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SLP(C)No. 17541 OF 1999

ITEM No.201

Court No. 2

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.17541/1999

(From the judgement and order dated 08/10/1999 in LPA 332/99
of The HIGH COURT OF M.P AT JABALPUR)

BRIJENDRA MISHRA

Petitioner (s)

VERSUS

STATE OF M.P. & ORS

Respondent (s)

(With prayer for interim relief)
(For Final Disposal)

Date : 27/07/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.P. BHARUCHA
HON'BLE MR. JUSTICE Y.K. SABHARWAL

For Petitioner (s) Mr. S.S. Khanduja,Adv.
Mr. Yash Pal Dhingra,Adv.

For Respondent (s)

UPON hearing counsel the Court made the following
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Leave granted.

The civil appeal is allowed.

The appellant shall pay to the respondents the costs
of this appeal, fixed at Rupees five hundred.

(T.I. Rajput)
Court Master

(Shelly Sengupta)
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.4747 of 2001@@
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(Arising out of S.L.P. (C) No.17541 of 1999)

Brijendra Mishra ...Appellant (s)

Versus~

State of Madhya Pradesh & Ors.Respondent (s)

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Leave granted.

The notice on the special leave petition stated that the matter might be disposed of at this stage by an order setting aside the order under challenge, condoning the delay in filing the appeal and restoring the appeal to the High Court for fresh disposal, with an order of appropriate costs in favour of the respondents.

The respondents have been served but have not chosen to put in an appearance.

By the order under challenge, the High Court noted that the appeal was barred by eleven days. It did not pass an order on the application for condonation thereof but went on to say that it had considered the order of the learned Single Judge and found no ground to interfere in the appeal.

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It would appear that the appeal was dismissed principally on the ground of delay because of the phraseology used thus: "The appeal is barred by 11 days. We have also@@

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gone through the order of the learned Single Judge". (Emphasis supplied) In a situation like this, it must be taken that the basic ground on which the appeal was dismissed was the ground of delay. We do not think that a delay of eleven days is such as justified the dismissal of the appeal. The High Court could have condoned it, making an order for costs in favour of the respondents, and considered the appeal on its merits thereafter.

Accordingly, the civil appeal is allowed. The order under challenge is set aside. The Letters Patent Appeal (L.P.A. No.332 of 1999) is restored to the file of the High Court to be heard and disposed of on merits.

The appellant will pay to the respondents the costs of this appeal, fixed at Rupees five hundred.

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.....J.
(S.P. Bharucha)@@
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.....J.
(Y.K. Sabharwal)@@
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New Delhi,
July 27, 2001.