IN THE SUPREME COURT OF INDIA [CIVIL APPELLATE JURISDICTION] CIVIL APPEAL NO. 2894 of 2011 CIVIL APPEAL NO. 7226 of 2011



A94

IN THE MATTER OF: MOHAMMAD HASHIM (DEAD)THROUGH LR

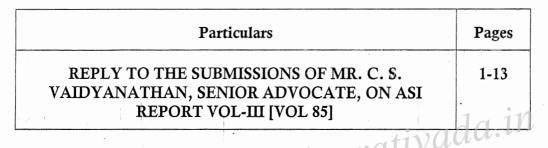
...APPELLANT

VERSUS

MAHANT SURESH DAS AND ORS.

... RESPONDENTS

#### & OTHER CONNECTED APPEALS



## By

### MS MEENAKSHI ARORA, SENIOR ADVOCATE

### ADVOCATE-ON-RECORD: M.R.SHAMSHAD

#### IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 2894 of 2011

IN THE MATTER OF: MOHAMMAD HASHIM (DEAD) THROUGH LR

...APPELLANT

#### MAHANT SURESH DAS AND ORS.

... RESPONDENTS

#### REPLY TO THE SUBMISSIONS OF MR. C. S. VAIDYANATHAN, SENIOR ADVOCATE, ON ASI REPORT VOL-III [VOL 85]

VERSUS

• None of the Plates of artefacts (human & animal figurines) referred to or otherwise mentioned in the Report are religious in nature, which can be specifically attributed to a Temple of Lord Ram. Hence, the plates in Vol 85 of the ASI Report do not lead to the inference that a temple existed on the disputed site at any point of time. The Chronology as per the ASI Report is as follows:

Period	Dynasty	Century	Years
I	NBPW	6 <sup>th</sup> -3 <sup>rd</sup> BC	500 BC - 299
			BC
II	Sunga	2 <sup>nd</sup> -1 <sup>st</sup> BC	100 BC -99 BC
III	Kushan	$1^{st} - 3^{rd} AD$	1-299
IV	Gupta	$4^{\text{th}} - 6^{\text{th}} \text{AD}$	300 - 599
V	Post Gupta-Rajput	7 <sup>th</sup> - 10 <sup>th</sup> AD	600 - 999
VI	Medieval-Sultanete	11 <sup>th</sup> -12 <sup>th</sup> AD	1000 -1199
VII	Medieval	12 <sup>th</sup> end -Start of	1180-1500
		16 <sup>th</sup> AD	
VIII	Mughal		
		No period a	ssigned
IX	Late and Post Mughal		
·		No period a	ssigned

[Pgs. 52-64, Vol 83]

• The following plates, from ASI Vol-III [Vol 85], were referred to show that they must have belonged to a temple of Lord Ram, at the site of the erstwhile mosque or areas adjacent to it. The Plaint case of Suit 5 is that:

'...23. That the books of history and public records of unimpeachable authenticity, establish indisputably that there was an ancient Temple of Maharaja

Vikramaditya's time at Sri Rama Janma Bhumi, Ayodhya. That Temple was destroyed partly and an attempt was made to raise a mosque thereat, by the force of arms, by Mir Baqi, a commander of Baber's hordes..... The Janmasthan was in Ramkot and marked the birthplace of Rama. In 1528 Babar came to Ayodhya and halted here for a week. He destroyed the ancient temple and on its site built a mosque, still known as Babar's mosque..."

#### [Para 23, Pg. 234@246, Vol 72]

o The witness for the other side, Mr. Jayanti Prasad Srivastava, has stated in his Chief Examination that:

> "Wall-16 was built around 1130 AD and pillared hall was erected in front of the shrines."

#### [Pg 11628, Vol 62]

The witness for the other side, Mr. Jayanti Prasad Srivastava, has stated in his 0 Cross Examination that:

> "According to me the wall-16 could have been constructed sometime between 1194 AD to 1199 AD"

> > [Pg 11931-11932, Vol 63]

The witness for the other side, Mr. Nagaswami, has stated in his Cujars Examination that:

> "Ques. According to you wall-16 was raised in 1080 CE, to protect to a temple after www.vadaprati its destruction in 1030 CE? Ans. Yes"

[Pg 2700, Vol 27]

o . The witness for the other side has stated that wall-16 which has been attributed to the "massive structure" and the alleged temple which according to the plaintiff was demolished in 1528 AD. It is noteworthy to state that the ASI has returned no finding on the issue of demolition. Thus, any 'find' which is not specific to the issue which was referred to the ASI holds no evidentiary value.

Plate No., Vol 85	Pg. No., Vol 85	Description, as per the ASI Report, Vol 83-84	Remarks
59. Partly	66	Found in Late level of	1. The surviving wall
damaged east-		Period V - Post-Gupta	as per ASI's
facing brick built		Rajput @ Pg.57, Vol. I	drawings makes
circular shrine, Tr.		ASI, Vol.83	only a quarter of
F8.			circle – such shapes
		[ <u>Note</u> : The layers 5, 5A, 6	are fairly popular in
60. Same, view	67	of trench E8-F8 belong to	walls of Muslim
from west.		Period V and considering	construction as

the finding of said shrine in the late level, it <b>possibly</b> belongs to layer 6.]	<ul> <li>well. @ Para 6.1, Pg.1892, Vol.13</li> <li>2. Shrine could have been a stupa belonging to the 6<sup>th</sup> or 7<sup>th</sup> century AD (Refer Fig.24) @ Para 6.7, Pg.1894, Vol.13</li> </ul>
	3. Nothing found in the structure in the way of image or sacred piece that can be called a "shrine" @ Para 6.2, Pg.1892 Vol.13
www.vadapro	<ul> <li>4. The association between the shrine (eastern area) &amp; the pavement (far north) has been used by the HC (para 3937, Pg. 2410 Vol II judgment) to date the shrine to 900- 1030AD even though the find in Trench J3 (shrine) has no connection with the aforesaid pavement. If channel had been in use for draining water for a long</li> </ul>
	water for a long time there should have been remains of water residuals – no such evidence found @ Para 6.10, Pg.1895, Vol 13
	5. "Experts who visited the site and measured the angle of slope of

,				
				the pranala found that the slope which was necessary for the water to pass out wasn't there." @ pg 7131, Vol 43. Thus, there was no basis to infer that it used for performing "Abhisheka".
	1		6.	The HC has wrongly termed the <i>Pranala</i> as a 'Gargoyle', which has no basis in the ASI Report. @ <b>Para 3937, Pg.</b> 2410, Vol II, Impugned Judgment
	W	vw.vadapr	7.	Fig 24 and Fig. 24A don't correspond to the actual find which is a quarter of a circle and there is no basis for the divinity attached to the said structure. @ Pg. 107-108, Vol 83
			8.	It is erroneous to compare the structure with a certain temple structures and not with circular walls & buildings. @ Para 6.1, Pg.1891, Vol.13
			9.	No object of <i>Hindu</i> worship found on this layer @ Para 6.1, Pg.1891 Vol.13

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66. Working level of the Kushan Period, Tr. J3	73	Shows levels 6,7 & 8 of Trench J3	It is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup> century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the Kushan Period (1 <sup>st</sup> to 3 <sup>rd</sup> century AD), the said finds have no
74. Terracotta core glazed ware.	78	Found in Period VII, VIII & IX @ Pg.174r.w.Pg.187- 192, Vol.I ASI (Vol.83)	bearing. Attributed to Period VII, VIII & IX which belong to the Islamic period hence cannot be
75. Sandy core glazed ware.	78	Found in Period VII, VIII & IX @ Pg.174 r.w.Pg.192, Vol.I ASI (Vol.83)	attributed to a temple. The Medieval Period extends from 12 <sup>th</sup> century to 16 <sup>th</sup> century,
76. Terracotta core glazed ware sherds.	79	Found in Period VII, VIII & IX @ Pg.174 r.w.Pg. 187-192, Vol.I ASI (Vol.83)	and the other two levels (Period VIII and Period IX) have not been assigned any
77.Porcelain ware sherds.	79	Found in Period VII, VIII & IX @ Pg.175 r.w.Pg.192, Vol.I ASI (Vol.83)	period. Hence, Thermoluminiscence dating would have given an accurate time
78.Celadon ware sherds.	80	Found in Period VII, VIII & IX @ Pg.174 r.w.Pg.192, Vol.I ASI (Vol.83)	period to the artefacts, which despite assurances was not done. This assumes importance considering that there was Islamic Rule during the aforesaid period.
103. Fragments of a flower motifs, stucco	97	Found on surface @ Pg.249 (S.no.6), Vol.II ASI (Vol.84)	This find belongs to the mosque. Flower motifs are often used in Islamic structures and the same has been admitted by a witness of the other side, Mr. J. P. Srivastava, as quoted under: "However, I have noticed flowered designs in such Islamic buildings." @Pg 11678, Vol 62

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resting on a pedestal, terracotta Kushan Period) @ Pg.253 (S.no.20), Vol.II ASI (Vol.84)Period). Therefore, admittedly, the temple not having been constructed in the Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)Period). Therefore, admittedly, the temple not having been constructed in the Kushan Period) @ 3rd century AD), the said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III ASI (Vol.84)Period III not having been constructed in the Kushan Period) @				
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ASI (Vol.84)constructed in the 12thI07. Leg portion99Found in layer 5 (Period III – Kushan Period) @ Pg.253 (S.no.20), Vol.II ASI (Vol.84)century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the108. A male holding a perforated disc, terracotta.100Found in layer 4 (Period III – Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)Kushan Period (1st to 3rd century AD), the said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III – Kushan Period) @Nol.II admittedly, the temple not having been constructed in the Kushan Period @ Baid finds have no bearing.	-			
107. Leg portion75Found in layer 0 (control in performed in ASI (Vol.84)Period).Period).108. A male holding a perforated disc, terracotta.100Found in layer 4 (Period III – Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)Period).Therefore, admittedly, the temple not having been constructed in the Kushan Period (1st to 3rd century AD), the said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III – Kushan Period) @Period).			ASI (Vol.84)	constructed in the 12 <sup>th</sup>
Pedestal, terracotta.Pg.253 (S.no.20), Vol.II ASI (Vol.84)admittedly, the temple not having been constructed in the Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)admittedly, the temple not having been constructed in the Kushan Period) @ 3rd century AD), the said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III - Kushan Period) @seen constructed in the Kushan Period III - Kushan Period) @	107. Leg portion	99		
Image: Period of the formation of the second systemImage: Period of the second systemImage: Period of the second systemImage: Period system <th< td=""><td>resting on a</td><td></td><td></td><td></td></th<>	resting on a			
InterfectualInterfectualInterfectualInterfectualConstructedInterfectualIO8. A male holding a perforated disc, terracotta.100Found in layer 4 (Period III – Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)constructed in the Kushan Period (1st to 3rd century AD), the said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III – Kushan Period) @	-			
I08. A male holding a perforated disc, terracotta.100Found in layer 4 (Period III – Kushan Period) @ Pg.259 (S.no.53), Vol.II ASI (Vol.84)Kushan Period (1st to 3rd century AD), the said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III – Kushan Period) @.	terracotta.		ASI (Vol.84)	-
Indication<	I08. A male	100	Found in layer 4 (Period III	Kushan Period (1 <sup>st</sup> to
perforated disc, terracotta.Pg.259 (S.no.53), Vol.II ASI (Vol.84)said finds have no bearing.109. A decorated human head,100Found in layer 4 (Period III - Kushan Period) @				3 <sup>rd</sup> century AD), the
terracotta.ASI (Vol.84)bearing.109. A decorated100Found in layer 4 (Period III – Kushan Period) @.	perforated disc,			
human head, – Kushan Period) @	terracotta.			bearing.
human head, – Kushan Period) @	109 A decorated	100	Found in layer 4 (Period III	
		100		
	terracotta.			
			J	

		ASI (Vol.84)	
110. Anthropomorphic figure, terracotta.	101	Found in layer 4 (Period VI – Medieval Sultanate) @ Pg.257 (S.no.38), Vol.II ASI (Vol.84)	The Sultanate period began in 1206 AD. Thus, the labelling of the period is therefore factually incorrect.
111. Standing female figure, head broken and missing, terracotta.		Found in layer 6 (Period V – Post Gupta Rajput @ [Pg.57, Vol.I ASI (Vol.83)] – Period I- NBPW Period @ Pg.253 (S.no.17), Vol.II ASI (Vol.84)	Different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions and conjectures. Even otherwise, it is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup> century (Medieval Period), thus the said find has no bearing.
112. A decorated human head, terracotta.	102	Found in Pit SB8 (Period IV – Gupta Period) @ Pg.256 (S.no.33), Vol.II ASI (Vol.84)	No find in the Pits has been explained in the Report. Hence, no inference can be drawn
113. Anthropomorphic figure, terracotta.	102	Found in Pit SB8 (Period IV – Gupta Period) @ Pg.258 (S.no.45), Vol.II ASI (Vol.84)	therefrom QQU.
114. Moulded human head, terracotta.	103	Found in Pit SB8 (Period IV – Gupta Period) @ Pg.258 (S.no.46), Vol.II ASI (Vol.84)	
115. Female head, terracotta	103	Found in layer 14 (Period II – Sunga Period @Pg.52, Vol.I ASI [Vol.83]) – Period III - Kushan Period @ Pg.260 (S.no.45), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup> century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the
			Kushan or Sunga Period, the said find has no bearing. Further, different

			periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions and conjectures.
116. Ornamented male bust with a typical headgear, terracotta.	104	Found in layer 16 (Period IV – Sunga Period @Pg.52, Vol.I ASI [Vol.83]) – Gupta Period @ Pg.260 (S.no.59), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup> century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>Sunga/Gupta</i> Period, the said find has no bearing. Further, different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to
	W	ww.vadapi	show that the Report is based on assumptions, presumptions & conjectures.
117. An archaic human waist, terracotta.	104	Found in layer 6 – Period I - NBPW @ Pg.260 (S.no.58), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup> century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>NBPW</i> Period, the said find has no bearing.
118. A primitive female figure, terracotta.	105	Found in Pit SB (Floor 1) Period VIII – Mughal Period @ Pg.254 (S.no.26), Vol.II ASI (Vol.84)	

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			The Deport fails to	
119. Horse rider, terracotta.	106	Found below Floor 3 – No Period mentioned @ Pg.251 (S.no.7), Vol.II	The Report fails to provide vital information about the period to which the	
		ASI (Vol.84)	Floor mentioned herein belongs.	
120. Smiling human head, terracotta.	106	Found in layer 7 (Period V -Post Gupta Period) @ Pg.258 (S.no.43), Vol.II	It is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup>	
		ASI (Vol.84)	century (Medieval Period). Therefore, admittedly, the temple	
			not having been constructed in the Post- Gupta Period, i.e. prior to the 10 <sup>th</sup> century AD. Thus, the said find has	
121. Human head	107	Found in layer 4 (Period	no bearing. The Medieval Period	
with head gear, terracotta.		VII – Medieval Period) @ Pg.251 (S.no.2), Vol.II ASI (Vol.84)	extends from 12 <sup>th</sup> century to 16 <sup>th</sup> century, and the other two	
			levels (Period VIII and Period IX) have not been assigned any	
			period. Hence, Thermoluminiscence dating would have	in
	147	ww.vadapi	given an accurate time period to the artefacts, which despite	
		V V	assurances was not done. This assumes importance considering	
			that there was Islamic Rule during the aforesaid period.	
122. Ornamented human torso, terracotta.	107	Found in layer 8 (Period V – Post Gupta Period) @ Pg.260 (S.no.56), Vol.II ASI (Vol.84)	Admitted that alleged temple not constructed in the <i>Post Gupta</i> period i.e. prior to the 10 <sup>th</sup>	
			century AD. Thus finds of said have no bearing.	
123. Female torso, terracotta.	108	Found in layer 7 (Period III or Period IV@Pg.51, Vol.I ASI [Vol.83]) - (	It is the case of the plaintiff that the alleged temple was	

		Period I – NBPW Period @ Pg.261 (S.no.61), Vol.II ASI (Vol.84)	constructed in the 12 <sup>th</sup> century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>Kushan/Gupta/NBPW</i> , the said find has no bearing. Different periods have been assigned to the same artefact by the different archaeologists of the ASI team. This goes to show that the Report is based on assumptions, presumptions & conjectures.
124. Decorated human waist, terracotta. 127. Elephant,	109	Found in layer 20 (Pre- Maurya Period – i.e.NBPW Period) @ Pg.260 (S.n0.60), Vol.II ASI (Vol.84) [Note: Mauryan period starts from 322-187BC] Found in layer 3 (Period	temple not constructed in the NBPW period. Thus finds of said period have no bearing. The Report fails to
terracotta.	W	not mentioned) @ Pg.269 (S.no.66), Vol.II ASI (Vol.84)	provide vital information about the period to which the layer mentioned herein belongs.
128. An animal figure, terracotta.	111	Found in layer 2 (filling) (Late Level) @ Pg.270 (S.no.74), Vol.II ASI (Vol.84)	The figurine has been (presumably) attributed to the Post Mughal Period, the period for which has not been assigned by the ASI. However, the erstwhile Mosque was already in existence and hence the find cannot be attributed to a temple of Lord Ram. In any case looking at the plate, it is impossible to ascribe whether it's a

			1 in the frameline forming
			hindu/muslim figurine
129. Cobra hood,	112	Found in layer 4 (Early	The Sultanate period
terracotta.		Medieval Period) @ Pg.267	began in 1206 AD. The
		(S.no.54), Vol.II ASI	labelling of the period
		(Vol.84)	is therefore factually
			incorrect.
	-		
130. Bull head,	112	Found in layer 13 (Period	It is the case of the
terracotta.		II – Sunga Period @ Pg.38,	plaintiff that the
<i>i</i>		Vol.I ASI, Vol.83) -	alleged temple was
		(Period III– Kushan	constructed in the 12 <sup>th</sup>
		Period) @ Pg.277	century (Medieval
		(S.no.119), Vol.II ASI	Period). Therefore,
		(Vol.84)	admittedly, the temple
		(101.04)	not having been
			constructed in the
			Kushan/Sunga Period,
			the said finds have no
			bearing.
			Different periods have
			been assigned to the
			same artefact by the
			different archaeologists
			of the ASI team. This
			goes to show that the
			Report is based on
			assumptions,
			presumptions &
		•	conjectures.
		1.012	
131. Broken	113	Found in layer 16	It is the case of the
elephant,	- 4 3	(Maurayan Period) @	plaintiff that the
terracotta.	W	Pg.278 (S.no.125), Vol.II	alleged temple was
		ASI (Vol.84)	constructed in the 12 <sup>th</sup>
	, ·		century (Medieval
		[Note: Mauryan period	Period). Further, the
		starts from 322-187BC]	ASI does not
			mentioned the
			Mauryan Period in
			Chapter 3: Stratigraphy
			and Chronology. The
			same may be assigned
			to the NPBW Period.
			Therefore, admittedly,
			the temple not having
			been constructed in the
			NBPW Period, the said
			finds have no bearing.
			finds have no bearing.

		VIII Madianal Dariad)	extends from 12 <sup>th</sup>
head, terracotta.		VII - Medieval Period) @	century to 16 <sup>th</sup> century.
		Pg.264 (S.no.23), Vol.П	Hence,
		ASI (Vol.84)	Thermoluminiscence
			dating would have
			given an accurate time
		· · ·	period to the artefacts,
		•	which despite
N			abbarances new sear
			done. This assumes
			importance considering that there was Islamic
			ituito attinto
			aforesaid period.
133. Bull figurine,	114	Found in Pit SB Floor 1	No find in the Pits has
terracotta.		(Period IX - Late & Post	been explained in the
		Mughal @ Pg.50, Vol.I	Report. Hence no inference can be drawn
		ASI, Vol.83) – (Maybe	
		assigned to Early Medieval	therefrom.
		Period) @ Pg.274	
		(S.no.101), Vol.II ASI	
		(Vol.84)	
134. An animal	115	Found below Floor 3 (from	The figurine has been
figurine, terracotta		Late level) @ Pg.263	(presumably) attributed
		(S.no.20), Vol.II ASI	to the Post Mughal
		(Vol.84)	Period, the period for
135. Elephant,	115	Found in layer Western	which has not been
terracotta.	110	Section of K3-K4 baulk	assigned by the ASI
terracotta.		(from the Late level)	However, the erstwhile
		Pg.277 (S.no. 123), Vol.II	Mosque was already in
		ASI (Vol.84)	existence and hence
	- 127	ASI (V01.64)	the find cannot be
		v ·	attributed to a temple
			of Lord Ram. In any
			case looking at the
			plate, it is impossible to
			ascribe whether it's a
			hindu/muslim figurine
126 Bird	116	Found in Pit 1 SB-1	No find in the Pits has
136. Bird,	110	(Maybe assigned to Early	been explained in the
terracotta.	1		Report. Hence no
		Historic period) @ Pg.272	inference can be drawn
		(S.no.88), Vol.II ASI	
-		(Vol.84)	therefrom.
105 0	11/	The state of the s	The shere the state
137. Part of an	116	Period -11 <sup>th</sup> century @	The observation made
inscription in		Pg.280-281 (Registration	in the Report states
Nagari script,		No.117), Vol.II ASI	that:
stone.		(Vol.84)	"Since the inscription is of
			highly fragmentary nature, the object of the

			record cannot be made
i			out. Perhaps, it mentions the name of a person ending with Pala." The aforementioned
			observation clearly goes to show that the inference drawn qua the inscription mentioned herein are based purely on conjectures and hence suffer from want of
			evidentiary value. The witness for the
			other side, Dr. R. Nagaswami, in his Cross Examination states as under:
			"However, I can disclose a fragmentary inscription found in trench J-3 and it is to the effect 'NG PAL'. From this inscription, it is
		1	not decipherable as to what was the name of the king or dynasty of the constructor of the
		, vadapr	temple" [Pg 2924, Vol 27]
okan	117	Found in layer 12 (3 <sup>rd</sup> BC) [belongs to NBPW @ Pg.52, Vol.I ASI, Vol.83] @ Pg.284 (S.no.1), Vol.II ASI (Vol.84)	It is the case of the plaintiff that the alleged temple was constructed in the 12 <sup>th</sup> century (Medieval Period). Therefore, admittedly, the temple not having been constructed in the <i>NBPW</i> Period, the said find has no bearing.
	ing okan glass	ing okan	ing bkan [belongs to NBPW @ Pg.52, Vol.I ASI, Vol.83] @ Pg.284 (S.no.1), Vol.II

#### Counsel for Appellants in CA 2894/2011 & other Connected Appeals

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