

ITEM NO.114

COURT NO.6

SECTION IV

S U P R E M E C O U R T O F I N D I A
 RECORD OF PROCEEDINGS
 CIVIL APPEAL NO(s). 241 OF 2007

YASH PAL

Appellant (s)

VERSUS

ASHOK KUMAR & ORS.
 (With office report)

Respondent(s)

Date: 13/07/2011 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU
 HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Appellant(s) Mr.Siddhartha Dave,Adv.
 Mr.Sudhir Walia,Adv.
 Mr. Abhishek Atrey,Adv.
 Ms.Jemtiben,Adv.

For Respondent(s) Mr. Rajiv Mehta,Adv.(NP)

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

The appeal is allowed in terms of the signed order.

(KUSUM SYAL)
 SR. P.A.

(INDU SATIJA)
 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(s). 241 OF 2007

YASH PAL

Appellant (s)

VERSUS

ASHOK KUMAR & ORS.

Respondent(s)

O R D E R

We have heard learned counsel for the appellant.

This appeal arises in the following circumstances:

Plaintiffs - respondent nos. 1 to 3 herein filed suit for
 permanent injunction inter alia praying that defendants, their

servants, employees, agents, family members or anybody through them be restrained from; igniting the Brick-Kiln, (ii) selling the stock of bricks and (iii) selling the vehicles. According to the plaintiffs, on the basis of the compromise between the parties, an application for withdrawal of the suit was filed. The Additional Civil Judge by order dated 17.04.2001 dismissed the suit as withdrawn. However, there is no mention in the order that that suit was dismissed as withdrawn on account of compromise. Further the order does not indicate that the suit was dismissed as withdrawn on the basis of the compromise. Naturally, therefore, no decree was drawn.

The plaintiff filed an application under Order 21 Rule 32 of the Code of Civil Procedure (hereinafter referred to as the

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"Code") inter alia praying for punishing defendant no.1 Yash Pal - the appellant herein for not fulfilling his undertaking dated 17.4.2001. The Civil Judge vide order dated 17.4.2001 directed the appellant to comply with the undertaking given by him within two months from the date of the said order. The appellant challenged the aforesaid order in revision before the High Court which dismissed the same by the impugned order dated 21.11.2005.

Mr.Siddhartha Dave, learned Counsel appearing on behalf of the appellant raises a very short point. He submits that Order 21 Rule 32 of the Code provides for detention of the person disobeying the decree of injunction granted by the Court of competent jurisdiction and in the present case there being no decree, the provision of Order 21 Rule 32 of the Code is wholly inapplicable.

Although the respondents have duly been served and representation has been made but when the matter is taken up, nobody has chosen to appear on their behalf.

We find substance in the submission of Mr. Dave. The suit was filed by the plaintiffs and on the basis of an application filed for its withdrawal, the same was dismissed. Suit has not

been dismissed in terms of the compromise on the undertaking given by the defendants. Further, no decree has been drawn. In our opinion, Order 21 Rule 32 of the Code shall come into picture when there is a decree for an injunction. In the

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present case, there has been no such decree. Therefore, in our opinion, the application filed by the plaintiffs under Order 21 Rule 32 of the Code was absolutely misconceived.

In the result, we allow the appeal, set aside the order of the Civil Judge as also the High Court. There shall be no order as to costs.

.....J
(MARKANDEY KATJU)

.....J
(CHANDRAMAULI KR. PRASAD)

NEW DELHI
July 13, 2011