

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8928/2007

(From the judgement and order dated 27/02/2007 in CM No. 291/2007 of the
HIGH COURT OF DELHI AT NEW DELHI)BALWANT KAUR
VERSUS

Petitioner(s)

RAJ KUMAR KAPOOR & ANR.

Respondent(s)

(With prayer for interim relief)
(FOR FINAL DISPOSAL)

Date: 26/09/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE CYRIAC JOSEPHFor Petitioner(s) Mr. Sunil Dutta Mishra,Adv.
Mr. A.S. Pundir,Adv.For Respondent(s) Mr. Pramod Gupta,Adv.
Mr. Gaurav Kejriwal,Adv.UPON hearing counsel the Court made the following
ORDER

Leave granted.

Heard the learned counsel for the parties for about an hour.

The appellant is directed to deposit 50% of the decretal
amount in stead and place of 100%, within four weeks from date and
the appeal is allowed in terms of the signed order. There
shall,however, be no order as to costs.(A.S. BISHT)
COURT MASTER(PUSHAP LATA BHARDWAJ)
COURT MASTER

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5879 OF 2008
[Arising out of SLP(C) No.8928/2007]

BALWANT KAUR

... APPELLANT(S)

:VERSUS:

RAJ KUMAR KAPOOR AND ANR.

... RESPONDENT(S)

ORDER

Leave granted.

Having heard the learned counsel appearing for the parties, we are of the opinion that the learned Trial Judge as also the High Court had imposed a harsh condition in setting aside the ex-parte decree passed against the appellant herein in so far as a direction for depositing the entire suit amount has been issued.

Indisputably, summons had not been served upon the defendant-appellant. The suit, of course, was filed under Order 37 of the Code of Civil Procedure. The learned Trial Judge, however, did not express any opinion as to how it arrived at the conclusion that the defendant-appellant had no defence at all.

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As the defendant-appellant had not filed her written statement, the question of disclosing her defence at that stage did not arise. The defence of the defendant-appellant, if any, has to be gone into only after the written statement is filed.

We are, therefore, of the opinion that the impugned judgment cannot be sustained in its entirety.

The appellant is hereby directed to deposit 50% of the decretal amount in stead and place of 100%, within four weeks from date.

The appeal is allowed to the aforementioned extent. There shall, however, be no order as to costs.

.....J
(S.B. SINHA)

.....J
(CYRIAC JOSEPH)

NEW DELHI,
SEPTEMBER 26, 2008.