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SLP(C)No. 5783 OF 2000
ITEM No.6

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.5783/2000

(From the judgement and order dated 17/11/1999 in RFA 14/99
of The HIGH COURT OF DELHI AT N. DELHI)

VIKAS FABS & ORS.

Petitioner (s)

VERSUS

PUNJAB NATIONAL BANK

Respondent (s)

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

Date : 18/07/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE DORAISWAMY RAJU

For Petitioner (s) Mr. Ranjit Kumar, Sr. Adv.
Mr. Varun Goswami, Adv.
Ms. Binu Tamta, Adv.

For Respondent (s) Mr. Dhruv Mehta, Adv. for
Mr. S.K. Mehta, Adv.

UPON hearing counsel the Court made the following
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Leave granted.
The appeal is disposed of in terms of the signed order.

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(D.L. Chugh)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4327 OF 2001@@
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(Arising out of SLP(C) No.5783 of 2000)

Vikas Fabs & Ors.

....Appellants

VERSUS

Punjab National Bank

....Respondent

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Leave granted.
Heard learned counsel for the parties.

By judgment and decree dated 1st December, 1998 the learned Single Judge of the Delhi High Court decreed Civil Suit No.1853 of 1987 filed by the respondent Bank for recovery of a sum of Rs.6,53,553.89 along with interest @ 15% per annum from the date of filing of the suit.

For one or the other reason the appellant failed to remain present at the time of leading the evidence. Therefore, the court proceeded under Order XVI Rule 20 of the Code of Civil Procedure, 1908 and passed the decree in favour of the plaintiff for the amount claimed in the suit.

The appellant (herein) preferred the first Regular Appeal No.14 of 1999 before the Delhi High Court. That appeal was also dismissed on 17th November, 1999.

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At the time of hearing of this appeal learned counsel for the appellants pointed out that the order passed by the High Court is on the face of it, illegal and erroneous because it has not taken into consideration the order passed by the same court in IA No.2075 of 1988 wherein the Bank was directed to adjust Rs.1,20,000/- in favour of appellant No.3 with the same rate of interest as was claimed by the Bank. He also pointed out that apart from this amount, the plaintiff had filed Civil Suit No.1737 of 1987 for recovery of Rs.18,07,228.92 with interest on the ground that the draft for the said amount was deposited with the Bank for encashment and for some mysterious reasons the amount was returned to the US Bank. It is contented that the said suit is pending before the High Court since years.

Considering the aforesaid facts, in our view, opportunity of leading the evidence is required to be given to the appellants so that they can point out all the necessary facts, including the previous order passed by the High Court in IA No.2075 of 1988. Hence, the impugned judgment and decree passed by the High Court in Civil Suit No.1853 of 1987 which is confirmed in Regular First Appeal No.14 of 1999 is set aside. However, the appellants are

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directed to deposit a sum of Rs.5,33,000/- before the trial court on or before 15th October, 2001. On failure to deposit the same before the due date the decree passed by the High Court would stand restored. After deposit of the aforesaid amount, the High Court will proceed with the suit and decide

it on merits after giving an opportunity of leading evidence to the parties. The High Court would also simultaneously try Civil Suit No.1737 of 1987 filed by the appellants against the Bank. The Court will decide the suits pending between the parties in accordance with law on merits without being influenced by any observations made by this Court in this order or the earlier judgments rendered by the High Court in the suit.

Appeal is disposed of accordingly. There will be no order as to costs.

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(M.B. SHAH)@@
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.....J.@@
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(DORAISWAMY RAJU)@@
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New Delhi,
July 18, 2001