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SLP(C)No. 1809 OF 2003

ITEM No.207

Court No. 1

SECTION XIIA
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.1809/2003
(From the judgement and order dated 11/10/2002 in Appeal No. 1440/89
of The HIGH COURT OF A.P AT HYDERABAD)

MALAPALI MUNASWAMY NAIDU

Petitioner (s)

VERSUS

P. SUMATHI

Respondent (s)

(With prayer for interim relief and office report)
(For Final Disposal)

Date : 23/07/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE G.P. MATHUR

For Petitioner (s)Mr. V. Krishna Murthy,Adv.

For Respondent (s)Mr. R Jagannath Goulay, Adv.
Mr. C. Ravichandran Iyer,Adv.

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

Leave granted.

The appeal stands allowed, in terms of the signed order, with no order as to costs.

The parties through their respective counsel are directed to appear before the High Court on 1
3th September, 2004.

(D.P. WALIA)
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. 4363 OF 2004

[arising out of SLP(C) No.1809 of 2003]

Malapali Munaswamy Naidu ... Appellant

vs.

P.Sumathi... Respondent

O R D E R

Leave granted.

A suit for specific performance of an agreement to sell filed by the respondent was dismissed by the trial court holding the agreement to be inadmissible in evidence. The plaintiff preferred first appeal in the High Court. When the appeal was taken up for hearing, the counsel for the appellant herein, that is the defendant-respondent before the High Court, failed to appear and assist the Court. The High Court heard the learned counsel for the appellant before it.

The only point that was argued before the High Court was that the finding of the trial court holding the agreement to be inadmissible in evidence was not correct. The High Court did not agree with the trial court and reversed its above-said finding. In the opinion of the High Court, the agreement was admissible in evidence.

However, it is clear from the judgment of the High Court that the High Court did not go into any other issue and having reversed the finding of the trial court on the question as to the admissibility of agreement in evidence directed the suit to be decreed. In particular, the High Court did not examine whether by reference to Section 20 of the Specific Relief Act, 1963 it was a fit case for exercising discretion to decree specific performance or not. For this reason, the appeal deserves to be allowed. We are, however, of the opinion, after hearing the learned counsel for the parties before us, that, inasmuch as the matter has to go back for hearing afresh by the High Court, all the issues should be left open for consideration afresh by the High Court.

The appeal is allowed. The impugned judgment of the High Court is set aside. The first appeal is remanded for hearing and decision afresh by the High Court. The parties shall be at liberty to raise all their pleas, including the question as to the admissibility of the agreement in evidence, before the High Court and the High Court shall form its opinion afresh on all the questions arising for decision in the appeal uninfluenced by the earlier judgment of the High Court. We make it clear that we have not expressed any opinion on any of the issues arising for decision except that we have felt impressed by the need for re-hearing and decision afresh of the appeal by the High Court.

The appeal stands allowed with no order as to costs.

The parties through their respective counsel are directed to appear before the High Court on 13th September, 2004.

.....CJI

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(G.P. MATHUR)

New Delhi;
July 23, 2004.