

ITEM No.14

Court No. 5

SECTION IVB
A/N MATTER

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

Petition(s) for Special Leave to Appeal (Civil) No.1891/2000

(From the judgement and order dated 17/09/1999 in CR 5091/97
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

SHIVALA BHIKHAMSAR

Petitioner (s)

VERSUS

BALBIR KUMAR JATTI AND ORS.

Respondent (s)

(With prayer for interim relief)

Date : 03/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s) Mr. Ananga Bhattacharya, Adv.
Mr. NPS Panwar, Adv.
Mr. DP Chaturvedi, Adv.
Mr. S.N. Bhat, Adv.

For Respondent (s) Mr. Manoj Swarup, Adv.

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

Leave granted.

The appeal is allowed. There shall be no
order as to costs.

.SP1

(Alka Dudeja)
Court Master

(S. Krishnan)
Court Master

Signed order is placed on the file.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6125 OF 2001@@
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(Arising out of S.L.P.(C) No. 1891 of 2000)

Shivala Bhikhamsar ... Appellant

Vs.

Balbir Kumar Jatti and Ors. ... Respondents

O R D E R@@
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Leave granted.

The plaintiff-appellant herein brought a suit for possession against the defendant-respondents. One of the pleas taken by the defendant-respondents was that the suit is not maintainable, in view of the provisions of Section 92 of the Code of Civil Procedure. The trial court dismissed the suit on one of the grounds that the suit was not maintainable for non-compliance of Section 92 of the Code of Civil Procedure. The plaintiff-appellant thereafter preferred an appeal before the first appellate court. In the said appeal the plaintiff-appellant filed an application for withdrawal of the suit on the ground of formal defect under Order 23 Rule 1 of the Code of Civil Procedure. The appellate court allowed the said application and permitted the plaintiff-appellant to withdraw the suit with a right to file a fresh suit after complying with the provisions of ...2/-

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Section 92 of the Code of Civil Procedure. Aggrieved, the defendant-respondents filed a revision petition before the High Court. The High Court took the view that since there was no formal defect in the suit, therefore, the application for withdrawal of the suit was not maintainable. In that view of the matter, the High Court set aside the order and judgment of the first appellate court and restored the appeal.

We have heard counsel for the parties. We are of the view that there was defect in the suit and the first appellate court was justified in permitting the appellant to withdraw the suit with a view to file a fresh suit.

In that view of the matter, the appeal succeeds and is allowed. The order under challenge is set aside. There shall be no order as to costs.

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.....J.
(V.N. KHARE)

.....J.
(B.N. AGRAWAL)

NEW DELHI
SEPTEMBER 3, 2001.