

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.11288/2000

(From the judgement and order dated 11/1/2000 in C.R. No.25/2000
of The HIGH COURT AT DELHI)

ZAHIRUL ISLAM

Petitioner (s)

VERSUS

MOHD. USMAN & ORS.

Respondent (s)

(For Final Disposal)

Date : 20/12/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SYED SHAH MOHAMMED QUADRI
HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE S.B. SINHA

For Petitioner (s) Dr. Nafis A. Siddiqui,Adv.

For Respondent (s) Ms. Binu Tamta,Adv.
No.3:For Resp. No.4: Ms. V. Deepa,Adv.
for Ms. Indu Malhotra,Adv.

For Resp. No.1: Ms. Pratibha Jain,Adv. (N/P)

UPON hearing counsel the Court made the following
O R D E R.....L.....I..T.....T.....T.....T.....T.....T.....T.....T.....J
Despite service of notice, none appears for Respondent
No.1.

Heard learned counsel for the petition for a while.

Leave is granted.

The civil appeal is allowed.

No costs.

REPORTABLE.@@
CCCCCCCCCCC(T.I. Rajput)
Court Master(Kanwal Singh)
Court Master

(Signed order is placed on the file)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 8631 of 2002@@
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(Arising out of S.L.P. (C) No. 11288 of 2000)

Zahirul Islam ...Appellant (s)

Versus~

Mohd. Usman & Ors.Respondent (s)

O R D E R@@
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Despite service of notice, none appears for Respondent No.1.

Leave is granted.

This appeal is filed against the order of the High Court at Delhi in Civil Revision Petition No. 25 of 2000 made on January 11, 2000.

The impugned order was passed by the High Court on the application of the appellant-legal representative of deceased Defendant No.2 who is said to have died on 1st February, 1995. He sought stay of execution of the decree in proceedings under Order IX Rule 13 of the Code of Civil Procedure, 1908. That application was dismissed. He approached the High Court by filing civil revision petition. The High Court dismissed the revision on the ground that the deceased Defendant No.2 had ...2/-

- 2 -

not chosen to appear before the trial court and the matter proceeded ex-parte during his lifetime. The order of the High Court is under challenge in this appeal.

It would be necessary to refer to Order XXII Rule 4 of the Code of Civil Procedure, 1908, insofar as it is relevant, which reads as under:

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"4. Procedure in case of deaht of one of@@
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several defendants or of sole defendant.--@@
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(1) to (3) xxx xxx xxx

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written

statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before the death took place."

....L.....I.....T.....T.....T.....T.....T.....T.....T.....T.....J
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A perusal of sub-rule (4), extracted above, shows that a plaintiff may be exempted from the necessity of substituting the legal representatives of a defendant who has failed to file a written statement or who, having filed it, failed to appear and contest the suit at the hearing and that, in such a case, the judgment may be pronounced against the said defendant notwithstanding the death of such defendant and it
...3/-

- 3 -

shall have the same force and effect as if the judgment has been pronounced before the death took place.

In the instant case, it is stated by the learned counsel appearing for the appellant that no permission contemplated under sub-rule (4) was obtained from the court exempting the plaintiff from bringing on record the legal representative of deceased Defendant No.2. From the order under challenge also, it does not appear that any such permission was sought or granted by the Court. In this view of the matter, the order under challenge cannot be sustained. It is, accordingly, set aside. The appellant was, therefore, entitled to be brought on record in the suit.

The civil appeal is, accordingly, allowed.
No costs.

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(Syed Shah Mohammed Quadri)@@
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.....J.@@
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(Ashok Bhan)@@
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.....J.@@
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(S.B. Sinha)@@
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New Delhi,
December 20, 2002.