

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.93 OF 2007

BASANT KUMAR

...APPELLANT(s)

VERSUS

MAHENDRA KUMAR & ORS.

...RESPONDENT(s)

O R D E R

We have heard learned counsel for the parties.

This appeal is directed against the judgment and order dated 27<sup>th</sup> September, 2004 passed by the High Court of Judicature for Rajasthan at Jodhpur in D.B. Civil Spl. Appeal (Writ) No.1117 of 2000.

Broadly the facts are that one Dau Dayal (deceased) was required to make some payment towards dead-rent and royalty in respect of a mining lease. Since Dau Dayal did not make the payment, recovery proceedings were initiated against him by attachment of his ancestral house. We need not go into the ownership of the ancestral house for the present.

Dau Dayal challenged the recovery proceedings against him by filing Writ Petition No.1197 of 1983 before the High Court of Judicature for Rajasthan. This writ petition was allowed by an order dated 4<sup>th</sup> November, 1993 and the State of Rajasthan was restrained from recovering

the amount against the demand leaving it open to the State to redetermine the demand as per the directions contained in the order passed by the High Court.

In the meanwhile, during the pendency of the Writ Petition No.1197 of 1983, the ancestral house of Dau Dayal was auctioned on 24<sup>th</sup> October, 1990 and the appellant before us gave the highest bid of Rs.2,01,000/-.

The brothers of Dau Dayal, who are Respondent Nos.1 and 2 before us, who claimed to be the owners of 2/3rd share of ancestral house challenged the auction sale before the concerned authority by filing objections. The objections were filed on 14<sup>th</sup> December, 1993 and it was brought to the notice of the concerned authority, i.e., the Assistant Mining Engineer (Recovery), Bikaner that the High Court had set aside the demand of recovery against Dau Dayal and, therefore, the auction was vitiated.

It appears that in spite of the fact that the recovery demand had been set aside, the Assistant Mining Engineer (Recovery) did not take this fact into consideration and instead passed an order on 24<sup>th</sup> December, 1993 confirming the auction.

Feeling aggrieved by the confirmation of the auction, Respondent Nos.1 and 2, i.e., brothers of Dau Dayal,

filed a writ petition in the High Court of Judicature for Rajasthan being Writ Petition No.1162 of 1995. That writ petition was allowed by the learned Single Judge on 11<sup>th</sup> September, 2000. Against the decision allowing the writ petition, the appellant before us filed a Special Appeal before the Division Bench which came to be dismissed by the impugned judgment and order dated 27<sup>th</sup> September, 2004.

Having heard learned counsel for the parties, we are of the view that the demand of recovery against Dau Dayal having been set aside by the High Court on 4<sup>th</sup> November, 1993 in Writ Petition No.1197 of 1983 was a material fact which ought to have been considered by the Assistant Mining Engineer (Recovery). This fact was brought to the notice of the Assistant Mining Engineer along with certain other objections that were placed on record by the brothers of Dau Dayal on 14<sup>th</sup> December, 1993. Notwithstanding the fact that the High Court had set aside the recovery demand against Dau Dayal and notwithstanding the fact that objections had been filed with respect to the validity of the auction by the brothers of Dau Dayal, the Assistant Mining Engineer (Recovery) passed an order confirming the auction sale without really going into the merits of the issues that were raised and accorded sanction for issuing a sale

certificate in favour of the appellant.

That being the position, in our view, there was non-application of mind by the Assistant Mining Engineer (Recovery) to material and relevant facts in passing the order dated 14<sup>th</sup> December, 1993 and ignoring them not only with regard to the recovery demand being set aside, but also with regard to the other issues raised by the brothers of Dau Dayal concerning the validity of the auction sale.

That being the position, we are of the view that the relevant materials require to be looked into afresh by the Assistant Mining Engineer (Recovery) taking all the facts into consideration, particularly the order of the High Court dated 4<sup>th</sup> November, 1993 in Writ Petition No.1197 of 1983 and any other subsequent material fact as well as the representation made by the brothers of Dau Dayal, Respondent Nos.1 and 2 herein on 14<sup>th</sup> December, 1993. The Assistant Mining Engineer (Recovery) will take a decision on the merits of the case without being influenced by the orders passed by the learned Single Judge as well as by the Division Bench which is impugned before us. A decision be taken by passing a speaking order within a period of six months from today and in any event by 30<sup>th</sup> June, 2017.

The parties will appear before the Assistant Mining Engineer (Recovery), Bikaner on 20<sup>th</sup> December, 2016 at 11 a.m. and further proceedings will be taken by the Assistant Mining Engineer (Recovery), Bikaner thereafter.

The appeal is disposed of. No costs.

.....J.  
(MADAN B. LOKUR)

.....J.  
(ADARSH KUMAR GOEL)

NEW DELHI  
NOVEMBER 30, 2016

ITEM NO.102

COURT NO.6

SECTION XV

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

Civil Appeal No(s).93/2007

BASANT KUMAR

Appellant(s)

VERSUS

MAHENDRA KUMAR &amp; ORS.

Respondent(s)

(with office report)

Date : 30/11/2016 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MADAN B. LOKUR  
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Appellant(s)      Mr. Jaideep Gupta, Sr. Adv.  
                                 Ms. Shruti Agrawal, Adv.  
                                 Mr. Kunal, Adv.  
                                 Mr. Abhinav Mukerji, AOR

For Respondent(s)    Mr. Jatin Zaveri, AOR  
                                 Mr. Neel Kamal Mishra, Adv.

Mr. S.S. Shamsbery, AAG  
Mr. Amit Sharma, Adv.  
Mr. Prateek Yadav, Adv.  
Mr. Ankit Raj, Adv.  
Ms. Ruchi Kohli, AOR

Mr. Manoj R. Sinha, Adv.  
Mr. T. Mahipal, AOR

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

The appeal is disposed of in terms of the signed  
order. No costs.

(SANJAY KUMAR-I)  
AR-CUM-PS

(JASWINDER KAUR)  
COURT MASTER

(Signed order is placed on the file)