

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).11158/2003

(From the judgement and order dated 28/02/2003 in CR No. 1153/2001 of

The

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

BALWANT SINGH

Petitioner(s)

VERSUS

DARSHAN SINGH & ORS.

Respondent(s)

(With prayer for interim relief and office report)

Date: 26/04/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Petitioner(s)

Mr. Suresh Kumari, Adv.

Mr. Dinesh Verma, Adv.

Mr. A.P. Mohanty, Adv.

For Respondent(s)

Mr. A.K. Chhabra, Adv.

Mr. Chanchal Kumar Ganguli, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order. No

orders as to costs.

(RAJESH DHAM)

(VIJAY AGGARWAL)

COURT MASTER

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 SLP(C) No. 11158/2003]

BALWANT SINGH

... Appellant

vs.

DARSHAN SINGH & ORS.

... Respondents

O R D E R

Leave granted.

In the suit pending in the trial court, during the course of trial, the plaintiff-appellant moved an application under Order XVIII Rule 17A read with Section 151 of the Code of Civil Procedure for producing additional evidence. By order dated 13.2.2001 the application was allowed subject to certain terms. The defendant-respondent No. 1 preferred a revision in the High Court which has been allowed vide order dated 28.2.2003 solely on the ground that by the time the High Court heard and decided the revision, Rule 17A abovesaid itself had stood deleted from the text of the Code.

Rule 17A was inserted by Act 104 of 1976 with effect from 1.2.1977. This Rule was in existence on the date on which the trial court passed the order. However, the Rule has been omitted from the body of Order XVIII by Act 46 of 1999 which amendment came into force with effect from 1.7.2002. The validity of the order passed by the trial court should have been decided by reference to the power which vested in the trial court and was exercised on the date

of passing of the order by the trial court and not by the High

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Court. The view to the contrary taken by the High Court is erroneous

and cannot be upheld.

The order dated 13.2.2001 permitting the plaintiff to tender additional evidence was an order passed by the trial court in exercise of its discretion which order would not be liable to be interfered with ordinarily in exercise of revisional jurisdiction by the High Court. We do not find that the trial court did not have the jurisdiction to pass the order which it did or acted with material irregularity in exercise of its jurisdiction while passing that order.

The impugned order of the High Court dated 28.2.2003 is set aside and the order dated 13.2.2001 passed by the trial court is restored.

The appeal is disposed of accordingly. No orders as to

costs.

.....CJI

(R.C. LAHOTI)

.....J

(D.M. DHARMADHIKARI)

.....J

(P.K. BALASUBRAMANYAN)

New Delhi;

April 26,2005.