

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

CRR 3811 of 2016
with
CRAN 3 of 2020

M/S. Antartica Graphics Limited
Vs.
State of West Bengal & Ors.

For the Petitioner : Mr. Satadru Lahiri
Mr. Kaushik Banerjee
Mr. Sudipta Paul
Mr. Abhishek Agarwal

For the opposite party No.2 : Mr. Mrityunjoy Chatterjee

Heard on: : 18th January 2021

Judgment on : : 18th January 2021

The Court:

This is an application challenging the judgement and order dated 16.04.2016 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Bichar Bhawan, Kolkata in Criminal Appeal No. 33 of 2000 arising out of Complainant Case No. C-927 of 1996 under Section 138 of the Negotiable Instruments Act, thereby remanding back the aforesaid case to the Court of the learned Metropolitan

Magistrate, 11th Court, Calcutta for passing judgement afresh after appreciating the evidence adduced in connection with this case afresh.

Learned counsel appearing on behalf of the petitioners submits as follows. The complainant initiated the impugned proceeding in the year 1996. The learned trial court convicted the accused / opposite party nos. 2 to 4 on charges under Sections 138 and 141 of the Negotiable Instruments Act. On 13.08.2010 the accused / opposite parties preferred an appeal. During such proceeding, the accused filed an application under section 391 of the Code for adducing additional evidence. The same was allowed. Accordingly, P.W. 3 was placed on witness box and cross-examined by the defence on the document dated 01.12.1995. The two documents dated 01.12.1995 and 06.03.1996 being Exhibit-B and Exhibit-C, respectively, on proof, were admitted in evidence for the defence. After receiving the additional evidence recorded by the learned Magistrate, the learned Appellate Court perused such additional evidence and the evidence on record the matter and held that the matter should be remanded back to the learned Court for deciding the case afresh. Being aggrieved, the petitioner preferred this revision in 2016. It is the petitioner's case that since the additional evidence was already there before the learned appellate court, the said court ought to have decided the case itself instead of sending it back to the learned Magistrate. The case has remained pending since 1996 and in the interest of justice, a direction

may be passed upon the learned appellate court to dispose of the appeal on merits in a time bound manner. A copy of the additional evidence recorded in pursuance of the direction passed under section 391 of the Code, as filed in Court, is taken on record.

Learned counsel appearing on behalf of the opposite party no. 2 submits as follows. The learned appellate Court had all the powers to remand back a case to the learned Court for fresh consideration. Simply because the evidence was recorded in pursuance of an order passed under section 391 of the Code, it does not mean that the case cannot be remanded back to the learned trial Court.

I have heard the submissions of the learned advocates of the petitioner and the opposite party no. 2 and have perused the revision petition and the affidavits filed in the case.

The matter has been pending since long. Interest of justice requires that the same is disposed of at the earliest.

It is true that simply because additional evidence was recorded pursuant to a direction under section 391 of the Code, it does not mean that in an appropriate case, a learned appellate court would be precluded from exercising all its powers under section 386 of the Code. In a fit case, it would be open for the learned appellate court to remand back the case to the learned trial court for fresh consideration.

However, in the present case it appears that the additional evidence has already been recorded by the learned Magistrate as per the direction of the learned appellate Court and the same was there before the learned appellate court for its consideration. It appears that the learned appellate Court without recording any reason for the same, held it fit that the matter should be remanded back to the learned trial court for fresh consideration.

After perusing the additional evidence recorded in this case, it does not appear that the same could not be taken into consideration by the learned appellate court itself along with other evidence on record for deciding the appeal.

In view of the above and in view of the inordinate delay that has already occasioned in this case, I set aside the impugned appellate judgement and order and remand back the matter to the learned appellate court for deciding the appeal afresh, on merits, after considering the evidence on record including the additional evidence recorded in pursuance of the direction passed under Section 391 of the Code.

The learned appellate Court is requested to conclude the proceeding as expeditiously as possible, without granting any unnecessary adjournment to any of the parties, preferably within a period of six weeks from the date of communication of this order.

With these observations, the revisional application and the connected application are disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

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