

L7
SLP(C)No. 11435 OF 2001

ITEM No.39

Court No. 2

SECTION IVA
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.11435/2001

(From the judgement and order dated 25/10/2000 in CRP 2530/00
of The HIGH COURT OF KARNATAKA AT BANGALORE)

DAYANANDA P. MENDON

Petitioner (s)

VERSUS

M/S. NEW INDIA ASSURANCE CO. LTD. & ORS.

Respondent (s)

(With prayer for interim relief)

Date : 21/01/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s) Mr. Girish Ananthamurthy, Adv.
Mr. P.P. Singh, Adv.

For Respondent (s) Mr. Pramod Dayal, Adv.
Ms. Lipika Sharma, Adv.

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

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Special leave granted.

For the reasons recorded in the signed order, this appeal is allowed and the orders of the trial court and the High Court are set aside. The effect of this would be that the application of the appellant being IA :No. 30 in OS NO. 248/88 stands allowed. The appellant is transposed as a plaintiff. The trial court will now proceed to decide

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the issues. It will be open to the respondent to raise such contentions as may be available to it in accordance with law.

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Kalyani. (S.L. GOYAL) @@
 AA
 COURT MASTER @@
 A AA

(Signed Order is placed on the file.)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 609 OF 2002@@
 CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC
 [arising out of SLP(C) No. 11435 of 2001]

Dayananda P. Mendon

..Appellant(s)

vs.

M/s New India Assurance Co. Ltd. & Ors.

..Respondent(s)

O R D E R@@
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Special leave granted.

In the instant case, a vessel belonging to the appellant was hypothecated and loan obtained from the Karnataka Bank Limited. This vessel was insured with respondent No. 1.

The said vessel was destroyed allegedly by fire whereupon the Bank filed a suit in which the appellant as well as the Insurance Company were parties. A number of issues were framed initially which pertained to the question of repayment of the amount to the Bank. But on 6th of July, 1993, three additional issues were framed which pertained to the liability of the Insurance Company under the insurance policy. The said additional issues were as follows:

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"1. Whether the D7 proves that D1 has violated the terms and conditions of insurance policy as contended ?

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2. Whether the D7 proves that it has rightly reproduced/repudiated the claims made for D1 as contended ?

3. Whether the suit is bad for misjoinder of necessary parties ?"

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The above issues were framed after the Insurance Company had repudiated the contract, but the suit was then compromised between the appellant and the Bank whereupon the appellant filed an application for being transposed as a plaintiff. By an order dated 16th September, 1999, this application was dismissed which was upheld by the High Court.

In our opinion, this was an appropriate case where the appellant should have been transposed as a plaintiff. It is very clear that the additional issues which were framed pertained to a dispute between the appellant herein, who was defendant No. 1 in the suit and the insurance company which was defendant No. 7. There were thus two sets of disputes before the court - one between the appellant and the Bank and the second between the appellant and the Insurance Company. The first set of disputes got settled with a compromise between the appellant and the Bank. In the second set of disputes referred to in the suit, additional issues had to be adjudicated upon. Under these circumstances, the courts below

ought to have allowed the application of the appellant for transposing him as one of the plaintiffs.

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For the aforesaid reasons, this appeal is allowed and the orders of the trial court and the High Court are set aside. The effect of this would be that the application of the appellant being IA No. 30 in OS No.248/88 stands allowed. The appellant is transposed as a plaintiff. The trial court will now proceed to decide the issues. It will be open to the respondent to raise such contentions as may be available to it in accordance with law.

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.....J.
(B.N. KIRPAL)

.....J.
(K.G. BALAKRISHNAN)

.....J.
(ARIJIT PASAYAT)

New Delhi;
January 21, 2002.