

H\$
SLP(C)No. 11818 OF 1999

ITEM No.203

Court No. 6

SECTION IX
A/N MATTER

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.11818/1999

(From the judgement and order dated 07/04/1999 in SFJ 313/97
in Summary Suit No.3646/1996 of The HIGH COURT OF BOMBAY)

STAR CHEMICALS (BOMBAY) LTD.

Petitioner (s)

VERSUS

KEDIA DISTELLERIES LTD. & ORS.

Respondent (s)

(For Final Disposal)

Date : 20/07/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.N. KHARE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s) Mr. Rajiv Nanda,Adv.
Ms. Ramni Taneja,Adv.

For Respondent (s) Mr. S.K. Gambhir,Sr.Adv.
Mr. Avinash Sinha,Adv. for
Mr. R.K. Maheshwari,Adv.

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

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

Leave granted.

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

.SP1

(Neelam Kawatra)
Court Master

(S. Krishnan)
Court Master

Signed order is placed on the file.

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4416 OF 2001
(Arising out of S.L.P© No. 11818/1999)

Star Chemicals (Bombay) Ltd. .. Appellant

-vs-

Kedia Distelleries Lrtd. & ors. .. Respondents

O R D E R

Leave granted.

The appellant herein, filed a Summary Suit at the High Court of Judicature at Bombay for recovery of money along with interest against respondent Nos. 1, 2, 3 and 4 under the provisions of Order XXXVII C.P.C. In response to the summons issued by the Court, respondent No. 1 filed an affidavit in reply, wherein it was stated that respondent No. 1 had been declared a sick industrial company by the BIFR and as such the matter cannot be proceeded against them. Respondent No. 2 did not file any affidavit in reply to the summons for judgment. The High Court, in so far as respondent No. 1 was concerned, adjourned the suit sine die until disposal of the proceedings before the BIFR and decreed the suit against respondent Nos. 3 and 4 in terms of prayer (a) of the plaint. So far as respondent No. 2 was concerned, an unconditional leave was granted to defend the suit, although no affidavit in reply to the summons for judgment was filed by respondent No. 2. Aggrieved against the order of the High Court granting unconditional leave to respondent No. 2, the appellant has filed this appeal. It is admitted that no affidavit in reply to the summons for judgment was filed by respondent No. 2. We are of the view, that in the absence of any material, the Court was not justified in granting unconditional leave to respondent No. 2 to defend the suit. On this short ground alone, the said order is liable to be set aside. We, accordingly, set aside the order under challenge to the extent it relates to respondent No. 2. However, it will be open to respondent No. 2 to file an affidavit in response to the summons for judgment. In case such an affidavit is filed, the High Court shall re-consider as to whether the unconditional leave to defend the suit be granted to respondent No. 2. Learned counsel also urged that respondent No. 1 is no longer a sick unit and, therefore, the Court may be directed to proceed against it. We are not deposed to express any opinion in that regard. However, it would be open to the appellant to bring to the notice of the Court any subsequent event that has taken place.

In view of what is stated above, the appeal is allowed. There shall be no order as to costs.

& & & & & & & & .J
(V.N.Khare)

& & & & & & & J
(B.N.Agrawal)

New Delhi;
July 20, 2001