

7%

SLP(C)No. 3324 OF 2002
ITEM No.204

Court No. 4

SECTION IX
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.3324/2002

(From the judgement and order dated 16/01/2001 in SA 32/98
of The HIGH COURT OF BOMBAY, BENCH AT AURANGABAD)

YESHWANT

Petitioner (s)

VERSUS

TUKARAM GAMBHIR BAUSKAR (D) BY LRS. Respondent (s)
(With Appln.(s) for c/delay in filing SLP and c/delay in filing counter
affidavit and exemption from filing O.T. and with prayer for interim
relief)(FOR FINAL DISPOSAL)

Date : 14/08/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s)Mr. Sanjay V. Kharde, Adv.
Mr. Naresh Kumar, Adv.

For Respondent (s)Mr. C.G. Solshe, Adv.

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

Delay condoned.Leave granted.

The appeal is allowed. No order as to the costs incurred in the High Court and this Court.
The parties through their learned counsel are directed to appear before the First Appellate Co
urt on 26th September, 2003.

(N. Annapurna)
Court Master

(Radha R. Bhatia)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6398 OF 2003
(Arising out of S.L.P.(C) No.3324/2003)

Yeshwant ...Appellant(s)

Versus

O R D E R

Delay condoned.

Leave granted.

The plaintiff-respondent filed a suit for specific performance of an agreement to sell. The suit was contested on very many grounds by the defendant-appellant. There were as many as seven issues framed. On all the issues, excepting one, the trial court recorded findings in favour of the defendant and against the plaintiff. The plaintiff preferred an appeal. The First Appellate Court reversed the finding of the trial court mainly on the question - whether the execution of agreement to sell was proved or not. Having held that execution of the agreement was proved, the Appellate Court set aside the decree of the trial court and passed a decree for specific performance. A perusal of the judgment of the First Appellate Court shows that not only issues other than the issue relating to execution of agreement were not dealt with by the First Appellate Court but even on the question of

....2/-

-2-

execution of agreement, all the relevant evidence and circumstances were not taken into consideration. The judgment of the First Appellate Court does not satisfy the requirements of a first appellate judgment as laid down by this Court in Santosh Hazari vs. Purushottam Tiwari [(2001) 3 SCC 179] more so when it is a judgment of reversal. The defendant preferred a second appeal in the High Court but the same has been dismissed as raising no substantial question of law.

First appeal is a valuable right of an appellant inasmuch as all the questions of law and fact arising for decision in the case are reopened for consideration. Having heard the learned counsel for the parties, we are satisfied that the first appeal has not been satisfactorily disposed of and there has been a prejudice to the defendant-appellant. The High Court ought to have noticed this infirmity in the judgment of the First Appellate Court and should have set aside the said judgment on this ground alone.

The appeal is allowed. The judgment of the High Court dismissing the second appeal in limine as also the judgment of reversal as recorded by the First Appellate Court are both set aside. The first appeal is remanded to the District Judge, Jalgaon for hearing and decision afresh and in accordance with law.

The First Appellate Court would do well to take up the hearing of the appeal expeditiously and dispose of the same in view of the time already lost.

....3/-

-3-

No order as to the costs incurred in the High Court and this Court. The parties through their learned counsel are directed to appear before the First Appellate Court on 26th September, 2003.

(R.C. LAHOTI)

.....J.

.....J.

(ASHOK BHAN)

New Delhi,
August 14, 2003.