

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).25579/2007

(From the judgement and order dated 27/07/2007 in FMA No. 1875/2003
of The HIGH COURT OF CALCUTTA)

NAVBHARAT CONSTRUCTIONS

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(With prayer for interim relief and office report)
(For final disposal)

Date: 01/05/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. MATHUR
HON'BLE MR. JUSTICE ALTAMAS KABIRFor Petitioner(s) Mr. A.P. Singh, Adv.
Mr. O.P. Bhadani, Adv.
Mr. Amit Pawan, Adv.For Respondent(s) Mr. S. Wasim A. Qadri, Adv.
Ms. Anil Katiyar, Adv.
Mr. B. Krishna Prasad, Adv.UPON hearing counsel the Court made the following
ORDER

Leave granted.

The appeal is disposed of in terms of the signed
order. No order as to costs.Further proceedings in execution shall remain stayed for two
months subject to further order of the High Court.
(Sukhwinder Kaur) (Vijay Dhawan)
Sr. P.A. Court Master(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3192 OF 2008
(Arising out of SLP (C) No. 25579 of 2007)

NAVBHARAT CONSTRUCTIONS

Appellant(s)

Versus

UNION OF INDIA

Respondent(s)

ORDER

Leave granted.

This appeal by special leave is directed against the order passed by the Division Bench dated 27.7.2007 whereby the Division Bench has dismissed the appeal of the petitioner on the ground that petitioner failed to deposit a sum of Rs. 22.48 lacs of the Award and he was only delaying the proceedings. Therefore, the appeal was dismissed. Aggrieved against this order, this SLP has been filed. It would be relevant to mention here that the matter was referred for arbitration on account of some dispute arising between the parties and the arbitrator gave award in a sum of Rs. 22.48 lacs against the appellant. Aggrieved against this award, the appellant preferred an appeal and appeal was entertained by the High Court and

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interim order was passed on 21.1.2004. Meanwhile the respondent moved the trial court and obtained an ex-parte Decree of the Award, by making rule of the Court. The decree was put into execution and notice of execution was received by the appellant. He informed the Trial Court that there is already interim order passed by the High Court on 21.1.2004. Therefore, this award cannot be executed as well as award could not have been made a rule of the Court when stay was granted by the High Court. When the appeal came before the High Court, the Division Bench directed the petitioner to deposit the entire amount and the Court was informed that the petitioner was not in a position to deposit the amount and he was only ready to deposit a cost of Rs. 300/- which was awarded by the Trial Court. Consequently, the High Court dismissed the appeal. Hence the present SLP.

Since the appellant was heard on merits by the High Court, he has the legitimate grievance that because of his inability to deposit the amount in one go, his appeal was

dismissed. We are, of the opinion that the High Court should have heard the appeal on merits instead of dismissing it on failure on the part

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of the petitioner to deposit the amount of award. Since the serious question arises in this matter and dismissal of the appeal would seriously affect his right. Looking to the facts and circumstances of the case, we direct that in case the appellant deposits a sum of Rs. 3 lacs before the Registrar General of Calcutta High Court within two months then the appeal shall stand restored back on the file of the High Court. The appeal shall be heard on merits by the High Court. In case the appellant fails to deposit the amount within two months from today, the appeal will automatically stand dismissed. Consequently, we set aside the impugned order dated 27.7.2007 on the aforesaid condition. Appeal is, accordingly, disposed of. No order as to costs.

Further proceedings in execution shall remain stayed for two months subject to further order of the High Court.

.....J.
(A.K.MATHUR)

.....J.
(ALTAMAS KABIR)

New Delhi,
May 01, 2008