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SLP(C)No. 14110 OF 2000

ITEM No.22

Court No.11

SECTION XVII  
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.14110/2000

(From the judgement and order dated 10/07/2000 in LPA 112/00  
of The HIGH COURT OF PATNA AT RANCHI)

SHAILESH PRASAD Petitioner (s)

VERSUS

UNITED COMMERCIAL BANK Respondent (s)

(With prayer for interim relief)

Date : 03/08/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE U.C. BANERJEE  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Petitioner (s) Mr. S.B. Sanyal, Sr. Adv.  
Mr. Ashok Kr. Pandey, Adv.  
Mr. Akhilesh Kumar Pandey, Adv.

For Respondent (s) Mr. A.K. Raina, Adv.  
Mr. Anil Kumar Jha, Adv.

UPON hearing counsel the Court made the following  
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Leave granted.

The appeal is dismissed in terms of the signed  
order with costs assessed at Rs. 15,000/-.

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Sushma (D.D. Jindal)  
Assistant Registrar

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2001@@  
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Shailesh Prasad ..... Appellant (s)

versus

United Commercial Bank ..... Respondent(s)

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Leave granted.

This appeal is directed against the final order and judgment dated 10.7.2000 passed by the High Court of Judicature at Patna, Ranchi Bench in LPA No. 112 of 2000(R).

Mr. Sanyal appearing in support of the appeal contended that the High Court was in clear error in allowing the LPA filed at the instance of UCO Bank.

On the factual score, it appears that the Certificate Debtor being the appellant herein filed a suit for quashing of the Certificate proceeding but ultimately the suit was dismissed as having been not maintainable. Being aggrieved by the order of dismissal however, the appellant filed a First Appeal before the High Court, wherein he prayed for an order of stay by way of grant of injunction under order 39 Rules 1 and 2 Civil ...2..

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Procedure Code. The High Court however, passed an order of stay, against which a LPA has been filed by the Bank whereon the Division Bench allowed the appeal as noticed above. Two reasons have been formulated thereof, the first being the suit for quashing of the certificate proceeding is not maintainable and secondly, that money claim cannot be stayed in any view of the matter. Admittedly the appeal pertaining to the maintainability of the certificate proceeding is pending for adjudication. This order in the LPA would undoubtedly negate such a proceeding and thus the same would neither be ascribed to be fair nor justiceable without considering the matter in detail.

Considering the fact situation in issue and in the interests of justice, we think it appropriate to dispose of the appeal with the direction in the matter as follows: (a) that the order dated 10th July 2000 stands set aside and (b) the appellant herein namely the Certificate Debtor is directed to furnish security to the satisfaction of the First Appellate Court for the entire amount covering the amount of Certificate issued against the appellant herein. Such security should be furnished within a period of eight weeks from the date of ...3..

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communication of the order. If the security is furnished within the stipulated time as above, the First Appellate Court should deal with the matter as expeditiously as possible and preferably within six weeks from the date of furnishing such security. In the event, however, the

security is not furnished within the stipulated time then and in that event the appeal shall stand dismissed with costs assessed at Rs.15,000.

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.....J  
(U.C. BANERJEE)

.....J  
(SHIVARAJ V. PATIL)

New Delhi,  
August 3, 2001

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