

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.8715 OF 1997

SIPANI AUTOMOBILES LTD.

Appellant (s)

VERSUS

TIRATH RAM BATRA

Respondent(s)

WITH

Civil Appeal Nos.4992-4993 of 1998

(With applications for exemption from filing c/c of the
impugned Judgment and stay)

Civil Appeal No.5935 of 1998

Date: 06/09/2005 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s)

Mr. Radhakrishna S. Hegde,Adv.

Mr. Chandra Prakash Tyagi,Adv.

Ms. Savitri Pandey,Adv.

Mr. P.P. Singh,Adv.

For Respondent(s) Mr. K.N. Rai,Adv.

Mr. Ashok Kumar Singh,Adv.

RR-EX-PARTE

Respondent-in-person

UPON hearing counsel the Court made the following

O R D E R

for Heard the learned counsel for the parties. Applications

amendment of the cause title are allowed.

signed Civil Appeal No.8715/1997 is allowed in part in terms of the

order.

ving become Civil Appeal Nos.4992-4993/1998 and 5935/1998 ha

infructuous are dismissed as such.

(A.S. BISHT)

(KANWAL SINGH)

COURT MASTER

COURT MASTER

[Two signed orders are placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.4992-4993 OF 1998

M/S. SIPANI AUTOMOBILES LTD.
T(S)

..... APPELLAN

:VERSUS:

PREMA SACHAN
NT(S)

..... RESPONDE

WITH

CIVIL APPEAL NO.5935 OF 1998

M/S. SIPANI AUTOMOBILES LTD.
T(S)

..... APPELLAN

:VERSUS:

NEERU MOHAN
NT(S)

..... RESPONDE

O R D E R

The only point urged in these appeals is that having regard to the fact that the appellant Company was declared to be sick Company in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and furthermore as the matter was pending before the Board of Industrial and Financial Reconstruction (BIFR), the orders passed by the Monopolies and Restrictive Trade Practices Commission could not have been enforced as was sought to be done by the impugned order. It is, however, accepted at the Bar that the BIFR proceedings had since been closed on the

-2-

ground that there was no chance of revival of the said Company. The appeal against the said order has since been withdrawn. It is, however, stated at the Bar that the winding up proceedings of the appellant Company are pending before the Karnataka

High Court, which is not relevant for the purpose of disposal of these appeals. In this view of the matter, we are of the opinion that these appeals have become infructuous. Dismissed accordingly.

.....J
(S.B. SINHA)

.....J
(C.K. THAKKER)

NEW DELHI ;
SEPTEMBER 06, 2005.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8715 OF 1997

M/S. SIPANI AUTOMOBILES LTD.
APPELLANT(S)

..... A

:VERSUS:

TIRATH RAM BATRA
RESPONDENT(S)

..... R

O R D E R

This appeal is directed against an order dated 15.04.1997 passed by the

Monopolies and Restrictive Trade Practices Commission, New Delhi (the

Commission' for short), in a Review Application filed in Civil Appeal No.61/2003

whereby and whereunder the appellant herein was directed to pay unto the respondent

a sum of Rs.1,37,806/- with interest at the rate of 18% per annum with effect from 2nd

February, 1993, till the date of payment. The Commission also awarded costs of

Rs.2,000/- in favour of the appellant herein. The basic fact of the matter is not in

dispute.

The respondent herein purchased a Montana Diesel car from the appellant.

He filed an application before the Commission purported to be under Section 12B of

the Monopolies and Restrictive Trade Practices Act, (MRTP Act) alleging inter alia

therein that the said vehicle had been

-2-

giving troubles. By an order dated 7.02.1994, the MRTP Commission, while hearing

the application of the respondent along with other compensation applications, passed

an order awarding a sum of Rs.10,000/- by way of compensation with interest at the

rate of 18% per annum and costs of Rs.1000/- each. Thereafter, the respondent herein

filed a review application in terms of Section 13(2) of the MRTP Act before the

Commission praying for withdrawal of the said order contending that he should have

been awarded a sum of Rs.1,37,806/-, namely the total amount of consideration for the

said car as well as the costs incurred towards its repairs. Upon entertaining the said

application the Commission framed the following issues for its consideration:

1. Whether the respondent is or has been indulging in the Unfair Trade Practices as alleged in the Compensation Application?

2. Whether the applicant has suffered any loss or injury as a result of Unfair Trade Practices and if so, the amount of compensation to which he may be entitled to?

It is not in dispute that the respondent herein by way of evidence affirmed an

affidavit in support of his claim but no evidence was adduced on behalf of the

appellant herein. By reason of the impugned order, as noticed hereinbefore, the

Commission awarded a sum of Rs.1,37,806/- with interest at the rate of 18% per

annum in favour of the respondent herein.

Aggrieved, the appellant is in appeal before us. Mr. Radhakrishna S. Hegde,

learned counsel appearing for the appellant has raised a short question in support of this

-3-

appeal contending that having regard to the claim made before the MRTPT

Commission and evidence adduced before it by the respondent no case has been made

out for grant of compensation to the extent of reimbursal of entire amount of

consideration paid by him for purchase of the said car to the appellant as well as the

cost of repairs incurred therefor.

The learned counsel appearing for the respondent, however, supported the

impugned Judgment.

The respondent herein in his application filed before the Commission alleged certain defects in the car. He furthermore alleged that he had spent a huge amount towards repairs of the car. He contended that despite the fact that the car had done only 9,500 Kilometers, the mechanic had recommended change of piston and the rings of the engine of the car. In his evidence by way of an affidavit the respondent furnished details of the amount spent by him towards repairing charges. The respondent neither in his application nor in his evidence raised any foundational fact as to on what basis he claimed the amount of Rs.1,37,806/-. The only evidence which has been adduced by him was that he had spent a sum of Rs.7,500/- towards the repair of the car including its engine.

The Commission however by reason of impugned order did not consider the aforementioned aspects of the matter. It neither referred to the pleadings of the parties nor the

-4-

evidences adduced by the respondent. It proceeded to pass the impugned Judgment only on the premise that compensation had been granted in favour of other owners of the Montana cars in a large number of cases and as such there was no need to adjudicate upon the issue whether the appellant has perpetrated the prohibited trade practices. The Commission observed: "Unfair trade practices on the part of the respondent is manifest and need no further reiteration." The Commission, however,

referred to the affidavit affirmed by the respondent herein in support of his claim in the application and proceeded on the basis that the purchase price covered by the invoice is Rs.1,25,024/- and further repairs, repainting etc. works out to be at Rs.7,500/- and thus the aggregate amount to be paid to the applicant would be Rs.1,37,806/-.

No basis whatsoever was laid for directing payment of the purchase price covered by the invoice to the extent of Rs.1,25,006/-.

Non-consideration of the pleadings of the parties as also total non-consideration of the evidence adduced by the respondent gives rise to a substantial question of law within the meaning of Section 100 CPC. To this extent the Judgment awarded by the Commission, in our considered opinion, is perverse and thus merits interference in exercise of our power under Section 55 of the Act.

-5-

We, therefore, allow the appeal in part and modify the award passed by the Commission to the effect that the respondent instead of Rs.1,37,806/- shall be entitled to a sum of Rs.7,500/- towards the amount spent by him for the repairs of the car.

In the peculiar facts and circumstances of the case, we are also of the opinion that the respondent would be entitled to a sum of Rs.5,000/- by way of compensation.

He shall also be entitled to interest on the sum of RS.7,500/- at the rate of 18% per annum from 2nd February, 1993 till the date of payment. We are also of the opinion that besides the costs awarded in his favour the appellant should also bear his costs for this appeal which is quantified at Rs.5,000/-. The appeal is thus allowed in part and to the extent mentioned hereinbefore.

.....J

(S.B. SINHA)

.....J

(C.K. THAKKER)

NEW DELHI;

SEPTEMBER 06, 2005.