

ITEM NO.46

COURT NO.6

SECTION IIA

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 (Crl) No(s).1738/2013

(From the judgement and order dated 09/02/2012 in MCRC No.3853/2011, of The HIGH COURT OF M.P AT INDORE)

ROFIN LATHER APPARELS TR.PARTNER Petitioner(s)

VERSUS

GREEN HEIGHTS TR.PROPRIETOR Respondent(s)

(With appln(s) for exemption from filing O.T.,stay and office report)

Date: 19/08/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE VIKRAMAJIT SEN

For Petitioner(s) Mr. Rajeev M.Roy, Adv.
Mr. M. Yogesh Kanna,Adv.

For Respondent(s) Mr. Vipin Kumar, adv.
Mr. K.K.Shrivastava, Adv.
Mr. Deepak Goel,Adv.

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

Leave granted.
The appeal is allowed in terms of the signed order.

| (Shashi Sareen) | (Veena Khera) |
| Court Master | Court Master |

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1205 OF 2013
(Arising out of SLP(CRL.) No. 1738 of 2013)

| ROFIN LATHER APPARELS TR.PARTNER | ... | Appellant(s) |

| Versus |

| GREEN HEIGHTS TR. PROPERTIER | .. | Respondent(s) |

O R D E R

Leave granted.

The trial court, the Sessions court and the High Court have declined to exempt the personal appearance of the appellant who hails from Chennai and is being prosecuted for an offence punishable under Section 138, Negotiable Instruments Act in a complaint pending before the Judicial Magistrate, Mhow, Madhya Pradesh.

When this petition came up before us for preliminary hearing on 22.02.2013, we directed notice to the respondent subject to the appellant depositing a sum of Rs. 5,00,000/- within a period of four weeks. That amount has been deposited by the appellant in this court.

Learned counsel appearing for him points out that apart from the amount deposited in this court, the appellant has also deposited a sum of Rs. 3,25,000/- before the trial court at Mhow taking total amount deposited to Rs. 8,25,000/- as against the cheque amount of Rs. 5,00,000/- which forms the basis of the prosecution against the appellant. Relying upon the decision of this Court in Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. and Ors. Vs. 2001 (7) SCC 401, learned counsel for the appellant argued that the trial court could have dispensed with the personal appearance of the appellant in connection with the case having regard to the nature of the allegations made against him as also the fact that the appellant had to travel a long distance from Chennai to Indore via Bombay to appear before the courts below. He urged that the appellant has engaged a counsel who will on all dates of hearing appear on his behalf to conduct the proceedings and that the appellant shall appear before the trial court as and when the trial court directed him to do so. He submits that subject to the above conditions, the appellant's personal appearance before the trial court could be dispensed with. We find merit in that submission.

In the fact and circumstances of the case the appellant should have been exempted from personal appearance on all dates of hearing before the trial court. We accordingly allow this appeal, set aside the orders passed by the courts below and directed that the appellant shall remain exempted from personal appearance before the trial court subject to the following conditions:

i) The appellant shall on all dates of hearing is represented by a counsel duly instructed to conduct the proceedings before the trial court.

ii) The appellant shall appear before the trial court as and when the trial court considers it necessary to have the appellant's presence in person.

In the event of breach of any one of the above two conditions, the trial court shall be free to take such coercive steps as may be considered necessary to secure the presence of the appellant including cancellation of the bail granted to him, forfeiture of the security and issue of non-bailable warrants for his production before the court.

The sum of Rs. 5,00,000/- deposited by the appellant shall stand transferred to the trial court which shall be available to the trial court for appropriation in such manner as may be considered just and proper at the time of final disposal of the case.

We had suggested to learned counsel for the parties to sit across the table and amicably settle the matter. While the respondent was ready to do so, the appellant's counsel was of the view that the appellant has a good case to fight before the trial court. We have not however foreclosed the option of the appellant to negotiate a settlement. The trial court would offer an

opportunity to the parties as and when they are ready to do so.

.....J.
(T.S.THAKUR)

.....J.
(VIKRAMAJIT SEN)

New Delhi,
August 19, 2013