

IN THE HIGH COURT OF SIKKIM

ORDER SHEET

.....F.A.O.....No. 2 of 199 2000.


.....Sanjay Agarwal.....Petitioner/Appellant

Versus


.....SIDICO & Ors.....Respondent


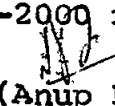
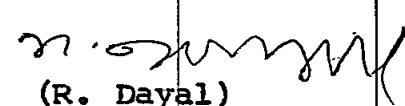
Serial No. of Order	Date of Order	Order with Signature	Office Note as to action (if any) taken on Order
1.	17.04.2000	<p>Present : Mr. Arun Sarkar and Mr. K. T. Bhutia, Advocates for the appellant.</p> <p>Mr. S. P. Wangdi, Advocate General with Mr. B.K. Rai, Advocate and Mr. Karma Thinlay, Assistant Govt Advocate for respondent Nos.1 & 2.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.4.</p> <p>Heard. Admit.</p> <p>Issue notice upon the respondents. Mr. Wangdi, learned Advocate General appearing for respondent Nos. 1 and 2 accepts notice. Mr. A.K. Upadhyaya accepts notice on behalf of respondent No.4. Mr. S. Namchyho, learned Advocate accepts notice on behalf of respondent No.5.</p> <p>Issue notice upon respondent No.3. A copy of the notice be also served upon Mr. B. Sharma, who appeared on behalf of Judgment Debtor, that is, the respondent No.3 in the Court below. Mr. Sharma submits that he will ascertain from respondent No.3 as to whether the respondent No.3 will engage Mr. Sharma before this Court also. Mr. Sharma will inform the Registry tomorrow.</p> <p>Requisites be filed by tomorrow. The appellants shall also make arrangement to serve notice upon the respondent No.3 by special messenger and affidavit of service shall be filed by the appellant within a week. A notice be also published in two National Newspapers in Hindi and English language having wide circulation in Sikkim and West Bengal. The appellant shall take out notices from the Registry and get it published.</p>	<p>Notice issued for Respondent No 3 by SP messenger & for publication in papers both the notices are taken by the Appll. for needful action on 18.4.2000</p> <p>Affidavit of service has filed by the Appll. on 24.4.2000</p>

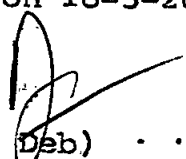
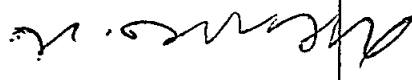


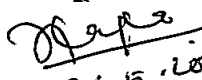
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		<p>The appellant shall prepare the Paper Book and submit the same in the Court on or before 2.5.2000.</p> <p>The learned District Judge, Special Division is directed to hand over certified true copies of the entire records within five days to the parties from the date of submission of application for certified copies. The learned District Judge, Special Division shall also be informed by the concerned parties as soon as application for certified copies are filed.</p> <p>Send back the record of lower Court forthwith. The learned District Judge, Special Division shall send the record of the case on 15.5.2000. Records received today be sent back in course of the day.</p> <p>List it on 17.5.2000 for hearing and disposal before the Division Bench along with Civil Revision No.4 of 2000. In case, the Division Bench cannot be constituted on 17.5.2000, the matter be heard and disposed by the Single Bench available on 17.5.2000. Place a copy of this order in the file of Civil Revision No.4 of 2000.</p> <p style="text-align: right;">  (Anup Deb) Judge 17.4.2000 </p> <p><u>C.M.A. No.96/2000</u></p> <p>Mr. Sarkar, learned Counsel for the appellant submits that some of the articles have been removed from the factory premises at Manpur, South Sikkim. He fairly concedes that inventory of such articles have not been prepared. Learned Advocate General appearing for respondent Nos.1 and 2 has brought to my notice the provisions of Rules 77, 79 and 95 of Order XXI of the Code of Civil Procedure which read as follows :-</p>	

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		<p>"77.Sale by public auction.-(1)Where movable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the <u>officer</u> or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.</p> <p>(2)On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.</p> <p>(3)Where the movable property to be sold is a share in goods belonging to the judgment-debtor, and a co-owner, and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.</p> <p>79.Delivery of movable property, debts and shares.-(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.</p> <p>(2)Where the property sold is movable property in the possession of some person other than judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.</p> <p>(3)Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person, except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the corporation from permitting any such transfer or making any such payment to any person except the purchaser.</p> <p>95.Delivery of property in occupancy of judgment-debtor.-Where the immovable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under Rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacant the same."</p>	

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2.	4.5.2000	<p>He submits that provision of these Orders and Rules have not been complied with by the Court while passing the order.</p> <p>Since an application for stay has been filed, all these materials are necessary for correct appreciation on the point as to whether stay should be granted in this case or not.</p> <p>Mr. Wangdi wants to file the objections. Liberty is given to the respondent Nos. 1 and 2 to file objections. The same be filed on or before 3.5.2000. The appellant may file their reply to the objections on or before 7.5.2000. Mr. Sarkar wants to move the stay application early.</p> <p>List this matter on 8.5.2000 for orders.</p> <p>Copy of this order be served upon Mr. K.T. Bhutia, Advocate, Mr. S.P. Wangdi, Sr. Advocate, Mr. A.K. Upadhyaya, Advocate and Mr. B. Sharma, Advocate.</p> <div style="text-align: right;">  (Anup Deb) Judge 17.4.2000 </div> <p>Present : Mr. K. T. Bhutia, Advocate for the appellant.</p> <p>Mr. S. P. Wangdi, Senior Advocate with Mr. Karma Thinlay, Advocate for respondent Nos. 1 & 2.</p> <p>Mr. B. Sharma, Advocate for respondent No.3.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.4.</p> <p>Mr. A. Moulik, Advocate for State Bank of India - applicant.</p> <p><u>CMA 117/2000</u></p> <p>Mr. S. P. Wangdi, learned Senior Advocate fairly concedes that the State Bank of India, the applicant should be added as respondent No.6 being a necessary party and Mr. Upadhyaya, Mr. B. Sharma and Mr. K.T. Bhutia leave the matter to the discretion of</p>	<p>Copy her sent to advs Wangdi</p>

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		<p>the Court. The State Bank of India be added as respondent No.6 subject to the objections that may be taken by the respondents at the time of hearing.</p> <p>It is made clear that the copy of the Revision Petition and other proceedings will have to be prepared by the respondent No.6 at its cost. It is once again made clear that adjournment shall not be given to any of the parties on the ground that this applicant has been added at a late stage.</p> <p>This petitioner may take part in the CMA No.96 of 2000 on 8.5.2000.</p> <p>CMA stands disposed of. <i>✓ in the main case ✓</i> List it on 17.5.2000 before the Division Bench.</p> <p style="text-align: right;">  (A. Deb) Judge 4/5/2000 </p>	
3.	8-5-2000	<p>Present: Mr. K.T. Bhutia, Advocate for the appellant.</p> <p>Mr. S.P. Wangdi, Senior Advocate with Mr. Karma Thinlay, Advocate for respondent Nos.1 and 2.</p> <p>Mr. B. Sharma, Advocate for respondent No.3.</p> <p>Mr. A.K. Upadhyaya, Advocate for respondent No.4.</p> <p>Mr. A. Moulik, Advocate for respondent No.6.</p> <p style="text-align: center;">---</p> <p>On request, the matter be put up on the date already fixed that is on 17-5-2000 for orders.</p> <p style="text-align: center;">   (Arup Deb) (R. Dayal) Judge. Chief Justice. </p>	

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4.	17-5-2000	<p>Present: Mr. K.T. Bhutia, Advocate for the appellant.</p> <p>Mr. S.P. Wangdi, Senior Advocate with Mr. Karma Thinlay, Advocate for respondent Nos.1 and 2.</p> <p>Mr. B. Sharma, Advocate for respondent No.3.</p> <p>Mr. A.K. Upadhyaya, Advocate for respondent No.4.</p> <p>Mr. A. Moulik, Advocate for respondent No.6.</p> <p>---</p> <p>Put up along with Civil Revision No.4/2000 on 18-5-2000 for further hearing.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  (Anup Deb) <u>Judge.</u> </div> <div style="text-align: center;">  (R. Dayal) <u>Chief Justice.</u> </div> </div>	
5.	18.5.2000	<p>Present : Mr. K. T. Bhutia, Advocate for the appellant.</p> <p>Mr. S. P. Wangdi, Senior Advocate with Mr. Karma Thinlay, Advocate for respondent Nos. 1 and 2.</p> <p>Mr. B. Sharma, Advocate for respondent No.3.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.4.</p> <p>Mr. A. Moulik, Advocate for respondent No.6.</p> <p>---</p> <p>Put up along with Civil Revision No.4/2000 on 29.5.2000 for further hearing.</p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;">  (A. Deb) Judge <u>18/5/2000</u> </div> <div style="text-align: center;">  (R. Dayal) Chief Justice <u>18/5/2000</u> </div> </div>	<p>Synopsis filed by the petitioner</p> <p> 26.5.2002</p>

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6. 29.5.2000	29.5.2000	<p>Present : Mr. Ashoke Kumar Bannerjee, Sr.Counsel with Mr. K. T. Bhutia and Mr. Subir Kumar Saha, Advocates for the Appellant.</p> <p>Mr. S. P. Wangdi, Advocate General with Mr. Karma Thinlay, Asstt.Govt.Advocate for respondent Nos. 1 and 2.</p> <p>Mr. B. Sharma, Advocate for respondent No.3.</p> <p>Mr. A. K. Upadhyaya, Advocate for respondent No.4.</p> <p>Mr. A. Moulik, Advocate for respondent No.6.</p> <p>Sri A. K. Upadhyaya appearing for M/S ITC Limited, decree-holder/respondent No.4 has given one bank draft bearing No.'392454' dated 24th May, 2000 for Rs.17,00,000 lakhs (Rupees seventeen lakhs) drawn in favour of the appellant M/S Tripti Steel Traders to Shri K. T. Bhutia, learned Advocate for the auction purchaser Tripti Steel Traders without prejudice to the rights and contentions of the decree holder.</p> <p>Learned Counsel for the appellant does not press the appeal. The appeal is dismissed as withdrawn.</p> <p>On the request of Sri S. P. Wangdi, learned Advocate General appearing on behalf of SIDICO, respondent No.1 and Sri A. Moulik, learned Counsel for the State Bank of India, respondent No.6, it is made clear that this order by itself, shall not prejudice the rights and contentions of the alleged mortgagees.</p> <p>The matter thus stands disposed of.</p>	
		 (A. Deb) Judge 29.5.2000	 (R. Dayal) Chief Justice. 29.5.2000.