

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.11121/2001

(From the judgement and order dated 22/04/1999 in AN 200/99  
of The HIGH COURT OF BOMBAY)

UNION OF INDIA & ANR.

Petitioner (s)

VERSUS

MACHINERY SALE CORPORATION

Respondent (s)

(With appln(s). for c/delay in filing SLP and c/delay in filing  
supplementary affidavit)  
(With prayer for interim relief)

Date : 10/01/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE S.B. SINHA  
HON'BLE DR. JUSTICE AR. LAKSHMANAN

For petitioner (s) Mr. S Ganesh, Sr.Adv.  
Mr. PS Narasimha, Adv.  
Mr. P Sridhar, Adv.  
Mr. B.V. Balaram Das,Adv.

For Respondent (s) Mr. Gopal Subramaniam, Sr.Adv.  
Mr. Udai Umesh Lalit,Adv.

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

Delay condoned.

Leave granted.

The appeal is allowed. There shall be no order as  
to costs.

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(Alka Dudeja)  
Court Master

(S. Krishnan)  
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. 105 of 2003@@  
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UNION OF INDIA & ANR.

... Appellant (s)

VERSUS

MACHINERY SALE CORPORATION

... Respondent (s)

O R D E R@@  
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Heard counsel for the parties.  
Leave granted.

The respondent herein filed a suit for recovery of money under Order XXXVII of the Code of Civil Procedure, 1908. In the said suit, the Union of India was not impleaded as the defendant. The Materials Superintendent, Eastern Naval Command, Vishakhapatnam and the Secretary, Ministry of Defence, Government of India were arrayed as Defendant Nos. 1 and 2 respectively. Both the said defendants were served. However, no written statement was filed. Ultimately, the suit was decreed ex-parte on 27th January, 1998. Appellant No. 1 herein alleged that it had no notice about the filing of the suit or service of notice on it and it was only on 14th May, 1998 that it came to know about the ex-parte ...2/-

decree dated 27th January, 1998. It is under such circumstances, the Union of India moved an application for setting aside the ex-parte decree. The Learned Single Judge of the High Court dismissed this application on the ground that it was belated. Aggrieved, the appellant filed an appeal before the Division Bench of that Court. However, the same was also dismissed. It is against the said judgment, the appellant has preferred this appeal.

It is not disputed that the Union of India was not arrayed as the defendant in the suit. It is also not disputed that at no point of time, notice of the suit was ever served on the appellant. We are satisfied that the Union of India was a necessary party in the suit. In that view of the matter, the suit suffered from misjoinder of parties and deserves dismissal. However, it is agreed between the parties that now the Union of India should be deemed to be impleaded as Defendant No. 3. In that view of the matter, we set aside the impugned orders and ex-parte decree dated 27th January, 1998 and remit the matter to the trial court to decide the suit in ...3/-

accordance with law. Any amount paid to the plaintiff-respondent pursuant to the ex-parte decree, shall be refunded to the appellant within a period of two months. The plaintiff-respondent is given liberty to amend the plaint within six weeks and within this period, the defendants in the suit shall file a written statement. We also permit the plaintiff-respondent to convert the summary suit in a regular suit, subject to payment of Court fee and other formalities, if required under law.

The appeal is allowed. There shall be no order as to costs.

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(S.B. Sinha)@@  
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.....J.@@  
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(AR. Lakshmanan) @@  
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New Delhi,  
January 10, 2003