

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(s).18627/2003

(From the judgment and order dated 07/08/2003 in CMWP No. 7250/2003 of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

MUNNER PRASAD

Petitioner(s)

VERSUS

UMA DUTT PANDEY & ORS.

Respondent(s)

(With prayer for interim relief)

Date: 11/09/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. T.N. Singh, Adv.

Mr. Rohit Pandey, Adv.

Mr. V.K. Singh, Adv.

Mr. Shiam Narain Singh, Adv.

For Respondent(s)

Mr. Vibhakar Mishra, Adv.

Mr. Kamal Kumar Pandey, Adv.

Mr. K.L. Janjani, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Heard learned counsel for the parties.

Appeal is allowed, impugned orders are set aside,  
application under

Order 9 Rule 13 filed by the appellant is allowed and ex-parte decree is set as

ide.

Now, the suit shall proceed in accordance with law.

No costs..

Prakash ]  
rt Master

[ Charanjeet Kaur ]

Court Master

[ Om  
Cou

[ Signed order is placed on the file ]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4063 OF 2006

( arising out of SLP(C) No. 18627 of 2003 )

Muner Prasad .. Appellant(s)

Versus

Uma Dutt Pandey & Ors. .. Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

The trial Court refused to set aside ex-parte decree passed

in a suit for specific performance of contract on the ground that the

agreement was between defendant No. 1 and the plaintiff and not

with other defendants t

though it recorded finding that neither they were served with the

summons nor they had any knowledge of the suit. The said order

has been confirmed by the High Court. Hence, this appeal by special leave.

From the ex-parte decree, it appears that the same has been passed not only against defendant No. 1 but against all the defendants. In view of this, it was necessary to serve summons

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upon them and same having not been done, the ex-parte decree was liable to be set aside and the trial Court was not justified in dismissing the petition on the ground that defendants other than defendant No. 1 were not parties to the agreement.

Accordingly, appeal is allowed, impugned orders are set aside, application under Order 9 Rule 13 filed by the appellant is allowed and ex-parte decree is set aside. Now, the suit shall proceed in accordance with law.

No costs.

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[ B.N. AGRAWAL ]

.....J

[ P.P.NAOLEKAR ]

NEW DELHI,

SEPTEMBER 11, 2006.

