

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).12256/2006
(From the judgement and order dated 21/04/2006 in CO No.1020/2004 of The
HIGH COURT OF CALCUTTA)

GOPAL DEBNATH

Petitioner(s)

VERSUS

SHRACHI SECURITIES LTD.
(With prayer for interim relief)

Respondent(s)

WITH SLP(C) NO. 21280 of 2006
(With office report)

Date: 18/02/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE DIPAK MISRA

For Petitioner(s) Mr. Lakshmi Raman Singh, Adv.
Ms. D. Durga Devi, Adv.

Mr. G.S. Chatterjee, Adv.

For Respondent(s) Mr. G.S. Chatterjee, Adv.

Mr. Lakshmi Raman Singh, Adv.

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

SLP) No. 12256/2006

Leave granted.

The appeal is allowed in terms of the Signed Order.

SLP) No. 21280/2006

Leave granted.

The appeal stands disposed of in terms of the Signed Order.

[RAJNI MUKHI]
SR. P.A.

[USHA SHARMA]
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2717 OF 2014
(@ SLP (C) No. 12256 of 2006)

GOPAL DEBNATH

APPELLANT

VERSUS

SHRACHI SECURITIES LTD.

RESPONDENT

WITH

O R D E R

C.A. NO.2717 OF 2014 (@ SLP (C) No.12256/2006)

Leave granted.

This appeal has been preferred by the appellant against the impugned judgment and order dated 21st April, 2006 passed by the High Court of Calcutta in C.O. No. 1020 of 2004. By the impugned judgment passed under Article 227 of the Constitution of India, the High Court directed the learned Arbitrator to adjudicate the ownership of the vehicle and to hold specifically and clearly who for the present would be the valid and legal owner of the vehicle and after such finding the learned Arbitrator would record his order in presence of the parties with proper reasoning. The appellant was asked to move before the Arbitrator to participate in the arbitration proceedings.

Respondent No.1 M/s. Sharachi Securities Ltd., Calcutta claimed that it is the owner of the vehicle involved in the present matter. It is further claimed that by hire-purchase agreement dated 7th July, 1997, the vehicle was subsequently transferred to Respondent No.3-Sujata Oil Mills Pvt. Ltd. On failure of Respondent No.3 to pay the legal dues to Respondent No.1, the matter was referred to

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the learned Arbitrator as per agreement entered between Respondent Nos.1 and 3.

According to the appellant he is the owner of the vehicle and is neither a party to the arbitration proceedings nor a party to the agreement which was reached between Respondent Nos. 1 and 3. In spite of the same, the Arbitrator on 11th March, 2004 passed the impugned order under Section 17 of the Arbitration & Conciliation Act, 1996, appointing custodian for the purpose of making inventory and for taking possession of the vehicle. Being aggrieved, the appellant challenged the order dated 11th March, 2004 passed by the learned Arbitrator before the High Court of Calcutta in C.O. No 1020/2004. The High Court vide judgment and order dated 23rd July, 2004, having noticed that the appellant was neither a party to the Agreement nor a party before the learned Arbitrator, held that the Arbitrator had exceeded his jurisdiction by passing the order under Section 17 of the Arbitration & Conciliation Act,1996. However, as the judgment and order dated 23rd July, 2004 in C.O. No 1022/2004 was passed ex-parte without hearing the respondent the said order was recalled by the High Court by the impugned order dated 10th January, 2005. By the impugned order, the High Court disposed of the revisional application of the appellant and directed him to move before the arbitrator.

Heard the learned counsel for the parties and perused the record. The respondents have appeared and they have not disputed the fact that the appellant is not a party to the agreement reached between the respondent Nos. 1 and 3.

The appellant was also not a party before the Arbitrator. In that view of the matter, we hold that the Arbitrator had exceeded his jurisdiction by passing the order dated 11th March, 2004 under Section 17 of the

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Arbitration & Conciliation Act, 1996.

In view of the aforesaid finding, we set aside the impugned order dated 21st April, 2006 passed by the High Court of Calcutta and the order dated 11th March, 2004 passed by the Arbitrator under Section 17 of the Arbitration & Conciliation Act, 1996. Since, the

question with regard to ownership and title of the vehicle has not been gone into, let the parties raise it before the appropriate forum.

The appeal is allowed with the aforesaid observations.

C.A. NO.2718 OF 2014 (@ SLP (C) No.21280/2006)

Leave granted.

The appeal stands disposed of in the light of decision in Civil Appeal No. 2717/2014.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(DIPAK MISRA)

NEW DELHI;
FEBRUARY 18, 2014