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SLP(C)No. 720-721 OF 2001

ITEM No.28

Court No. 2

SECTION IX
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.720-721/2001
(From the judgement and order dated 28/03/2000 in CRA 452/99
and the judgment and order dated 07/08/2000 in CMA 823/00 in CRA
452/99 of The HIGH COURT OF GUJARAT AT AHMEDABAD)

GUJARAT LEASE FINANCING LTD.

Petitioner (s)

VERSUS

ABDULLA AKBARALI & CO. & ORS.

Respondent (s)

(With prayer for interim relief)

Date : 09/01/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Petitioner (s) Mr. Huzefa Ahmadi, Adv.
Mr. Shridhar Chitle, Adv. for
M/s Hathi & Co., Advs.

For Respondent (s) Mr. R P Bhatt, Sr. Adv.
Mr. M.N. Shroff, Adv.
Mr. Chirag M Shroff, Adv.

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

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Special leave granted.

The appeals are allowed and the orders of the
trial court and the High Court whereby unconditional
leave has been granted are set aside. The trial court
will now proceed in accordance with law.

No costs.

(D.P. WALIA)
COURT MASTER

(S.L. GOYAL)
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 115-116 OF 2002@@

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[Arising out of S.L.P.(C) Nos. 720-721 of 2001]

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M/s. Gujarat Lease Financing Ltd. Appellant

Versus

M/s. Abdulla Akbarali & Co. & Ors. Respondents

O R D E R@@

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Special leave granted.

In the instant case, the appellant had filed a suit under Order 37 CPC against the respondents for recovery of money. As per the appellant, loan had been granted to the respondents and when they failed to repay the same the suit had to be filed for recovery thereof alongwith interest on the principal amount. The respondents filed an application for leave to defend. Curiously enough, the trial court granted unconditional leave by holding that an injunction had been issued restraining the respondents from transferring the shares of M/s. Volvo Steels Ltd. and, therefore, that was a ground for granting unconditional leave. It may here be noticed that according to the respondents the loan so obtained was used for purchasing the shares of M/s. Volvo Steels Ltd.. It is stated by Mr. R P Bhatt, learned senior counsel for the respondents that the ...2/-

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company-M/s. Volvo Steels Ltd. has become sick and is before the B.I.F.R. The shares of the said company are more or less of no value. The challenge to the order granting unconditional leave failed before the High Court. Hence, these appeals.

It was sought to be contended in this Court that the loan was in effect given to M/s. Volvo Steels Ltd. and not to the three respondents in their individual capacity. On 29th November, 2001, order was passed directing to place on record the balance sheets of M/s. Volvo Steels Ltd. in order to ascertain whether in the said balance sheets this amount was shown as due and payable by the company to the appellant herein.

Mr. Bhatt states that the balance sheets do not disclose such state of affairs. This being so, it is quite evident that the loan was taken by the respondents in their individual capacity. The mere fact that an injunction had been granted restraining the disposal of valueless shares of M/s. Volvo Steels Ltd. cannot be a

reason for granting unconditional leave. There does not appear to be any triable issue and there was no occasion for the Court to show any indulgence.

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We, accordingly, allow these appeals, set aside the orders of the trial court and the High Court whereby unconditional leave has been granted. The trial court will now proceed in accordance with law.

No costs.

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(B.N. KIRPAL)

.....J
(K.G. BALAKRISHNAN)

.....J
(ARIJIT PASAYAT)

New Delhi,
January 9, 2002.