

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.6 IN CIVIL APPEAL NO.7234 OF 1999

KUMAR DHIRENDRA MULLICK AND ORS.

Appellant(s)

VERSUS

TIVOLI PARK APARTMENTS (P) LTD.

Respondent(s)

(For directions and office report)

with I.A. Nos. 7 & 8(Application for permission to file additional affidavit and extension of time, modification, clarification and direction)

Date: 13/12/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE S.H.KAPADIA

For Appellant(s)Mr. U.U.Lalit, Sr. Adv.

Mr. Ashok Jain, Adv.

Mr. Pankaj Jain, Adv.

Mr. Bijan Kumar Ghosh, Adv.

For Respondent(s)

Mr. R.F.Nariman, Sr. Adv.

Mr. Jawahar Lal Gupta, Sr. Adv.

Mr. Sanjiv Sen, Adv.
Mr. P.H. Parekh, Adv.
Mr. Sameer Parekh, Adv.
Mr. Rajeev Mishra, Adv. for
M/s P.H. Parekh & Co.

UPON hearing counsel the Court made the following

O R D E R

I.A. Nos. 6 & 8 are disposed of in terms of the signed order.

(Parveen Kr. Chawla)

(Anand Singh)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

I.A. Nos. 6 & 8 in CIVIL APPEAL NO.7234 OF 1999

Kumar Dhirendra Mullick & Others

..Appellant(s)

VERSUS

Tivoli Park Apartments (P) Ltd.
)

.Respondent(s)

O R D E R

This Court passed a decree in the nature of preliminary decree in Civil

Appeal No. 7234 of 1999 vide its judgment dated 1st November, 2004 arising from

Title Suit No. 176 of 1981 and directed the decree-holder to tender/deposit the sum of

Rs.29,20,000.00 within thirty days from the date of the judgment failing which the

agreement dated 16.8.1980 shall stand rescinded and the title suit No. 176 of 1981

shall stand dismissed.

After obtaining the certified copy of the judgment, respondent-decree holder (for short 'the applicant') got prepared a demand draft bearing No. 022559 dated 19th

November, 2004 drawn on Standard Chartered Bank, Kolkatta in favour of 'Trust

Estate of Raja Rajendra Mullick' for Rs.29,20,000.00. Applicant repeatedly attempted

to hand over the draft and draft lease deed but the appellant-trustees refused to

accept or respond. Finally on 27th November, 2004, along with the covering letter, the

representatives of the applicant along with his advocate went personally to the

residence of the trustees to hand over the covering letter along with the demand draft.

Sri Kumar Dipendro Mullick, one of the trustees, who was personally present refused

to accept the same. Finding no other alternative applicant posted the said letter along

with all its enclosures at G.P.O. by speed post with A.D. on 27th November, 2004 to

be delivered to the appellant-trustees.

The postal authorities duly tendered the said envelope containing the said

pay order and other documents and letter on 29th November, 2004, 30th November, 2004 and 1st December, 2004 but the trustees did not receive the same. The trustees finally received the said documents on 4th December, 2004.

On the said date, the advocate for the trustees sent a communication to the applicant's advocate stating inter alia that the terms of the lease was to be executed by the trial Court.

On 9th December, 2004, the applicant received an envelope posted by one Mr. Brojen Seal, Advocate whereby he returned all the documents along with the original demand draft for Rs.29,20,000/-. Thereafter the applicant filed an application on 13.12.2004 to deposit the aforesaid amount of Rs.29,20,000/- in the Court of

Second Assistant District Judge, Alipur, Calcutta praying for the execution of the

lease deed in terms of the order of this Court dated 1st November, 2004 in favour of the applicant. The trustees of the appellant took objection that the amount was not tendered/deposited in terms of the order passed by this Court. That it was beyond the period granted by this Court. The executing Court dismissed the application filed by the applicant seeking execution of the lease deed in its favour. The applicant,

aggrieved thereby has filed Writ Petition No. 3271 of 2005 under Article 227 of the Constitution of India in the High Court of Calcutta, which is still pending.

Respondents-applicants have now filed Interlocutory Application Nos. 6 & 8

of 2005 in Civil Appeal No. 7234 of 1999. In I.A. No.8 of 2005, respondents-

applicants have sought extension of time to deposit the said amount of Rs.29,20,000.00 as according to them the appellants had refused to accept the amount tendered by them through a demand draft prepared on 19.11.2004.

After going through the applications, reply filed by the judgment-debtors and after hearing counsel for the parties, we are of the view that since the decree is in the nature of preliminary decree, this Court has the jurisdiction to extend the time to tender/deposit the amount and accordingly, on the facts of this case, we set aside the order of the executing Court rejecting the application filed by the applicant for execution of the lease deed and extend the time for deposit of the said amount of Rs.29,20,000.00 till 17th December, 2005.

Counsel for the respondents-applicants tendered the Demand Draft No.986012 dated 7.12.2005 drawn on Allahabad Bank for Rs. 29,20,000/- to the counsel for the judgment-debtors in the Court but he refused to accept the same because of lack of instructions from his clients. Because of the aforesaid refusal by the counsel for the judgment-debtors to accept the tender, we direct the decree-holder to deposit the said demand draft with the Registrar General of this Court on or before 17th December, 2005. On being approached by the judgment-debtors, Registrar General shall handover the demand draft to them or their counsel. The deposit made with the Registrar General shall be taken as compliance of our direction given in the judgment to deposit the amount in satisfaction of the decree passed by this Court.

Counsel for the decree-holder states that in view of the order passed today, he would withdraw the Writ Petition No. 3271 of 2005 filed by decree-holder in the High Court of Calcutta against the order of the executing Court dated 7th September, 2005. On his doing so, the executing Court shall proceed to execute the lease deed in terms of our judgment dated 1st November, 2004.

Ordinarily, we would not have interfered in this matter, particularly, when the decree holder has moved the High Court by filing Writ Petition No. 3271 of 2005, which writ petition is pending even today in the High Court. However, in order to put an end to the litigation, which has been going on for last 20 years and since technical objections have been raised by the judgment debtor to defeat the decree, we have extended the time to enable the decree holder to deposit the amount as indicated above. This order to has do been passed on the peculiar facts of this case substantial justice between the parties and the same be not taken as a precedent for any future case.

I.A. Nos. 6 & 8 are disposed of in the above terms.

.....J. [ASHOK BHAN]

NEW DELHI;J. [S.H. KAPADIA]
DECEMBER 13, 2005.