

ITEM NO.5

COURT NO.4

SECTION XIV

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(s).14046/2011

(From the judgement and order dated 02/05/2011 in  
of The HIGH COURT OF DELHI AT N. DELHI)

FAO No. 213/2011

ATUL AGARWAL

Petitioner(s)

VERSUS

SUBHASH CHAND BANERJI

Respondent(s)

(With prayer for interim relief)

Date: 16/05/2011            This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI  
          HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD  
          (VACATION BENCH)

For Petitioner(s)            Mr.Siddharth Luthra, Sr.Adv.  
  Mr.Sanjay Grover, Adv.  
  Ms.Meenakshi Grover, Adv.

For Respondent(s)            Mr.Nikhil Majithia, Adv.

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

Feeling aggrieved by refusal of the learned Single Judge of the Delhi High Court to set aside the order passed by Additional District Judge No.3(C), Delhi dismissing the application filed by him under Order 9 Rule 13 read with Section 151 of the Code of Civil Procedure, the petitioner has preferred this petition under Article 136 of the Constitution.

The suit filed by the respondent, in whose favour the landlord had executed registered Will, for eviction of the petitioner was decreed by the trial Court vide its judgment dated 24.2.2009. After one month, the petitioner filed an application

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for setting aside the ex-parte judgment and decree by contending that he had not been served with the notice issued by the trial Court.

After considering the pleadings of the parties, the trial Court dismissed the petitioner's application by observing that notice of the suit filed by the respondent will be deemed to have been served by way of publication in the newspaper.

The learned Single Judge dismissed the appeal filed by the petitioner and confirmed the order passed by the trial Court.

We have heard Shri Siddharth Luthra, learned senior counsel appearing for the petitioner and Shri Nikhil Majithia, learned counsel for the respondent. In our view, the finding recorded by the trial Court and the learned Single Judge of the High Court that notice of the suit filed by the respondent was duly served upon the petitioner does not suffer from any legal error warranting interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed. However, time is allowed to the petitioner till November 30, 2011 to vacate the suit premises and handover possession thereof to the respondent subject to his filing usual undertaking before this Court within four weeks.

It is also made clear that during the intervening period, the petitioner shall not induct any person in the suit premises in any capacity whatsoever.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master