

ITEM NO.29

COURT NO.2

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.9352/2017

(Arising out of impugned final judgment and order dated 30/01/2017 in APOT No. 15/2017 30/01/2017 in ACO No.9/2017 passed by the High Court of Calcutta)

ATC LOGISTICS PVT LTD

Petitioner(s)

VERSUS

RANJIT KUMAR SAHA

Respondent(s)

(With appln. (s) for exemption from filing c/c of the impugned judgment and interim relief and office report)

Date : 07/04/2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA  
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Petitioner(s) Mr. Abhrajit Mitra, Sr. Adv.  
Mr. S. Sanyal, Adv.  
Mr. SK. M. Rahman, Adv.  
Mr. Anirban Das, Adv.  
Ms. Shalu Sharma, AOR

For Respondent(s) Mr. Mainak Bose, Adv.  
Mr. Ankur Jain, Adv.  
Soumya Dutt, AOR

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

Heard Mr. Abhrajit Mitra, learned senior counsel for the petitioner and Mr. Mainak Bose, learned counsel for the respondent.

The first respondent filed winding up petitions before the learned Company Judge in the High Court of Calcutta putting forth a claim of Rs.1.52 crores to debt of Rs.2 crores. The learned company Judge did not admit the company petition but granted liberty to the petitioner therein to initiate civil action by filing of a suit. However, at that juncture learned Company Judge directed the present petitioner to furnish cash security of Rs.1.52 crore. On an appeal being preferred the Division Bench held as follows:-

"We have perused the decision of the learned Company Court and we do not find that there is any error apparent on the face of the record or that the Court has overstepped the boundaries which are prescribed in the several judgments for the Company Court to adhere to while considering whether to admit a winding up petition. The learned Judge has found that the explanation offered by the appellant/company regarding the sale transaction and the refund of excess stamp duty was difficult to accept. The learned Judge has also observed that the sale of land was paid by a separate cheque subsequent to the loan transaction. The Company Court made the aforesaid observations after examining the sale deed.

The Company Court has considered the various judgments cited before it and has concluded that it would be appropriate to relegate the petitioning creditor to file a suit against the appellant/company on furnishing cash security for Rs.1.52 crores. We do not find any reason to interfere with the impugned order.

However, we direct that the cash security which is required to be furnished by the appellant/company under the order of the Company Court shall be furnished within four weeks from today."

In our considered opinion when the High Court refused to admit the company petition and granted liberty to the petitioner therein to file civil suit it could not had

directed the petitioner to furnish cash security. Therefore, we are inclined to set aside the said part of the order that pertains to furnishing of cash security. Be it noted that liberty to file civil suit for realization of the amount could not have been directed with the condition precedent for deposit of a certain sum. Needless to say if the respondent is so advised he can file appropriate application under the code of civil procedure for seeking to get the amount secured. We need not elaborate on the said score. With the aforesaid modification in the order passed by the High Court, the special leave petition stands disposed of. No order as to costs.

We may hasten to clarify that we have not expressed any opinion on the merits of the claim or any other aspect. There shall be no order as to costs.

(Chetan Kumar)  
Court Master

(Madhu Narula)  
Court Master