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SLP(C)No. 13283 OF 2000

ITEM No.202

Court No. 3

SECTION IVA
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.13283/2000
(From the judgement and order dated 14/03/2000 in CRP 312/00
of The HIGH COURT OF KARNATAKA AT BANGALORE)

SEEMA & ANR.

Petitioner (s)

VERSUS

BANK OF MAHARASHTRA

Respondent (s)

(For Final Disposal)

Date : 02/03/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MRS. JUSTICE RUMA PAL

For Petitioner (s)

Mr. S.N. Bhat,Adv.

For Respondent (s)

Mr. Sudarsh Menon,Adv.
Mr. Y P Chandna, Adv.

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

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Special leave granted.

For the reason given in the signed order, this appeal is allowed, the judgment of the High Court and that of the trial court refusing payment to the appellants is set aside and an order is passed directing the respondent to pay to the appellants sum of Rs. 32,000/- plus interest at the rate of 12 per cent per annum from the date of deposit till the date of payment.

No costs.

(D.P. WALIA)
Court Master

(S.L. GOYAL)
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. 1695 OF 2001@@
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[arising out of S.L.P.(C) No. 13283/2000]

Seema & Anr. ..Appellant(s)

vs.

Bank of Maharashtra ..Respondent(s)

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Special leave granted.

In the instant case, suit had been filed by the respondent against the appellants' father and grand-mother. In the written statement, it was alleged that there was forgery and the defendants denied their liability to pay any amount to the respondent herein. During the pendency of the suit, interim orders were passed directing the defendants to deposit in Court a sum of Rs. 32,000/- which was done. Subsequently on 4th May, 1993, defendant No. 1 died leaving behind him the appellants herein. Defendant No. 2, who was grand-mother, also died. The respondent-Bank took no steps to bring on record the legal representatives of the deceased defendants and ultimately on 10th November, 1993 the Court disposed of the suit as having abated. Till today, the abatement has not been set aside or the suit revived.

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The appellants claimed through a legal notice, which was sent, repayment of Rs. 32,000/- which had been deposited plus interest at the rate of 18 per cent. When payment was not made, an application was filed by the appellants for direction to pay back the money. In the meantime, the respondent's application for setting aside abatement was dismissed by the trial court and that order has become final. Against the dismissal of appellants' application for refund of Rs. 32,000/- plus interest, revision petition was filed to the High Court, but without success. Hence, this appeal by special leave.

We have heard the learned counsel for the parties. It is quite clear that it was by virtue of the orders passed by the trial court that defendant No. 1 deposited Rs. 32,000/- in Court. This deposit was made under protest and without prejudice to the rights of the defendant. When the suit was dismissed, the claim for restitution cannot be defeated on the plea that money was owed to the respondent. The claim of the respondent was never admitted by the defendants and the suit having been dismissed the Court was duty bound to direct the respondent herein to pay back the money which he had received under the orders of the Court along with such interest as the

Court might deem proper.

For the aforesaid reason, this appeal is allowed, the judgment of the High Court and that of the trial court

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refusing payment to the appellants is set aside and an order is passed directing the respondent to pay to the appellants sum of Rs. 32,000/- plus interest at the rate of 12 per cent per annum from the date of deposit till the date of payment.

No costs.

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.....J.
(B.N. KIRPAL)

.....J.
(DORAISWAMY RAJU)

.....J.
(RUMA PAL)

New Delhi;
March 2, 2001.

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