

SUPREME COURT OF INDIA

Subhash Chander Sachdeva

Vs.

Yoginder Mohan Sachdeva

C.A.No.3244 of 2008

(P.P. Naolekar and V.S. Sirpurkar JJ.)

02.05.2008

ORDER

1. Leave granted.

2. Respondent No.1 filed a suit against the appellant and Respondent No.2 for partition of suit property on the basis of a Will dated 3.8.1992.

3. By an order dated 19.12.2005, the appellant's defence was struck off by the learned Single Judge of the High Court against which the appellant preferred an appeal challenging that order. The appeal was admitted by the Division Bench but it did not grant stay of the proceedings of suit pending before the learned Single Judge.

“Ultimately, the Division Bench dismissed the First Appeal of the appellant. Against the said order the present appeal by special leave petition has been filed. As stay was not granted to the proceedings of the civil suit, it was proceeded with and we have been informed that by an order dated 1st August, 2007, the learned Single Judge of the High Court has decided the suit and a judgment and decree has been passed. As the judgment and decree in the suit is already passed, the appropriate remedy available to the appellant is to challenge the judgment of the learned Single Judge in an appeal before the Division Bench and in the said appeal to raise a question in regard to the validity of the order passed by the learned Single Judge whereby he has struck down the defence of the appellant.”

4. It appears to us that the defendant was seriously ill when his defence was struck off and the gap between the dates on which the case was adjourned from time to time, for the appellant to take steps in the suit proceedings, was very short and that the matter is pending consideration before us challenging the order of striking off the defence of the appellant, we find that in the interest of justice the appellant should be permitted to raise the question of validity of the order passed by the learned Single Judge whereby his defence was struck off in an appeal if preferred by the appellant against the final judgment of the learned Single Judge. We grant this liberty to the appellant considering all the aspects of the case.

5. With these observations, the appeal stands disposed of.