

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 10866-10867/2010

M.SIDDIQ (D) THR. LRS. APPELLANT(S)

VERSUS

MAHANT SURESH DAS & ORS. RESPONDENT(S)

WITH

**C.A. NO. 4768-4771/2011, C.A. NO. 2636/2011,
C.A. NO. 821/2011, C.A. NO. 4739/2011, C.A.
NO. 4905-4908/2011, C.A. NO. 2215/2011, C.A.
NO. 4740/2011, C.A. NO. 2894/2011, C.A. NO.
6965/2011, C.A. NO. 4192/2011, C.A. NO.
5498/2011, C.A. NO. 7226/2011, C.A. NO.
8096/2011, DIARY NO(S). 22744/2017, W.P.(C)
NO. 294/2018, W.P. (C) NO.105 OF 2016, W.P.
NO.151/2019**

ORDER

**1. In our previous order dated 26th
February, 2019 we have recorded that the
dispute raised in the present cases (i.e.
appeals/special leave petitions/writ
petitions) should be attempted to be resolved
by mediation to be held during the period of**

eight weeks that we had allowed to the parties to take steps to make the cases ready for hearing. The aforesaid part of the order dated 26th February, 2019 is extracted below:

"We have suggested to the parties that during the interregnum a Court appointed and Court monitored mediation with utmost confidentiality could be initiated to bring a permanent solution to the issues raised in the cases. This, we have done keeping in mind that the period of eight weeks that we have allowed to the parties to go through the translations of the oral and documentary evidence could be effectively utilized to try and resolve the issues in the manner indicated above. In doing so, we have also kept in mind the mandate of Section 89 of the Code of Civil Procedure, 1908."

2. We have heard the learned counsels for the parties on the issue as to whether the dispute between the parties should be referred to mediation by invoking Section 89 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC")

3. We have considered the nature of the dispute arising. Notwithstanding the lack of consensus between the parties in the matter we

are of the view that an attempt should be made to settle the dispute by mediation.

4. The contention raised by some of the contesting parties that the instant dispute(s) ought not to be referred to mediation on the strength of Order I rule 8 (sub-rule 2, 3 and 4) of the CPC and Order XXIII rule 3-B of the CPC does not strictly arise for consideration at this stage when we are considering whether dispute(s) should be referred to mediation or not.

5. For the sake of convenience, the provisions of Order 1 rule 8 CPC and Order XXIII rule 3-B are reproduced herein below:

**"Order I
Parties to suits**

.....

8. One person may sue or defend on behalf of all in same interest

(1) Where there are numerous persons having the same interest in one suit,--

(a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all

persons so interested;

(b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf, or for whose benefit, a suit is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence,

the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf, or for whose benefit, the suit is instituted, or defended, as the case may be.

Explanation.--For the purpose of determining whether the persons who sue or are sued, or defend, have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf, or for whose benefit, they sue or are sued, or defend the suit, as the case may be.]

XXX XXX XXX

Order XXIII

Withdrawal and Adjustment of suits

3-B. No agreement or compromise to be entered in a representative suit without leave of Court

(1) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.--In this rule,
"representative suit" means,--

(a) a suit under section 91 or section 92,

(b) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit."

6. Considering the provisions of the CPC, indicated above, we do not find any legal impediment to making a reference to mediation for a possible settlement of the dispute(s) arising out of the appeals. Whether the said provisions of the CPC would apply in the event parties arrive at a settlement/compromise in the mediation proceedings is a matter left open to be decided at the appropriate stage. We, therefore, order accordingly and having taken note of the names suggested by the parties we are of the view that the following panel of learned mediators should be appointed

to go into the dispute with liberty to the learned Mediators to co-opt other members of the Panel, if so required.

1. Justice Fakkir Mohamed Ibrahim Kalifulla,
Former Judge, Supreme Court of India - Chairman

2. Sri Sri Ravi Shankar - Member

3. Shri Sriram Panchu,
Senior Advocate - Member

7. We are also of the view that the mediation proceedings should be conducted with utmost confidentiality so as to ensure its success which can only be safeguarded by directing that the proceedings of mediation and the views expressed therein by any of the parties including the learned Mediators shall be kept confidential and shall not be revealed to any other person. We are of the further opinion that while the mediation proceedings are being carried out, there ought not to be any reporting of the said proceedings either in the print or in the electronic media. However, we refrain from passing any specific order at this stage and instead empower the learned mediators to pass necessary orders in

writing, if so required, to restrain publication of the details of the mediation proceedings. The Chairman of the Mediation Panel may also inform the Registry of this Court any difficulties that the panel may face in carrying out the task assigned to it by the present order and also to inform of any requirement to facilitate the mediation and to conclude the same at the earliest.

8. We are of the further view that to ensure success of the mediation proceedings the same should be held in Faizabad (Uttar Pradesh) and adequate arrangements in this regard including the venue of the mediation, place of stay of the learned Mediators, their security, travel, etc. should be forthwith arranged by the State Government so that the mediation proceedings can commence immediately which we expect to so commence within a week from today.

9. We further direct that the mediation proceedings be held in camera as per the norms

applicable to conduct of mediation proceedings. The Mediators may take such legal assistance as they may feel necessary at any stage of the mediation proceedings.

10. The panel of learned Mediators is requested to ensure completion of the process during the period of the interregnum indicated above and send a report of the progress of the mediation to this Court within four weeks of the commencement of the process.

....., CJI.
(RANJAN GOGOI)

....., J.
(S.A. BOBDE)

....., J.
(DR. DHANANJAYA Y. CHANDRACHUD)

....., J.
(ASHOK BHUSHAN)

....., J.
(S. ABDUL NAZEER)

NEW DELHI
MARCH 8, 2019

ITEM NO.1501

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal Nos. 10866-10867/2010

M.SIDDIQ (D) THR. LRS.

Appellant(s)

VERSUS

MAHANT SURESH DAS & ORS.

Respondent(s)

WITH

C.A. NOS. 4768-4771/2011 (III-A)C.A. NO. 2636/2011 (III-A)C.A. NO. 821/2011 (III-A)C.A. NO. 4739/2011 (III-A)

(FOR DISCHARGE OF ADVOCATE ON RECORD ON IA 95540/2018)

C.A. NOS. 4905-4908/2011 (III-A)C.A. NO. 2215/2011 (III-A)C.A. NO. 4740/2011 (III-A)C.A. NO. 2894/2011 (III-A)C.A. NO. 6965/2011 (III-A)C.A. NO. 4192/2011 (III-A)C.A. NO. 5498/2011 (III-A)C.A. NO. 7226/2011 (III-A)C.A. NO. 8096/2011 (III-A)DIARY NO. 22744/2017 (XI)

(I.A. NO.69841/2017 - CONDONATION OF DELAY IN FILING)

W.P.(C) NO. 294/2018 (X)

(FOR ADMISSION, I.A. NO.72707/2018 - EXEMPTION FROM FILING O.T.

and I.A. NO.72706/2018 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)W.P. (C) NO. 105 OF 2016 (X)W.P. NO. 151/2019 (X)

(FOR ADMISSION AND I.A. NO.24779/2019 - CLARIFICATION/DIRECTION)

Date : 08-03-2019 This matter was called on for pronouncement of
order today.

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Mr. Sandeep Singh, Adv.
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M/s. Fox Mandal & Co., AOR

Petitioner-in-person

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Mr. Irshad Ahmad, AOR

Mr. Varinder Kumar Sharma, AOR

Mr. M.C. Dhingra, AOR

Mr. Ankur S. Kulkarni, AOR

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Mr. Ibad Mushtaq, Adv.
Ms. Aditi Gupta, Adv.

Mr. Barun Kumar Sinha, Adv.
Mrs. Pratibha Sinha, Adv.
Mr. Birendra Kumar Choudhary, Adv.

Mr. Arun Kumar, Adv.
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Mr. Rajendra Kumar Singh, Adv.
Mr. Nisarg Chaudhary, Adv.
Mr. Puneet Sheoran, Adv.
Ms. Rita Gupta, Adv.
Ms. Deepshika Bharati, Adv.
Mr. Umesh Babu Chaurasiya, Adv.
Mr. Sujit Kumar, Adv.

Mr. M.R. Shamsad, AOR
Mr. Md. Shahid Anwar, AOR
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M/s. Fox Mandal & Co., AOR

Mr. Mohd. Irshad Hanif, AOR

Mr. Ajit Singh Pundir, AOR

Mr. Lakshmi Raman Singh, AOR

UPON hearing the counsel the Court made the following

O R D E R

Hon'ble the Chief Justice of India pronounced the order of the Bench comprising His Lordship, Hon'ble Mr. Justice S.A. Bobde, Hon'ble Dr. Justice Dhananjaya Y. Chandrachud, Hon'ble Mr. Justice Ashok Bhushan and Hon'ble Mr. Justice S. Abdul Nazeer.

In terms of the signed order, the Court passed the following directions:-

"6. Considering the provisions of the CPC, indicated above, we do not find any legal impediment to making a reference to mediation for a possible settlement of the dispute(s) arising out of the appeals. Whether the said provisions of the CPC would apply in the event parties arrive at a settlement/compromise in the mediation proceedings is a matter left open to be decided at the appropriate stage. We, therefore, order accordingly and having taken note of the names suggested by the parties we are of the view that the following panel of learned mediators should be appointed to go into the dispute with liberty to the learned Mediators to co-opt other members of the Panel, if so required.

1. Justice Fakkir Mohamed Ibrahim Kalifulla,
Former Judge, Supreme Court of India - Chairman
2. Sri Sri Ravi Shankar - Member
3. Shri Sriram Panchu,
Senior Advocate - Member

7. We are also of the view that the mediation proceedings should be conducted with utmost confidentiality so as to ensure its success which can only be safeguarded by directing that the proceedings of mediation and the views expressed therein by any of the parties including the learned Mediators shall be kept confidential and

shall not be revealed to any other person. We are of the further opinion that while the mediation proceedings are being carried out, there ought not to be any reporting of the said proceedings either in the print or in the electronic media. However, we refrain from passing any specific order at this stage and instead empower the learned mediators to pass necessary orders in writing, if so required, to restrain publication of the details of the mediation proceedings. The Chairman of the Mediation Panel may also inform the Registry of this Court any difficulties that the panel may face in carrying out the task assigned to it by the present order and also to inform of any requirement to facilitate the mediation and to conclude the same at the earliest.

8. We are of the further view that to ensure success of the mediation proceedings the same should be held in Faizabad (Uttar Pradesh) and adequate arrangements in this regard including the venue of the mediation, place of stay of the learned Mediators, their security, travel, etc. should be forthwith arranged by the State Government so that the mediation proceedings can commence immediately which we expect to so commence within a week from today.

9. We further direct that the mediation proceedings be held in camera as per the norms applicable to conduct of mediation proceedings. The Mediators may take such legal assistance as they may feel necessary at any stage of the mediation proceedings.

10. The panel of learned Mediators is requested to ensure completion of the process during the period of the interregnum indicated above and send a report of the progress of the mediation to this Court within four weeks of the commencement of the process."

(Deepak Guglani)
Court Master

(Anand Prakash)
Court Master

(signed order is placed on the file)