

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(s).7305/2004

(From the judgement and order dated 27/11/2003 in CO No. 2577/2003 of The
HIGH COURT OF CALCUTTA)

KUNWARJEE PANDEY

Petitioner(s)

VERSUS

RAM PRAVESH PANDEY & ORS.

Respondent(s)

(With prayer for interim relief and office report)

(For final disposal)

Date: 18/10/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE RUMA PAL

HON'BLE DR. JUSTICE AR. LAKSHMANAN

For Petitioner(s) Ms. S. Janani,Adv.

For Respondent(s)

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed with no order as to costs.

(Usha Bhardwaj)
P.S. To Registrar

(Madhu Saxena)
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 S.L.P.(Civil) No.7305 of 2004)

Kunwarjee Pandey

...Appellant(s)

vs.

Ram Pravesh Pandey & Ors.

...Respondent(s)

O R D E R

Leave granted.

None appears on behalf of the respondents despite service having been

effected.

The subject matter of the challenge in this appeal is an order

passed by the High Court on a civil revision petition setting aside the order of the

District Judge by which the District Judge had rejected the application of the

respondent No.1 for recalling an order directing the probate proceedings to

be

decided ex-parte as far as he is concerned. The probate proceeding was filed i
n

1988 by the appellant. It is not in dispute that the respondent N
o.1 had been

served in 1991. This was also affirmed by the High Court.

:2:

Despite such service of notice, the respondent No.1 has not chosen to contest the
proceedings which was contested by the other respondents named in this appeal.

In 2003, the respondent No.1 filed an application for setting aside the order by
which the proceedings had been set down ex-parte as far as he is concerned. The
trial court dismissed the application finding that the application was not bona
fide.

The only ground on which the High Court set aside the order of the
District Magistrate was that while trying probate proceedings the Court was a
court of conscience that the matter should preferably be decided in the presence
of all the parties. The High Court also directed the expeditious disposal of the
matter by the trial court.

In our view, the High Court should not have interfered with t
he
order of the District Judge. Despite the Court sitting as a court of conscience

:3:

while trying probate proceedings, nevertheless the conscience cannot be evoked for helping a person who himself lacks bonafides and who was guilty of gross and unexplained laches.

The appeal is, accordingly, allowed. The decision of the High Court is set aside and the order of the District Judge confirmed. There shall be no order as to costs.

.....J.

(RUMA PAL)

.....J.

(DR.AR.LAKSHMANAN)

New Delhi,
October 18, 2005.