filed Revision Petition before the High Court and the same is said to be pending for decision.

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The orders passed in the suit on 8.8.1995 and 5.12.1995 and also orders passed in the appeals above-mentioned, i.e., Appeals Nos.464-465/95 were by way of an interim arrangement pending fixation of fair rent. Now that the fair rent is fixed and that the revision is pending relating to the fixation of fair rent, it may not be necessary for us to express one way or the other on the merits of the contentions advanced on behalf of the parties. All the contentions of the parties are left open to be urged before the High Court in the revision petition or in the suit pending, as the case may be. During the pendency of the appeals in this Court, it appears certain developments have taken place. It is submitted on behalf

of the appellant that the original company - Sudera Enterprises Pvt. Ltd. is now amalgamated with M/s. ABL International Limited. In that view, on I.A.Nos. 5-6 filed seeking amendment of the cause title, a submission was made that the competent Authority has passed an order under Section 391(3) of the Companies Act. The respondent Nos. 1 to 3 submitted that the appellant did not bring to the notice of this Court earlier about the amalgamation of the company; suppressing this fact a personal security was furnished by the three Directors of the Sudera Enterprises

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Pvt. Ltd. Since nothing much turns on that in these proceedings, we may not spend time in considering whether the appellant was guilty of suppression or concealment deliberately. All that is required to be done is that the personal security given by - (1) Bijay Singh Baid; (2) Mahabir Jha and (3) R. Janakiraman, as Directors of Sudera Enterprises for the purpose of withd

rawing the amount, pursuant to the order passed by this Court, shall be kept intact, subject to the orders to be passed by the High Court in the suit or in the revision petition, as the case may be.

We may add that personal security given by the above-mentioned three persons, although kept intact, it shall be treated as security furnished on behalf of M/s. ABL International. All the contentions of the parties are left open to be urged before the High Court with liberty to either side to make interim or interlocutory applications before the High Court in the pending revision or in the suit, as the case may be.

I.A. Nos.5 and 6 seeking amendment of the cause title stand allowed. I.A. Nos.9-18 are permitted to be withdrawn, as requested by the learned counsel for the

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appellant, with liberty to move those applications before the High Court, if need be.

Learned counsel for the respondent No.4 (CESC) submitted that the amount that may be due to the CESC, may be paid by the appellant, as and when demand is raised. It is open to the CESC to make such demand in accordance with law.

The appeals are disposed of accordingly, but, with no order as to costs.

At this stage, we are informed that some Contempt Petition between the same parties is fixed for hearing before this Court on 12th September, 2003. In the light of the disposal of these appeals, learned counsel for the parties submit that the contempt proceedings may be dropped.

The contempt petition is not before us. However, the same submission can be made as and when the petition comes up for hearing.

(SHIVARAJ V. PATIL)

.....J.

New Delhi, (D.M. DHARMADHIKARI)
September 3, 2003.

.....J.