

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5780 OF 1999

Christian Mica Industries Ltd., Calcutta

...

Appellant

VERSUS

Vinayak Mica Exports Co. & Ors.

...

Respondents



ORDER

JUDGMENT

1. This appeal by way of a Special Leave is directed against a Judgment and order dated 9th of August, 1999 passed by a Division Bench of the High Court of Calcutta in ACO No. 32 of 1998 arising out of Appeal

No. 281 of 1998 and connected with Company Petition No. 117 of 1979, by which an application filed at the instance of the respondent for extending or granting a further period of 12 weeks to the respondent to lift mica from Dump No. 1, Dump No. 2 and the main factory shed of M/s Christian Mica at Tisri, Giridih, Bihar was allowed in part.

2. By the impugned order, the Division Bench of the High Court granted extension of time to remove the remaining quantities of mica scraps lying at Dump No. 1, Dump No. 2 and the main factory shed of M/s Christian Mica at Tisri, Giridih, Bihar, not exceeding the

quantity of 15,000 MTs within a period of 8 weeks from the date of obtaining the assistance of police authorities.

3. We have heard the learned counsel for the parties and also examined the records of this case. In view of the fact that the time granted by the Division Bench of the High Court by the impugned order had long expired and during the pendency of this appeal in this Court, certain interim orders have been passed by this Court permitting the respondents to remove or lift mica scraps from Dump No. 1, Dump No. 2 and the main factory shed of M/s Christian Mica at Tisri, Giridih,

Bihar, we are of the view that the appeal has become infructuous.

4. Mr. Jaideep Gupta, learned senior counsel appearing on behalf of the appellant submits that the respondent had lifted mica scraps more than the scraps they were allowed to lift from Dump No. 1, Dump No. 2 and the main factory shed of M/s Christian Mica at Tisri, Giridih, Bihar, although the High Court by the impugned order had restricted the respondents from lifting more than 15000 MTs from the aforesaid dumps in question. Accordingly, Mr. Gupta, learned senior counsel for the appellants, sought to contend that since the respondents have lifted more than they were

allowed to lift, the appellants should be permitted to take appropriate steps for recovery of the mica scraps or equivalent amount of damages by approaching the High Court or any other appropriate authority in accordance with law.

5. Mr. Sushil Kumar Jain, learned counsel for the respondent, contested the submissions of Mr. Gupta and submitted that in compliance with the order passed by the High Court as well as by this Court in the interim orders, they have lifted scrap from the dumps in question and, therefore, question of giving liberty to recover the mica scraps or equivalent amount of damages from the appellants does not arise at all. He

had drawn our attention to some of the orders passed by the High Court and also the impugned order, from which he sought to contend that the lifting of mica scraps has been done in accordance with the order passed by the High Court and also by this Court and, therefore, it would not be open for the appellants to re-agitate the question any further.

6. After hearing the learned counsel for the parties and after going through the impugned order as well as the interim orders passed by this Court during the pendency of this appeal, we are of the view that this question as raised by the learned counsel for the parties, cannot be agitated at this stage because the

appeal has been filed against an order passed by the High Court on the application for extension of time to lift mica scraps from the dumps in question. Since that time has already expired and, therefore, we are not in a position to go into this question. Accordingly, we dispose of this appeal by making an observation only that whatever observations or findings made by the High Court in the impugned order has to be taken for the adjudication of the application for extension of time and not otherwise.

7. The parties would be at liberty to agitate the question before the appropriate Court or authority as to the findings made by the High Court while deciding the

application for extension of time to remove mica
scraps.

8. With these observations, this appeal is disposed of.

There will be no order as to costs.

.....J
[TARUN CHATTERJEE]

.....J
[R. M. LODHA]

NEW DELHI,
SEPTEMBER 10, 2009