

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 4559 OF 2008
(Arising out of S.L.P. (C) No.19941/2007)**

Ram Awatar Saraf ... Appellant

Versus

Bharat Petroleum Corpn. Ltd. ..Respondent

O R D E R

Learned counsel for the respondent seeks leave of the Court to withdraw application for impleadment of the State of West Bengal as party respondent. I.A. No. 2 is dismissed as withdrawn.

Leave granted.

This appeal is directed against the judgment and order dated 13.12.2006 passed by a Division Bench of the High Court of Calcutta in First Appeal No.204/2004 whereby and whereunder, the judgment and decree passed by the Court below was set aside and the matter was remanded to the trial Court for adduction of fresh evidence, inter alia, on the premise that the question as to whether the rights of the defendant as a tikha tenant in terms of the lease of 1950 stood extinguished in view of the execution of the fresh lease of 1966, further evidence would be necessary for the purpose of a proper adjudication.

Such a finding, as has rightly been contended by Mr. Lalit, learned senior counsel appearing on behalf of the appellant, does not satisfy the tests laid down under Order XLI Rule-23 A of the Code of Civil Procedure.

The High Court in its judgment did not say that a re-trial was necessary. As indicated hereinbefore one of the issues in the suit was purported extinguishment of

the tikha tenancy. For the adjudication of the said issue, the parties had adduced evidence. Whether such evidence is sufficient for the purpose of determination of the

issue is a question which was required to be considered by the High Court itself. We may, furthermore, notice that the respondent had filed a large number of documents before us in support of its case. The said documents, admittedly, had not been filed before the trial Court. Proper course, thus, which could have been resorted to by the respondent, therefor was to file an application for adduction of additional evidence in terms of Order XLI Rule 27 of C.P.C. Had such an application was filed, it was for the High Court alone to consider as to whether such evidence should be allowed or not.

The said procedure having not been taken recourse to, we would not be in a position to determine the issues between the parties finally at this stage.

We, therefore, set aside the impugned judgment and remit the matter to the High Court for consideration of the appeal afresh on merit.

In the event, the respondent files an application for adduction of additional evidence, the same may be considered on its own merits. We would request the High Court to consider the desirability of disposing of the matter as expeditiously as possible preferably within a period of three months from the date of communication of this order.

The appeal is allowed with the aforementioned observations and directions.

[S.B. SINHA]

.....J.

[CYRIAC JOSEPH]

.....J.

New Delhi,
July 16, 2008.