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C.A.No. 1713 OF 1998

ITEM NO.102

COURT NO.6

SECTION IV

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

CIVIL APPEAL NO. 1713 OF 1998

STATE OF M.P.Appellant (s)

VERSUS

LAXMAN RAO (DEAD)BY LRS. & ANR.Respondent(s)
(With office report)

Date: 25/08/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s)Mr. Sakesh Kumar, Adv.
for Mr. Satish K. Agnihotri,Adv.

For Respondent(s)Mr. U.N. Bachawat, Sr.Adv.
Mr. Sushil Kumar Jain, Adv.
Mr. A.P. Dhamija, Adv.
Mr. H.D. Thanvi, Adv.
Mr. Sharad Singhania, Adv.
Ms. Ruchi Kohli, Adv.
Mr. Alok Bachawat, Adv.
Mr. Ram Niwas, Adv.
Ms. Pratibha Jain,Adv.

Ex-Parte

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

Mr. Sakesh Kumar, learned counsel appearing for the appellant-State started his arguments from 12.35 p.m. and concluded at 1.00 p.m. Thereafter, Mr. U.N. Bachawat, learned Senior counsel for the respondents made his submissions for 5 minutes. The appeal is allowed in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1713 OF 1998

STATE OF M.P. ... APPELLANT

VERSUS

LAXMAN RAO (DEAD) BY LRS. & ANR. ... RESPONDENTS

O R D E R

Having heard learned counsel for the parties, we are satisfied that the impugned judgment cannot be sustained for a simple reason that the second appeal has been disposed of by the High Court without their being formulation of substantial question or questions of law, if arose for consideration between the parties, as required under Section 100 of the Code of Civil Procedure ('the CPC', in short). In this view, as repeatedly held by this Court, the second appeal could be admitted and then disposed after formulation of such question or questions of law, if arose for consideration. Although, this ground is not raised in the special leave petition, a bare perusal of the ..2/-

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impugned judgment shows that the High Court did not formulate the substantial question or questions of law, as required under Section 100 of the CPC. This being the position, without expressing one way or the other on the merits of the respective contentions of the parties, we allow this appeal, set aside the impugned judgment and remit the second appeal to the High Court for consideration and formulation, if such substantial question or questions of law arise for consideration and then dispose of the second appeal. All the contentions of the parties are left open to be urged before the High Court.

.....J.
[SHIVARAJ V. PATIL]

.....J.
New Delhi, [B.N. SRIKRISHNA]
August 25, 2004.