

S UP R E M E COUR T OF I N D I A  
R ECO R D OF P R OC E E D I N G S  
CIVI L A P P E A L NO(s). 1 3 8 OF 2 0 0 1

HUDCO(HOUS I N G & UR B A N DE V. COR P N . L T D .)& ORS Appellant  
(s)

VE R S U S

SR E I INT E R N A T I O N A L S ECU R I T I E S LT D. & ANR Respondent(s)  
)

(With office report )

Date: 3 0 / 0 8 / 2 0 0 7 This Appeal was called on for hearing today.

CORA M : HON' B L E MR. JUS T I C E H.K. S E M A  
HON' B L E MR. JUS T I C E LO K E S H W A R SING H P A N T A

For Appellant(s) Mr. Ra mes h P. Bhatt, Sr. Adv.  
Mrs. Mahim a C. Shroff, Adv.  
Mr. Mukesh Ku m a r , Adv.  
Mr.Chir ag M.Shroff, Adv.

For Respondent(s) Mr. Vijay Hansa ri a, Sr. Adv.  
Mr. Pr a n a b Ku m a r Mullick, Adv.  
Ms. Sneha Kalita, Adv.  
Mr. Sha kti K. P atn aik, Adv.

UPON hearing counsel the Court made the following

OR D E R

The order of learned single Judge as affirmed by the Division Bench is modified to that extent. The appeal is dismissed in terms of the signed order. The appellant is directed to allow brokerag e commission to the respondent w.e.f. 01/0 9 / 1 9 9 7 . The balan ce

brokerage amount, after deducting Rupees Twenty Two Lak h s which has already been paid to the respondent pursuant to interim order dated 0 4 / 0 1 / 2 0 0 1 , shall be paid to the respondent within four weeks from today. We make it clear that in this appeal we are not deciding the validity of the modified order dated 2 6 / 0 8 / 1 9 9 7 and other issues raised by the appellant in this appeal. This appeal is dismissed in the given facts and circumsta nces of the case.

( Ravi P. Verm a )  
Court Master

( Anand Singh )  
Court Master

[Signed order is placed on the file]  
IN TH E SU P R E M E COUR T OF INDI A

CIVI L A P P E L L A T E JUR I S D I C T I O N

CIVI L A P P E A L NO. 1 3 8 OF 2 0 0 1

HUDCO (HOUSI N G & UR B A N DE V E L O P M E N T  
COR P O R A T I O N LT D.) & ORS. ....A P P E L L A N T ( S)

Versus

SR E I INT E R N A T I O N A L S ECU R I T I E S LT D. & .....R E S P O N D E N T  
( S )  
ANR.

OR D E R

This appeal is directed against the judgment and order dated 28 / 06 / 2000 passed by the Division Bench of the Calcutta High Court in A P O T 4 7 7 / 2 0 0 0 in GA 2 2 4 1 / 2 0 0 0 dismissing the appeal preferred by the appellant herein against the order of the learned single Judge.

At the outset, we are of the view that in such disputed question of fact a writ court is no real and effective remedy. Be that as it may be. Now, it is too late in the day to ask both the parties to go and approach a regular court of civil jurisdiction.

The facts leading to the filing of the present appeal may briefly be recited. Controversy involved in this appeal is with regard to the payment of commission of broker age in favour of respondent No.1, S R E I International Securities Limited. HUDCO invited public deposits. A brochure was issued. In a nutshell, the brochure prescribed that the

..2.

-2 -

public deposit can be made either directly or through a broker. By a letter dated 21 / 04 / 1997 the respondent was appointed as a Manager-cum- Broker for HUDCO Public Deposit Scheme with certain terms and conditions. In the said appointment letter, the name of the respondent No.1 appeared at sl.no.8. In the terms and conditions, the clause which we feel is relevant for the purpose of disposal of this appeal is clause (viii). It reads as under:-

"viii) Your company shall not receive any application alongwith Demand Draft/Cheque drawn in favour of your company or anybody else except Cheques/Demand Drafts drawn in favour of Housing & Urban Development Corporation Ltd. Under no circumstances your company shall receive any application alongwith cash."

Clause (x) also stipulated that the company shall ensure to comply with the terms and conditions of the Public Deposit Scheme announced by HUDCO from time to time.

The terms and conditions of the appointment was further modified by another order of 26 / 08 / 1997 . It says that, in continuation of earlier order, w.e.f. 1/ 9 / 1997 , brokerage shall be payable on deposits mobilised by the company from Individual and HUF only. It appears that on 27 / 08 / 1997 the respondent company deposited Rupees Twenty Five Crores. On the

.....3

-3 -

top of the cheque it is written 'Manager's Cheque'. It has been verified by the Board and the Board held that it is a cheque and not Manager's Cheque or Demand Draft. The respondent also deposited Rupees Two Crores on the same day, i.e. on 27 / 08 / 1997 by an Account Payee Cheque from Murshidabad Gramin Bank payable at Calcutta. The dispute arose as to whether the respondent was entitled commission on the aforesaid two deposits and, if so, with effect from what date. The dispute was taken to the High Court in Writ Petition No.2339 / 1999 . The Single Bench of the High Court disposed of the writ petition on 12 / 10 / 1999 with a direction that the writ petition be treated as a representation before the appellant company and the appellant was directed to consider the writ petition and decide. Pursuant to the said direction of the learned single Judge, the appellant constituted a Group of Directors, hereinafter 'GOD', for short, in 272<sup>nd</sup> meeting for giving a hearing to the writ petitioner, respondent herein, regarding payment of brokerage in Public Deposit Scheme. The GOD examined the amount of Rupees Twenty Five Crores and Rupees Two Crores deposited on 27 / 08 / 1997 and came to the conclusion that it is not a draft but it is a cheque.

As we propose to dispose of this appeal on the basis of the finding recorded by the GOD, the operative portion of the finding recorded by GOD is quoted in extenso:-

.....4.

-4 -

"In view of the above stated facts, the GOD feel that there is no strength in the contentions of M/s SR E I International al that the deposit amount may be treated as deposit through a draft and credit be given w.e.f. 27.8.97. The deposit has rightly been treated as a deposit through a cheque. Therefore the broker age is payable from the date of realisation i.e. 1.9.97 and the broker age applicable from that date would be payable to M/s SR E I International Ltd.."

It appears that despite the aforesaid finding by GOD, the respondent has not been benefited by any commission w.e.f. 01/09/1997 and culminating in filing of a second writ petition which is now before us.

Mr. Ramesh P. Bhatt, learned senior counsel appearing for the appellant strenuously contended that in view of the modification order dated 26/08/1997, the deposit is neither from an individual nor from HUF and, therefore, as stipulated in the modified order dated 26/08/1997, w.e.f. 01/09/1997 the respondent is not entitled for any commission on broker age. We are unable to countenance with this contention. As already noticed, the GOD has given a clear finding on 23/11/1999 on which day the modification dated 26/08/1997 was very much before them. It is their own modification order and it cannot .....5.

-5 -

be permitted to say that they were not aware of the modification order dated 26/08/1997. Despite the knowledge of existence of modification order dated 26/08/1997, GOD has given a clear finding as quoted above. In view thereof, we are of the view that it is too late in the day to accept the contention that, despite the decision of the GOD on 23/11/1999, the respondent is not entitled brokerage commission w.e.f. 01/09/1997 in view of the modification order dated 26/08/1997.

In the view that we have taken, the order of learned single Judge as affirmed by the Division Bench is modified to that extent. The

appeal is dismissed. The appellant is directed to allow broker age commission to the respondent w.e.f. 01/09 / 1997 . The balance brokerage amount, after deducting Rupees Twenty Two Lakhs which has already been paid to the respondent pursuant to interim order dated 04 / 01 / 2001 , shall be paid to the respondent within four weeks from today. We make it clear that in this appeal we are not deciding the validity of the modified order dated 26 / 08 / 1997 and other issues raised by the appellant in this appeal. This appeal is dismissed in the given facts and circumstances of the case.

.....J .  
( H.K. S E M A )

New Delhi;  
August 30, 2007 .

.....J .  
( LO K E S H W A R S I N G H P A N T A )