

SUPREME COURT OF INDIA

Abdul Gaffar Abdul Rehman

Vs

Shivnath Rai Harnarain (I) Limited and Another

Appeal (Civil) 3656 of 2006

(Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ)

24.08.2006

JUDGMENT

DR. AR. LAKSHMANAN, J.

Leave granted.

Heard learned Senior counsel on either side.

CIVIL APPEAL NO.3656 OF 2006(@ SLP(C)NO.21127 of 2004)

This Appeal was filed by M/s. Abdul Gaffar Abdul Rehman against the interim order dated 18.3.2004 passed by the High Court of Delhi in I.A. No.10382 of 2003 in OMP No.300 of 2001. By the said order, the High Court ordered that the consignment in question be sold at the Atari Border itself through the Chief Commercial Manager, Northern Railway in accordance with Railways' rules and regulations regarding public auctions of such goods and the entire sale proceeds be deposited in the High Court. The High Court made it clear that the order would be without prejudice to the pleas of the parties in regard to their claims over the consignment in question. Though this order was passed on 18th March, 2004, the instant special leave petition was filed in this Court by the appellant only on 24th August, 2004. It is now stated that in the meanwhile the consignment was auctioned and a sum or Rs.1, 95, 30, 000/- was realised as sale proceeds. Since goods have already

been sold by complying with the direction of the High Court the appeal has become infructuous and no relief can be granted to the appellant in this Civil Appeal No.3656 of 2006 (@ SLP(C)NO.21127 of 2004). We, therefore, dispose of the same in view of change in the circumstances, confirming our order dated 1st October, 2004 by which this Court directed the amount to be deposited in the High Court pursuant to the auction sale should not be disbursed.

CIVIL APPEAL NO.3657 OF 2006(@ SLP(C)NO.2081-2082 of 2005)

This appeal was again filed by M/s. Abdul Gaffar Abdul Rehman against the interim order dated 24.9.2004 passed by the High Court of Delhi in I.A. Nos.3966 & 6239 of 2004 in OMP No.300 of 2001. By the said order the High Court, after hearing all the respective parties, allowed the application filed by M/s. Shivnath Rai Harnarain (I) Ltd. for payment of excise and other dues. By the said order, the Registry of the High Court was directed to prepare two cheques, one in the sum of Rs.19, 70, 064/- in the name of the Excise Department, Yamunagar and another for Rs.2, 33, 800/- in the name of the Excise Department, Dehradun. The High Court also made it clear that the payment will be without prejudice to the rights and pleas of the parties in regard to their respective claims.

This Court by interim order dated 7.2.2005, after issuing notice in the special leave petition, ordered impleadment of the Commissioner of Excise, Yamuna Nagar and Commissioner of Excise, Dehradun, in whose favour the directions have been made by the High Court to issue cheques for payment of excise duty. Notice was also ordered to the impleaded party. In the meanwhile, this Court stayed the operation of order dated 24th September, 2004.

The matter was argued by Mr. Kailash Vasdev, learned Senior Counsel for the appellant and Dr. A.M. Singhvi, learned Senior Counsel for the respondents at length. Since the main matter filed under Section 9 of the Arbitration & Conciliation Act is pending before the High Court, we are not inclined to consider the arguments advanced by the learned Senior Counsel on merits at this stage. The proper course, in our opinion, would be to request the High Court to dispose of the Section 9 application at the earliest. Since the matter is pending in the High Court from October, 2001, we request the High Court to dispose of the Section 9 application as expeditiously as possible at any rate not later than 30th November, 2006. We make it clear that we are not expressing any opinion on the merits of the rival claims including the claims of the Excise and Railways. It is open to those parties to approach the High Court for appropriate relief. The stay granted by this Court in regard to disbursement of the amount shall be in force till the disposal of the Section 9 application. The liberty is reserved to all parties to approach the High Court for expeditious disposal and for other directions, if any.

The appeals are accordingly disposed of with no orders as to costs.