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SLP(C)No. 23589 OF 2003

ITEM No.51

Court No. 3

SECTION XV
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.23589/2003

(From the judgment and order dated 06/08/2003 in SBCFA 303/01
of The HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR)

BUDHAR RAM & ORS

Petitioner (s)

VERSUS

DEVA RAM & ORS

Respondent (s)

(With prayer for interim relief)
(With Appln(s). for exemption from filing O.T.)

Date : 11/10/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Petitioner (s) Mr. D.N. Mishra,Adv.

Mr. Pallav Shishodia, Adv.
Mr. Hemant Sharma, Adv.

For Respondent (s)

Mr. B.D. Sharma,Adv.

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

Leave granted.

The appeal is allowed in terms of the signed order.

Jasvir
Court Master

[V.P.Tyagi]

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6688 OF 2004
(ARISING OUT OF S.L.P.(C)No.23589 of 2003)

BUDHAR RAM & ORS

Appellants

VERSUS

DEVA RAM & ORS

Respondents

O R D E R

Interlocutory application for exemption from filing official translation is allowed.

Leave granted

The challenge in this appeal is to the impugned order dated 6.8.2003 passed by the High Court rejecting the application of the appellant dated 23.4.2003 for bringing on record the legal representatives of deceased respondent no.2 Shri Kharta Ram. It appears that Shri Kharta Ram died during the pendency of the Suit. It is also not in question that in the first appeal (Civil First Appeal No. 303/2001) filed against the judgment and decree of the trial court, instead of making legal representatives of Shri Kharta Ram as respondents, Shri Kharta Ram was impleaded as respondent no.2. To correct that mistake of filing the appeal against respondents out, of which one had already died and whose legal representatives were already on the record of the trial court, the application dated 23.4.2003 was filed which has been dismissed by the impugned order of the High Court. One of the main reasons for the mistake

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according to the appellants was that the name of the legal representatives was not shown in the judgment and the decree of the trial court which continued to show the name of the dead respondent despite legal representatives having been brought on record. It also appears that even after the report had been received about the non-service on respondent no.2 on account of his having died, the appellant, took some time in filing the application. Despite it, on the facts and circumstances of the case, no malafides can be attributed to the appellants though they should have been more vigilant. But having regard to the facts of the case that there were other respondents, namely, brothers of Shri Kharta Ram who were already party respondents in the High Court appeal, the mistake committed by the appellants in filing the application with some

delay ought to have been allowed and delay condoned by imposing some reasonable amount of cost. In this view, setting aside the impugned judgment, we allow the application of the appellants filed before the High Court for bringing on record the legal representatives of Shri Kharta Ram as sought for in that application subject to the payment of cost of Rs.10,000/- by the appellant to the respondents.

The appeal is allowed accordingly.

[Y.K. SABHARWAL]

.....J

[D.M. DHARMADHIKARI]

.....J

New Delhi,
October 11, 2004