

CASE NO.:
Appeal (civil) 6082 of 2006

PETITIONER:
Ghanshyam G. Khanchandani

RESPONDENT:
Mohandas C. Gurdasani

DATE OF JUDGMENT: 28/02/2008

BENCH:
A.K.MATHUR & ALTAMAS KABIR

JUDGMENT:
JUDGMENT

O R D E R
WITH
CIVIL APPEAL NO. 6083 OF 2006

Ghanshyam G. Khanchandani
....
Appellant
Versus
Neelam M. Gurdasani(Since Dead)
....
Respondent

1. We have heard the appellant, who appears in person, as well as learned counsel for the appellant on I.A. No. 3/2008 in C.A. No. 6083/2001.
2. In this application the appellant has prayed that the sole respondent Mrs. Neelam M. Gurdasani had expired on 28th September, 2007 in a car accident and, therefore, her legal representatives may be brought on record and the appellant may be permitted to amend the cause title.
3. In the facts and circumstances of this case, we allow this application. The name of the deceased Mrs. Neelam M. Gurdasani is deleted and her legal representatives are taken on record.
4. Office may make the necessary amendment in the cause title in Civil Appeal No. 6083/2001.
5. Both these appeals are taken up together for disposal as they involve similar questions of fact and law.
6. Civil Appeal No. 6083/2001 arises out of the judgment and order dated 11.12.1997 of the Division Bench of the High Court of Bombay in appellant's Appeal No. 567/1997 whereby the Division Bench has affirmed the order dated 02.12.1996 passed by the learned Single Judge in Summary Suit No. 376/1995 whereby the appellant-original defendant was permitted to defend the suit on deposit of Rs.2,50,000/-. Brief facts are, the respondent-original plaintiff, Neelam M. Gurdasani(since deceased) filed a suit for recover of Rs. 2,50,000/- against the appellant-defendant. The said suit was based on two cheques each of Rs. 1,25,000/- and two hundies for the equal amount. The hundies were given by way of security. The said suit was contested by the appellant herein. The learned Single Judge by his order dated 02.12.1996 permitted the appellant-defendant to defend the suit on deposit of Rs.2,50,000/-. Aggrieved against the said order dated 02.12.1996 of the learned Single Judge, the appellant herein filed an appeal before the Division Bench of the High Court and the Division Bench vide order dated 11.12.1997 dismissed the appeal and affirmed the order passed by the learned Single Judge.
7. In similar facts, another Summary Suit No. 377/1995 was filed by one Mohandas C. Gurdasani (husband of deceased Neelam M.Gurdasani), respondent in Civil Appeal No. 6082/2001 and in the said suit the learned Single Judge allowed leave to defend the suit subject to the appellant-defendant depositing Rs. 2,00,000/- in Court. On appeal the Division Bench also affirmed the order passed by the learned Single Judge in the said Suit and dismissed the appeal filed by the appellant herein by order dated 11.12.1997. Aggrieved against the order dated 11.12.1997 passed by the Division Bench disposing of

both the appeals, the appellant is before us by way of present appeals.

8. Since both the appeals before the High Court have been dismissed by a common order, the present appeals are taken up together for hearing and final disposal by this common order.

9. It may be mentioned here that due to non-compliance by the appellant (herein) of the order passed dated 02.12.1996 passed by the learned Single Judge, the suits were decreed by learned Single Judge in favour of the respondents-defendants vide order judgment and decree dated 27.7.1998.

10. In these circumstances, it appears that the appellant moved an application dated 1.11.2000 for permission to amend the special leave petitions in both these appeals and to challenge the judgment and decree dated 27.7.1998 passed by the learned Single Judge. It appears that no order was passed on the said applications for amendment of the special leave petitions whereby the appellant sought to challenge the judgment and decree dated 27.7.1998.

11. Be that as it may, now we allow the applications for permission to amend the special leave petitions and permit the appellant to challenge the judgment and decree dated 27.7.1998 passed by the learned Single Judge.

12. We have heard the appellant, appearing in person, as also learned counsel for the respondent. The appellant has admitted that there was a transaction whereby Rs.2,50,000/- was given to him as loan and against that he has paid back a sum of Rs.1,95,000/- to the respondent herein on Dhanteras. This is evident from the affidavit of one Geeta Shankar Sheety filed by the appellant. Therefore, it is an admitted position that a sum of Rs.55,000/- is due to be paid by the appellant to the respondent.

13. However, keeping in view the facts and circumstances of the case, we direct that the appellant shall deposit a sum of Rs.50,000/- with the High Court and on so deposit, he will be permitted to defend the suits. Accordingly, we modify the order dated 02.12.1996 of the learned Single Judge. Since the appellant preferred appeals before the Division Bench against the order dated 02.12.1996 passed by the learned Single Judge and the present appeals are preferred against the judgment and order dated 11.12.1997 passed by the Division Bench of the High Court, we are of the opinion that the judgment and decree dated 27.7.1998 passed by the learned Single Judge also need to be set aside. Consequently, we modify the order dated 02.12.1996 of the learned single Judge and set aside the judgment and decree dated 27.7.1998 as also the judgment and order dated 11.12.1997 of the Division Bench of the High Court and direct that the appellant shall deposit a sum of Rs.50,000/- before the High Court within a period of one month from today and on the amount of Rs.50,000/- being so deposited, the appellant-defendant shall be allowed to defend both the suits before the Trial Court. After deposit of Rs.50,000/- by

the appellant, as directed by us, the Trial Court shall proceed with the suits in accordance with law. Since the suits are old, we request the Trial Court to expedite hearing of the suits.

14. The appeals are partly allowed to the extent indicated hereinabove. No order as to costs.