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SLP(C)No. 3472 OF 2004
ITEM No.52

Court No. 1

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.3472/2004

(From the judgement and order dated 28/04/2003 in CRP 76/02
of The HIGH COURT OF PATNA)

BHULAN ROUT & ANR.

Petitioner (s)

VERSUS

LAL BAHADUR YADAV

Respondent (s)

(With Appln(s). for c/delay in filing SLP and c/delay in refileing SLP
and Raising additional grounds)(With prayer for interim relief)

Date : 23/08/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE G.P. MATHUR

For Petitioner (s)Mr.Prabhat Kumar, Adv.
Mr. Aniruddha P. Mayee, Adv.

For Respondent (s)Mr. H.L. Agrawal, Sr. Adv. (NP)
Mr. Gaurav Agrawal, adv.
Mr. Prashant Kumar,Adv.

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

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order placed on the file.

No order as to the costs.

(Ajay Kr. Jain)

(Radha R. Bhatia)

Court Master

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2004
(Arising out of SLP(C) No. 3472 of 2004)

Bhulan Rout & Anr.

....

Appellants

Versus

Lal Bahadur Yadav

....

Respondent

O R D E R

Delay condoned.

Leave granted.

By order dated 8.2.2001, the Trial Court allowed an application under Order IX Rule 13 of the CPC and set aside the ex-parte decree passed against the applicants therein. Feeling aggrieved by the said order dated 8.2.2001 the plaintiffs filed an "appeal" in the Court of District Judge, Siwan which was allowed by order dated 4.10.2001. Against this order the defendants preferred a revision which has been dismissed by the High Court. They have come up to this Court by filing this petition for special leave.

The only submission made by the learned counsel for the appellants is that the order dated 4.10.2001 passed by the learned District Judge, Siwan is without jurisdiction inasmuch as the order of the Trial Court passed on application under Order IX Rule 13 CPC and allowing the application by setting aside the ex-parte decree could not have been appealed against. A bare perusal of Order XLVIII of the CPC shows that an appeal is maintainable, insofar as an application under Order IX Rule 13 CPC is concerned, only against an order rejecting an application and not against an order allowing the application. The appeal before the learned District Judge was wholly misconceived and not maintainable and the same could not have been allowed. The learned counsel for the respondent has found it difficult to dispute this legal position.

The appeal is allowed. The order dated 4.10.2001 passed in M.A. No. 8/2001 passed by the learned District Judge, Siwan is set aside as without jurisdiction. And with that the order of the High Court passed in civil revision upholding the order of the learned District Judge also goes.

Needless to say that the respondent herein is at liberty to avail such remedy against the order dated 8.2.2001 as may be available to him under the law, which if availed, shall be heard and determined on its own merits but we express no opinion thereon.

No order as to the costs.

.....CJI.
(R.C. LAHOTI)

.....J.
(G.P. MATHUR)

New Delhi
August 23, 2004