

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1204 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
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?
5. Whether it is to be circulated to the Civil Judge?

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HARSUKHLAL HARJIVANDAS SANGHVI

Versus

ISHVARLAL JETHALAL PAREKH

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Appearance:

MR TUSHAR MEHTA for Petitioner

MR DH WAGHELA for Respondent No. 3

MR SURESH M SHAH for Respondent No. 4

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 28/02/97

ORAL JUDGEMENT

Rule. Service of Rule waived by Respondent No.4 for his behalf as also on behalf of rest of the respondents.

2. This is tenant's revision against the order passed by the learned trial Judge below application Ex.8 in Civil Suit No. 150/96.

3. It appears that the respondents-landlords filed aforesaid Suit for obtaining possession of the Suit premises on number of grounds, inter alia, on the ground that the Suit premises have been sub-let and that the same are not used for the purpose for which they have been let out for a period of more than six months prior to the date of the Suit. The respondents-landlords moved an application Ex.5 dated 31.7.1996 stating therein that in case the petitioner would come to know about filing of the Suit he would immediately alter the condition of the suit premises (suit shop) and would destroy the evidence that might be available to the respondents-landlord. The respondents-landlords therefore prayed for making an inventory panchnama by local inspection of the suit premises by a Commissioner to be appointed by the Court. On the same day the Court passed the order in following terms :

"Mr.B.J.Parmar is appointed as Court Commissioner to prepare panchnama of the disputed premises only in relation to the possession as it stands. He shall draw the panchnama after intimating both the parties and in presence of parties and independent panchas."

It appears that when the Commissioner accompanied with the bailiff made panchnama the premises was found closed. The allegation made by the respondents-landlords is that when the bailiff went to the residence of the tenant although the petitioner's son was present and although the petitioner was also present, it was represented by the petitioner's son that the petitioner would remain present at the suit shop in the evening after he would return home. The respondents landlord, therefore, prayed for, in Application Ex.8, that the panchnama was deliberately not allowed to be prepared and, therefore, the lock applied on the suit shop should be directed to be removed, the panchnama should be made by the Commissioner, new lock should be applied to the suit shop and the keys should be produced in the Court by the Commissioner. On the same day (and without hearing the petitioners) the Court passed order to the effect that the Commissioner should break-open the lock of the suit shop, prepare panchnama (as ordered earlier), apply new lock to the suit shop and produce the keys of the new lock in the Court through its Registrar or Nazir. It is this order which has been subjected to challenge in this petition under Section 115 of the Code of Civil Procedure.

4. The short submission made on behalf of the petitioner is that the impugned order is not warranted either by Order 26, Rule : 9 or Order : 39, Rule : 7 C.P.C. The submission is also sought to be substantiated by decision of this Court rendered on 23.9.1985 (A.S. QURESHI, J.) in Civil Revision Application No.1104/85 which came to be decided between the same parties in respect of almost similar type of order passed in another suit between the parties which is pending before the trial Court. In reply it has been submitted by respondent No.4, who is appearing for himself as well for other parties and who happens to be the learned Advocate practising before the lower Court submitted that the subsequent conduct of the petitioner does not call for interference with the impugned order. According to his submission on 1.8.1996 the impugned order was passed by the trial Court and on 8.8.1996 this petition was filed. In spite of the pendency of this petition the petitioner with the aid of his sons got removed the PVC goods of the third party stored in the suit premises on 16.8.1996 and that is how the petitioner has prevented vital evidence to come to light at the time of trial. In my opinion this submission of the respondent No.4 cannot be entertained at this stage in this Civil Revision Application because it would be a matter of trial. The vital question is whether the trial Court had jurisdiction to issue direction as per the impugned order. Having gone through the provision of order : 26, Rule : 9 as also order 39, Rule : 7 which has been quoted in the application moved before the trial Court I am of the opinion that the Court did not have jurisdiction in the facts of the case to issue such direction as has been issued pursuant to the impugned order. The purpose of application which was moved by the respondent-landlord was to see that the local inspection was made and the panchnama was prepared. The purpose for which the application was moved was never taking of possession of the Suit premises even before the trial. Even if that was the purpose that could hardly have been entertained in the Suit for possession under the provisions of the Rent Act. This Court had an occasion in the previous proceeding to deal with the matter at length and to observe that the provision of Order : 39, Rule : 7 does not empower the Court to pass order whereby the premises if found lock should be sealed for an indefinite period the consequence of which would be illegal ouster of the tenant. The Court disapproved of almost similar type of order passed by the Court in the other proceeding. In my opinion the impugned order in the present proceeding is required to be dealt with in the similar fashion. I have no hesitation in finding

that the learned trial Judge has exceeded all its jurisdiction in passing the impugned order and the same deserves to be quashed and set aside.

5. At this stage I asked respondent No.4 whether he would be ready to have a panchnama since the petitioner expressed his readiness to prepare panchnama before this Court. The respondent No.4 submits that now it is no use having panchnama made in the light of the facts which have been set out by him. It will be open to the respondents - landlords to adduce evidence on such facts before the Court at the time of trial, however, in view of what is stated above whereas the impugned order is required to be quashed and set aside no further order is required to be made on the application for making panchnama.

6. In the result this Civil Revision Application is allowed. The impugned order is hereby quashed and set aside. It is observed that there is now no necessity at this stage to make panchnama of the suit premises, however, it is open to the parties to move application before the trial Court as and when the occasion might arise, to have local inspection and make the panchnama and it will be open to the Court to pass appropriate order, in accordance with law and after hearing both the parties. It is, however, directed that the learned trial Judge who hears the Civil Suit No.220/85 will also hear the Civil Suit No. 150/96. Both the matters will be decided as expeditiously as possible by the trial Court.

Rule is accordingly made absolute with no order as to costs.

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