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SLP(C)No. 10499 OF 2001
ITEM No.204

Court No.10

SECTION XI
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.10499/2001

(From the judgement and order dated 15/05/2001 in WP 1209/2001
of The HIGH COURT OF U.P AT LUCKNOW)

MOHAMMAD SHAFEEQ

Petitioner (s)

VERSUS

MIRZA MOHAMMAD HUSAIN & ORS.

Respondent (s)

(With Appln(s). for exemption from filing O.T. and taking additional
document on record and with prayer for interim relief)
(For Final Disposal)

With SLP(C)No.15460/2001-(With appln.(s) for exemption from
filing O.T. and with prayer for interim relief)(For final disposal)

Date : 01/02/2002 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Petitioner (s) Mr. Shakil Ahmed Syed,Adv.

For Respondent (s) Mr. Sudhir Chandra, Sr. Adv.
Mr. Trideep Pais, Adv.
Ms. Temina Punwani, Adv.
Mr. Achintya Dwivedi, Adv.
for Mr. Nikhil Nayyar, Adv.

UPON hearing counsel the Court made the following
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Learned counsel for the parties made their
submissions for 15 minutes.
Leave granted in both the special leave petitions.
The appeals are allowed in terms of the signed
order.

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Sarita (Radha Rani Bhatia)@@
AA
Court Master@@
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(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 909 OF 2002@@
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(Arising out of SLP(C)No.10499/2001)

MOHAMMAD SHAFEEQ

...APPELLANT

VERSUS

MIRZA MOHAMMAD HUSAIN & ORS.

...RESPONDENTS

WITH CIVIL APPEAL NO. 910/2002 @ SLP(C)No.15460/2001

O R D E R@@
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Leave granted in both the special leave petitions.

The appellant preferred the objections under Order 21 Rule 97 C.P.C. offering resistance to execution of decree, wherein he was not a party vide order dated 30.5.2000. His application was rejected by the executing court. He preferred an appeal which was registered as Regular Civil Appeal No.122/2000 in the Court of District Judge, Lucknow on 10.8.2000, the appeal was allowed. The order of the executing court was set aside and the case was remanded back to the executing court with a direction to decide the objections of the appellant afresh in accordance with law. This order was put in issue by the decree holder by filing a Civil Writ Petition before the

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High Court, which was allowed. The High Court quashed the order of the District Judge dated 10.8.2000, forming an opinion that the appellant should have preferred a revision and not an appeal and therefore, the order of the District Judge, passed in exercise of appellate jurisdiction, was void and a nullity. Submitting to the order of High Court the appellant now preferred a Civil Revision against the order of executing court dated 30.5.2000, seeking condonation of delay in filing the revision. The learned Additional District Judge, who heard the revision, condoned the delay in filing the revision and set it down for hearing on merits. This order of the revisional court condoning the delay was, once again, put in issue by the decree holder by filing a writ petition in the High Court. The High Court has allowed the writ petition and set aside the order of the Additional District Judge condoning the delay in filing the revision. The principal reason, which has persuaded the High Court in passing the order, is that the appellant should have prayed for conversion of his appeal before the District Judge into revision and that prayer, though made before the High Court, was refused.

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In our opinion, the High Court has taken too technical a view of the error committed by the appellant in pursuing the remedy available to him under the law. The appellant had been prosecuting his remedy diligently and there is nothing to doubt his bona fides. These aspects were taken into consideration by the learned Additional District Judge while condoning the delay in filing the revision. In our opinion, the High Court ought not to have interfered with the order of the Additional District Judge, condoning the delay in filing the revision which being an order passed in exercise of discretion vested in the learned Additional District Judge and for reasons, was not open to interference by High Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution.

The appeals are allowed. The impugned order of the High Court dated 15/5/2001 is set aside. The Civil Revision, filed by the appellant before the Additional District Judge, shall stand restored to its file and set down for hearing on merits and decision in accordance with law.

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However, in view of the delay that has already taken place, learned Additional District Judge may proceed to hear and decide the revision expeditiously.

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.....J.
(R.C. LAHOTI)

New Delhi,
February 1, 2002.

.....J.
(BRIJESH KUMAR)