

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4510/2007

(From the judgement and order dated 09/10/2006 in WP No. 3929/2004 of The HIGH COURT OF KARNATAKA AT BANGALORE)

JAGADISH KUMAR JAIN & ORS.

Petitioner(s)

VERSUS

VENARAM

Respondent(s)

(With prayer for interim relief and office report)

Date: 25/07/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DALVEER BHANDARI
HON'BLE MR. JUSTICE HARJIT SINGH BEDI

For Petitioner(s)

Mr. R.P. Wadhvani, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
ORDER

Heard learned counsel for the petitioner.

The petitioners are plaintiffs in a suit pending before the trial court. One witness was examined on the side of the plaintiffs. The witness was present for cross-examination and the counsel for the defendant sought adjournment and before the witness could again appear for examination, he passed away.

By its order the trial court then held that the examination-in-chief is to be expunged from the records.

-2-

The same was challenged by petitioners herein before the High Court in revision. The Revisional Court affirmed that order.

The counsel for the petitioners points out, that because of the directions to expunge the entire chief-examination of the deceased witness which is already on record and the plaintiff is unable to make use of the same for any other purpose, as permissible under law. We have not considered that aspects on merit, but leave open the same to be considered by the trial court and the interested parties would be certainly entitled to raise their objections in case the plaintiff would like to use the testimony of the deceased witness for any purpose admissible under law. Therefore, the expunging the testimony of the witness who had been examined only in chief examination is partly set aside.

In view of the facts and circumstances of the case we direct that the trial court may consider the deposition already on record in accordance with the provisions of Evidence Act to the extent permissible under law.

This order is being passed without hearing the respondents, as he is being given opportunity to raise objections before the trial court. If feel aggrieved by this order he would be at liberty to seek review of this order.

With the above observation, the special leave petition is disposed of.

[SUMAN WADHWA]
COURT MASTER

[VEERA VERMA]
COURT MASTER