

SLP(C)No. 2490 OF 2004
ITEM No.201

Court No.10

SECTION XIV
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.2490/2004

(From the judgement and order dated 12/12/2003 in CRP 412/00
of The HIGH COURT OF GAUHATI)

SWAPAN SAHA

Petitioner (s)

VERSUS

NILIMA GUPTA & ORS.

Respondent (s)

(With prayer for interim relief)
(For Final Disposal)

Date : 13/01/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Petitioner (s)Mr. Arunabh Chowdhary, Adv.
Mrs Manik Karanjawala,Adv.

For Respondent (s)
Mr. Avijit Bhattacharjee,Adv.

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

Leave granted.
The appeal is allowed in terms of the signed order.

(Shashi Sareen) (Vijay Aggarwal)
Court Master Court Master

(Signed order is placed on the file)IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2005
(Arising out of SLP(C) Nos. 2490 of 2004)

SWAPAN SAHA

...
Appellant(s)

Versus

NILIMA GUPTA & ORS.

...

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for the parties and perused the impugned order passed in revision by the High Court. The revision before the High Court arose out of order dated 30.9.2000 passed in execution proceedings which reads as follows:

"The D.H. is represented. Objector so called Transferee decree holder is also represented. Perused the petition No. 1426/14. In view of the order passed in T.Ex.No. 11/2000 on today, the further proceeding of execution be stayed till 31.10.2000. The case is posted for hearing on stay matter on 31.10.2000."

Looking to the nature of the order, we are clearly of the opinion that the revision under the amended provision of 115 of Code of Civil Procedure was not tenable and the High Court went wrong in entertaining the petition and going into the merits of controversy before the Executing Court.

Consequently the impugned revisional order of the High Court is set aside. Learned counsel appearing for the respondent wanted to address this Court on the merits of the execution petition and the objections raised to the execution. We refrain from going into the same and would allow the respondents to raise all available grounds and the arguments before the Execution Court. The impugned order of the High Court is set aside.

The appeal is allowed accordingly.

.....J.
(D.M.DHARMADHIKARI)

.....J.
(B.N.SRIKRISHNA)

New Delhi,
January 13, 2005.