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C.A.No. 5017 OF 1999
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5017 OF 1999

SURENDRA SINGH ... APPELLANT
VERSUS

M/S. THAKUR RAM GANGA PD.(PVT.) LTD. ... RESPONDENT

O R D E R

In this appeal, the order dated 18.9.97 passed by the Division Bench of the High Court in L.P. A.No.845 of 1995/Company appeal is under challenge. The appellant made an application before the High Court/Company Court in Company Petition No.5 of 1977 to recall an order made in respect of the property said to be in unauthorised occupation of the appellant. Similarly, some other persons have also made applications for recalling the order made by the Company Court. The Company Court, by its order dated 21.7.1995, dismissed the application made by the appellant as well as the applications of few others. One of them being Chandreshwar Prasad approached this Court directly under Article 136 of the Constitution of India questioning
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the correctness of the order of the Company Court by filing Special Leave Petition (C) No.18539 of 1995. The said special leave petition (SLP) was dismissed. The appellant filed the L.P.A. calling in question the correctness and validity of the order dated 21.7.1995 of the Company Court. In the impugned judgment, the Division Bench of the High Court did not consider the merits of the contentions raised in the L.P.A. It simply dismissed the L.P.A. on the ground that the SLP filed by Chandreshwar Prasad was dismissed by this Court. The learned Senior counsel for the appellant urged that the Division Bench of the High Court was not right and justified in dismissing the L.P.A. merely on the ground that the SLP filed by Chandreshwar Prasad was dismissed when the contentions and facts of the case in relation to Chandreshwar Prasad and that of the appellant were distinct and different. He also added that the appellant had made an application under Order 41 Rule 27 of the Code of Civil Procedure ('CPC' for short) for receiving additional evidence for considering the case of the appellant relating
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to his title over the property. Unfortunately, the Division Bench of the High Court did not consider that application and documents annexed to the said application as well. Per contra, learned counsel for the Official Liquidator strongly contended that the appellant could not produce any document establishing his title before the Company Court and the stand of the appellant had been contradictory in regard to the title over the property; in short, according to the learned counsel for the Official Liquidator, there is no substance in the case of the appellant at all.

We have considered the submissions made by the learned counsel for the parties. It cannot be disputed that the Division Bench of the High Court disposed of the L.P.A. only on the ground that the SLP filed by Chandreshwar Prasad was dismissed by this Court; the Division Bench did not examine on the merits of the respective contentions. It is also a fact that the facts leading to the filing of the L.P.A. by Chandreshwar Prasad and the present appellant are distinct.

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Merely because the SLP filed by Chandreshwar Prasad was dismissed was not a ground for the Division Bench of the High Court to dismiss the L.P.A. filed by the appellant without considering it on merits, including the question of maintainability of the LPA/Company Appeal. In the view we are taking to remit the case to the Division Bench of the High Court, we do not wish to express one way or the other on the merits of the respective contentions advanced on behalf of the parties. Hence, the impugned order is set aside, the LPA No.845 of 1995/Company appeal is remitted to the Division Bench of the High Court to consider and dispose of the same on merits in the light of the observations made above. All the contentions of the parties are left open to be urged before the Division Bench of the High Court. The appeal is allowed accordingly.

No costs.

At this stage, the learned counsel for the respondent-Official Liquidator urged that having regard to the fact that the proceedings are pending for a very long time, the Division Bench of the High Court may dispose of the appeal early. We find force in this submission.

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We expect that the High Court may dispose of the appeal as expeditiously as possible, preferably within a time-frame of six months from today.

.....J.
[SHIVARAJ V. PATIL]

New Delhi, [B.N. SRIKRISHNA]
September 23, 2004.
ITEM NO.104 COURT NO.6 SECTION XVII

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. 5017 OF 1999

SURENDRA SINGH APPELLANT (S)

VERSUS

M/S.THAKUR RAM GANGA PD.(PVT) LTD.

RESPONDENT(S)

[WITH I.A.NOS.2-3 : FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS
WITH EXEMPTION FROM FILING OFFICIAL TRANSLATION]

Date: 23/09/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)Mr. S.B. Sanyal, Sr.Adv.

Mr. Akhilesh Kumar Pandey,Adv.

Mr. Ashok Kumar Pandey, Adv.

For Respondent(s)Mr. Atul Jha, Adv.

for Mr. Anil K. Chopra,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties for 20 minutes.

The appeal is allowed with no costs in terms of the signed order.

Sarita
Court Master

(Shelly Sengupta)

(Signed order is placed on the file)