

ITEM NO.501

COURT NO.1

SECTION III-A/X/XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 10866-10867/2010

M.SIDDIQ (D) THR. LRS.

APPELLANT(S)

VERSUS

MAHANT SURESH DAS & ORS.

RESPONDENT(S)

WITH

C.A. NO. 4768-4771/2011 (III-A) [ITEM NO.501.1]

C.A. NO. 2636/2011 (III-A) [ITEM NO.501.2]

C.A. NO. 821/2011 (III-A) [ITEM NO.501.3]

C.A. NO. 4739/2011 (III-A) [ITEM NO.501.4]  
(FOR DISCHARGE OF ADVOCATE ON RECORD ON IA 95540/2018)

C.A. NO. 4905-4908/2011 (III-A) [ITEM NO.501.5]

C.A. NO. 2215/2011 (III-A) [ITEM NO.501.6]

C.A. NO. 4740/2011 (III-A) [ITEM NO.501.7]

C.A. NO. 2894/2011 (III-A) [ITEM NO.501.8]

C.A. NO. 6965/2011 (III-A) [ITEM NO.501.9]

C.A. NO. 4192/2011 (III-A) [ITEM NO.501.10]

C.A. NO. 5498/2011 (III-A) [ITEM NO.501.11]

C.A. NO. 7226/2011 (III-A) [ITEM NO.501.12]

C.A. NO. 8096/2011 (III-A) [ITEM NO.501.13]

DIARY NO(S). 22744/2017 (XI) [ITEM NO.501.14]

W.P.(C) NO. 294/2018 (X) [ITEM NO.501.15]  
(FOR ADMISSION)

Date : 10-01-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE S.A. BOBDE  
HON'BLE MR. JUSTICE N.V. RAMANA  
HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE DR. JUSTICE DHANANJAYA Y. CHANDRACHUD

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

Today is fixed for fixing a date of hearing and for drawing up of a time schedule for hearing of the cases before us.

Before the Court could be addressed on any of the aforesaid issues, Dr. Rajeev Dhavan, learned Senior Counsel appearing for the appellants in Civil Appeal No.10866-10867 of 2010 made a statement that a member of the Bench (Uday Umesh Lalit, J.) had appeared in a connected matter sometime in the year 1997. Dr. Dhavan has further pointed out that though he has no objection to Hon'ble Mr. Justice Uday Umesh Lalit hearing the matter the ultimate decision in this regard is for the learned Judge to take.

The said facts being pointed out, Hon'ble Mr. Justice Uday Umesh Lalit has expressed his disinclination to participate in the hearing any further. We, therefore, have no option but to adjourn the case to another date for the same purpose i.e. to fix a date of hearing and to draw up a time schedule for hearing of the case.

Dr. Rajeev Dhavan has also pointed out the judgment and order of this Court dated 27<sup>th</sup> September, 2018 by which a reference of the correctness of the judgment of this Court in Dr. M. Ismail Faruqui and others vs. Union of India and others<sup>1</sup> was refused to be made to a Constitution Bench. Dr. Dhavan has drawn the attention of the Court to certain speculations prevailing as to why the matter has now been fixed for hearing before a Five Judges Bench though the Three Judges Bench by aforesaid judgment and order dated 27<sup>th</sup> September, 2018 had expressly directed that the matter be listed before a Three Judges Bench.

The decision to post the matter before a Five Judges Bench had been taken by the Hon'ble Chief Justice on the administrative side in exercise of his powers under Order VI rule 1 of the Supreme Court Rules, 2013 which mandates that "every cause, appeal or matter shall be heard by a Bench consisting of not less than two Judges nominated by the Chief Justice."

Order VI rule 1 of the Supreme Court Rules, 2013 prescribes the minimum numerical strength of the Bench and it is always open for the Hon'ble Chief Justice to decide, having regard to the various relevant facts and

1. (1994) 6 SCC 360

circumstances, which cannot be exhaustively laid down, to constitute Benches of such strength that the Hon'ble the Chief Justice deems it proper. This is how the present bench of five Judges has been constituted which is, in no way, contrary to what has been laid down by the Three Judges Bench in the aforesaid judgment and order dated 27<sup>th</sup> September, 2018.

The Secretary General of the Registry has informed the Chief Justice that in the four suits, out of which these appeals have arisen, in all, 120 issues have been framed for trial. A total of 88 witnesses were examined. The depositions of the witnesses run into 13,886 pages. A total of 257 documents were exhibited (according to Dr. Rajeev Dhavan the number of Exhibits is 533 including 3 Archaeological Reports). The judgment runs into 4304 printed pages (according to the Registry, 8533 typed pages). The Bench has been informed that the original records are lying in 15 sealed trunks in a room which has also been sealed. Whether the depositions and documents which are in Persian, Sanskrit, Arabic, Gurumukhi, Urdu and Hindi, etc. have been translated is not clear.

The orders of this Court, particularly, the order dated 10<sup>th</sup> August, 2015 indicate that though the learned counsels for the parties had attempted to submit some translated version of the evidence there is a dispute with regard to the correctness of the translations made.

In these circumstances, the Registry of this Court is directed to physically inspect the records which are lying under lock and key; make an assessment of the time that will be taken to make the cases ready for hearing by engaging, if required, official translators of the requisite number and give a report thereof to the Court. The said report will be submitted to this Court by the Registry on 29<sup>th</sup> January, 2019 when the reconstituted Bench (without Uday Umesh Lalit, J), as may be, will assemble once again to take up the matter for further orders.

[VINOD LAKHINA]  
AR-cum-PS

[ANAND PRAKASH]  
BRANCH OFFICER