

SLP(C)No. 23687 OF 2003
ITEM No.39

Court No. 9

SECTION XI
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.23687/2003

(From the judgement and order dated 21/07/2003 in RA 7278/03 in SA 1579/2001(Old No. 1791/82) of the High Court of Uttaranchal at Nainital)

JYOTI AND ANR (DEAD) BY LRS.

Petitioner (s)

VERSUS

HARI RAM (DEAD) BY LRS.

Respondent (s)

(With prayer for interim relief)

(With Appln(s). for further directions and bringing LRs on record bringing LRs on record deletion of the name of respondent)

Date : 26/03/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR
HON'BLE MR. JUSTICE ARUN KUMAR

For Petitioner (s)

Mr. Dinesh Kumar Garg,Adv.
Mr. R.C. Kaushik,Adv.
Mr. B.S. Billasria,Adv.
Mr. D.K. Gupta,Adv.
Mr. Rohit Pandey,Adv.

For Respondent (s)

Mr. Syed Ali Ahmed,Adv.+
Mr. Syed Tanweer Ahmed,Adv.
Mr. Awadhesh Kr. Singh,Adv.
Mr. Rajeev Sharma,Adv.
Mr. R.D. Upadhyay,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is allowed of in terms of the signed order.

(Sarojbala)

PA to Addl.Registrar

(Promila Nagpal)

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1910 OF 2004

(Arising out of SLP(C) No.23687/2003)

Jyoti and Anr.(Dead) by Lrs.

Appellant(s)

Vs.

Hari Ram (Dead) by Lrs.

Respondent(s)

O R D E R

Leave granted.

The names of Respondent Nos. 2 and 3 may be deleted from the array of parties at the risk of the appellants.

On perusal of order dated 14.12.2002, we find that order of abatement of the appeal was recalled and the application for substitution was to be later considered. By means of the impugned order dated 21.7.2003 the order dated 14.12.2002 has been recalled and the appeal has again been dismissed as abated. In our view, this order could not be passed unless the application for substitution was considered since on that ground the order of abatement passed earlier, was recalled.

...2/-

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We, therefore, allow the appeal and set aside the impugned order dated 21.7.2003 and remand the matter to the High Court for consideration of the application of abatement alongwith the application for substitution made by the appellants in the High Court.

No order as to costs.

.....J.
(BRIJESH KUMAR)

.....J.
(ARUN KUMAR)

NEW DELHI
MARCH 26, 2004.