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SLP(C)No. 14232 OF 1998
P.H.
ITEM No.203

Court No.11

SECTION IVA
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.14232/1998

(From the judgement and order dated 01/09/1997 in SA 242/88
of The HIGH COURT OF M.P AT JABALPUR)

KAMALCHANDRA JAIN

Petitioner (s)

VERSUS

PYARELAL AGARWAL (DEAD) BY LRS.

Respondent (s)

(With Appln(s). for substitution)
(For Final Disposal)

Date : 2/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P.MOHAPATRA
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s) Mr. U.N.Bachawat, Sr.Adv.
Mr. Shiv Sagar Tiwari, Adv.
Mr. Alok Bachawat, adv.

For Respondent (s) Mr. V.A.Mohta, Sr.Adv.
Mr. Manish Kumar, adv.
Mr. Rakesh K. Sharma, Adv.

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

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.SP2

No orders on application for substitution.
Leave granted.

Status-quo regarding possession of the property as
prevailing on date shall be maintained by the parties till
the disposal of the appeal.

Appeal is allowed. There will be no order as to
costs.

.SP1

(Suman Wadhwa)
PA to Addl.Regr.

(S.Malkani)
Court Master

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1724 OF 2001
(Arising out of S.L.P.© No.14232 of 1998)

Kamal Chandra Jain

& Appellant

Vs.

Pyarelal Agarwal (Dead) by Lrs.

& Respondent

O R D E R

Leave granted.

In this appeal, filed by the landlord the judgment of the Madhya Pradesh High Court in Second Appeal No. 242/88 is under challenge. The respondent (dead represented by LRs) was the tenant.

The suit was instituted by the appellant seeking eviction of the tenant on the ground that the premises in question was required by him for starting his business. The trial court dismissed the suit. The First Appellate Court reversed the judgment of the trial court and decreed the suit for eviction. The High Court in Second Appeal reversed the judgment of the First Appellate Court and restored the judgment of the trial court.

At the commencement of his argument Sri U.N. Bachawat learned counsel for the appellant drew our attention to the question of law formulated in paragraph one of the judgment of the High Court which reads:

Whether in the facts and circumstances of the case the first appellate court erred in law in finding that the suit accommodation was required bona fide by the plaintiff-respondent for starting his business of general provision ?

The learned counsel submitted that the question as formulated is not a substantial question of law as required under Section 100 of the Civil Procedure Code. According to him the second appeal should have been dismissed summarily on the ground that no substantial question of law was involved in the case.

Mr. V.A. Mohta, learned senior counsel appearing for the respondent contended that the question of bona fide requirement is a substantial question of law that arises in the facts and circumstances of the case. He, however, fairly accepted that the question has not been properly formulated by the High Court.

On perusal of the judgment of the High Court under challenge and on consideration of the submissions made by learned counsel for the parties, we are of the view that the interest of justice would be subserved if the judgment under challenge is set aside and the matter is remitted to the High Court to consider the question and to dispose of the second appeal afresh. The High Court will consider whether any substantial question of law arises in the appeal and if satisfied formulate the question and dispose of the appeal on merits according to law.

Accordingly, the appeal is allowed. The judgment of the High Court dated 1.9.1997 in second appeal No.242 of 1988 is set aside. The appeal is remitted to the High Court

for fresh disposal in the manner noted above. Since the suit was instituted in 1979 and the second appeal was filed in 1988, in our view, it is just and appropriate for the High Court to dispose of the appeal expeditiously. Hence we request the High Court to do so, within six months from the date of the receipt of the copy of this Order. Status quo regarding possession of the property as prevailing on date shall be maintained by the parties till the disposal of the appeal. There will be no order as to costs.

& & & & & & & J.
(D.P. MOHAPATRA)

& & & & & & & J.
(SHIVARAJ V. PATIL)

New Delhi
Dated: March 2, 2001

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