

CASE NO.:
Appeal (civil) 91 of 2008

PETITIONER:
DALEEP SINGH

RESPONDENT:
R.D. ARJUN

DATE OF JUDGMENT: 08/01/2008

BENCH:
Tarun Chatterjee & Dalveer Bhandari

JUDGMENT:
JUDGMENT

O R D E R
[Arising out of SLP [C] No. 20598 of 2006]
TARUN CHATTERJEE, J.

1. Leave granted.
2. This order is restricted to an order dated 31st of July, 2006 passed by a learned Judge of the High Court at New Delhi in CRP No. 288 of 2005. We make it clear that the learned counsel appearing for the appellant did not press the appeal which has also been filed against the order dated 31st of July, 2006 in CRP No. 362 of 2004 and therefore, this appeal stands dismissed in so far as regards the order dated 31st of July, 2006 in CRP No. 362 of 2004. The impugned order dated 31st of July, 2006 in CRP No. 288 of 2005 runs as under: -
Notice.

Notice accepted by Mr. Anupam Srivastava on behalf of the respondent. It was pointed out by both the learned counsel that leave to defend has already been granted. The points raised in this petition have already been raised in the written statement. The learned Judge will consider those objections while disposing of the matter. With these observations, the petition is disposed of.

3. Having heard the learned counsel for the parties and after going through the impugned order as well as the order of the trial Court rejecting the application filed under Order 7 Rule 11 of the CPC, we are of the view that the order impugned in this appeal was passed by the High Court without applying its mind and without passing a reasoned and speaking order. The High Court, in the impugned order, had only referred that the points raised in the petition under Order 7 Rule 11 of the CPC shall be decided at the time of disposing of the original suit. That being the position, the impugned order cannot stand and accordingly, the order dated 31st of July, 2006 in CRP No. 288 of 2005 is set aside and the CRP No. 288 of 2005 is restored to its original file. The High Court is requested to decide the Civil Revision case being CRP No. 288 of 2005 at an early date preferably within three months from the date of communication of this order. We make it clear that we have not gone into the merits of the order, which was challenged by the appellant before the High Court rejecting the appellant's application under Order 7 Rule 11 of the CPC. That will be decided by the High Court in accordance with law.

4. The appeal is allowed to the extent indicated above.
There will be no order as to costs.

JUDIS