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C.A.No. 1540 OF 1998

ITEM No.104

Court No. 9

SECTION XVII

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. 1540/1998

MAHENDRA MANDAL & ORS.

APPELLANT (S)

VERSUS

UPENDRA PRASAD & ORS.

RESPONDENT (S)

Date : 19/11/2003 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. M.N. Rao, Sr.Adv.

Mr. Santosh Kumar, Adv.

Mr. Chandra Kanta Nayak, Adv.

Mr. R.N. Keshwani, Adv.

Mr. Jyothish A.P., Adv.

Ms. Deepthi K., Adv.

For Respondent (s)Mr. Lakshmi Raman Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties for 10 minutes.

The appeal is allowed in terms of the signed order. No costs.

The status quo order made by this Court on 6.3.1998 in relation to possession, shall be maintained till the disposal of the L.P.A.

Sarita(Shelly Sengupta)

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1540 OF 1998

MAHENDRA MANDAL & ORS.

APPELLANTS

VERSUS

UPENDRA PRASAD & ORS.

RESPONDENTS

O R D E R

The order passed by the Division Bench of the High Court in L.P.A. No.906/1997 is under challenge in this appeal. The learned Senior counsel for the appellants, after narrating the facts, drew our attention to the impugned order to contend that the Division Bench of the High Court was not right and justified in disposing of the appeal in a summary way when several contentions of law based on facts arose for consideration, while adding that the appellants have got a very good case on merits. However, he submitted that it would be appropriate in the first place that the Division Bench of the High Court examines in the L.P.A. the contentions that arise between the parties. The learned counsel for the respondents submitted that the impugned order was passed without

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notice to the respondents and he also submitted that having regard to the impugned order and the facts and circumstances of the case, this Court may pass an appropriate order. He further submitted that in view of Section 100-A of the Civil Procedure Code, the L.P.A. itself was not maintainable before the Division Bench of the High Court. This position is strongly contested by the learned counsel for the appellants

In the view we propose to take, we do not wish to express one way or the other on the merits of the respective contentions. We are satisfied that having regard to the contentions that arise for consideration in view of the facts and circumstances of the case and the evidence placed on record, the Division Bench was not right in disposing of the appeal summarily. In our view, the Division Bench ought to have considered the contentions raised in the appeal on merits, after hearing both the parties.

In this view, without stating anything more, we set aside the impugned order and remit the L.P.A. to the High Court for disposal on merits considering the contentions raised by the parties. All the contentions of

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the parties are left open to be urged before the High Court in the said L.P.A. The appeal is allowed accordingly. No costs.

We make it clear that the status quo order made by this Court on 6.3.1998 in relation to possession, shall be maintained till the disposal of the L.P.A.

.....J.  
(SHIVARAJ V. PATIL)

.....J.  
New Delhi, (D.M. DHARMADHIKARI)  
November 19, 2003.