

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 197 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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BANK OF BARODA

Versus

THAKKER BHAGWANJI KALIDAS

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Appearance:

MR DD VYAS for Petitioner  
MR SN BHATT for respondents

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 29/02/96

ORAL JUDGEMENT

1. RULE. Mr. S.N. Bhatt appears for the respondents and waives service of Rule on behalf of the respondents. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.

2. This Civil Revision Application is directed against

the judgment and order passed by 4th Joint Civil Judge (SD), Rajkot dated 6th January, 1996, whereby he has rejected the application of the present petitioner at Exhibit-26 in Special Civil Suit No. 17 of 1993. It was an application given under Order 38 Rule 5 of the Code of Civil Procedure for attachment of the property of the respondents defendants. The petitioner bank has advanced certain money under Cash Credit facility to the defendants and since they have failed to pay the amount of Rs. 1,56,491.12ps the suit was filed to recover the said amount and at the same time prayer was made for attachment of properties of the partnership firm and guarantor during the pendency of the suit. The trial court has found that there are properties of the defendants situated within its local limits and that there are allegations to the effect that the said properties are sought to be transferred, assigned, charged or in any way alienated. The trial court despite this fact situation, did not think it fit to grant any injunction or even to grant the order of attachment before judgment and it rejected the application. On going through the order of trial court and the serious allegations made in the application for injunction and attachment before judgment by the petitioner bank, there is no manner of doubt that more than a strong prima facie case is made out by the petitioner bank at least for grant of injunction and also for attachment before judgment. However, the trial court for thoroughly unsatisfactory reason rejected such application.

3. At the hearing of this Civil Revision Application, Mr. Bhatt appearing for the respondents has suggested that respondent No.6 is the guarantor and respondents No. 1 to 5 are the partnership firm and its partners. He states that all the partners for and on behalf of the partnership firm and respondent No.6 shall file an undertaking in the trial court by 6th of March, 1996 stating before the trial court that during the pendency of the suit, they shall not transfer, alienate, mortgage, encumber the suit properties or in any way deal with the same or induct anyone else into possession thereof. Such undertaking is directed to file before the aforesaid date. In case of failure to file such undertaking, the defendants are hereby restrained from transferring, alienating, dealing with, mortgaging, encumbering the properties in question and from inducting anyone else into possession thereof.

4. In the result, this Civil Revision Application succeeds. Rule is made absolute. There shall be no order as to costs.

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