

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 131 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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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?

DINESHCHANDRA J DOSHI

Versus

SHARDABEN K SHAH

Appearance:

Mr.K.G.Vakharia Sr.Advocate with
MR TUSHAR MEHTA for Petitioner
MR PC Kavina for Respondent No. 1
None present for other respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/11/98

ORAL JUDGEMENT

This Civil Revision Application under Section 115 of the CPC, 1908 is directed against the order dated 16.11.92 below Exh.83 of the second Joint Civil Judge (SD) Surendranagar in Special Civil Case No.65/86 by the

plaintiff petitioners was held to be not maintainable in view of the provisions of the Benami Transactions (Prohibition) Act, 1988. The plaintiff petitioners filed a suit against the defendant respondent for dissolution of the partnership firm and revaluation of the Accounts. The Learned Trial Court on the basis of the pleadings of the parties framed the issues in the suit vide Ex.52. The respondent no.1 filed application below Ex.83 and prayed therein that issue no.7A may be decided as a preliminary issues it is a pure question of law.Issue No.7A reads as under:-

"Whether the present suit is not tenable and maintainable in view of benami transactions (Prohibition) Act, 1988?"

2. After hearing the learned counsel for the parties the application below Ex.83 came to be rejected by the learned Trial Court on 12.3.1990. Against this order the respondent filed revision application before this Court. This Court has decided the matter in favour of the defendant and directed the learned Trial Court to decide issue No.7A as preliminary issue under sub-rule 2 of rule 2 of order 14 of the Civil Procedure Code. The learned Tribal Court heard the matter and under its order of 16.11.92, impugned in this revision application, held that the properties held in the name of defendant respondent no.1 or in name of her husband Kasturchand Dipchand are concerned, the plaintiff's suit is not maintainable in view of the Benami Transaction (Prohibition) Act, 1988.

3. This order of the learned Trial Court is subject matter of challenge in this civil revision application. The learned Counsel for the petitioner contended that the decision of the apex Court on which the reliance has been placed by the learned Trial Court to decide the matter against the plaintiff petitioner is no more good law in view of the later decisions of the Apex court. The Learned Counsel for the petition contended that the provisions of the Benami Transactions (Prohibition) Act, 1988 have only prospective effect and the learned Trial Court has committed serious error of jurisdiction in applying the provisions of that Act in the suit out of which this civil revision application has arisen which has admittedly been filed much earlier in point of time and date from which the Act aforesaid has been brought into force.

4. The Learned Counsel for the respondent no.1 on the other hand is unable to successfully challenge the

contention of the learned Counsel for the petitioners. The only contention is that the matter may be remanded back to the Trial court to examine the application filed by the respondent no.1 below Ex.83 with reference to the subsequent decisions of the apex court. It is next been contended that the learned Trial court may be given direction to decide all the issues together. The Issue No.7A may not be singled out and to be decided as a preliminary issue under sub rule 2 of rule 2 of order 14 of CPC, 1908.

5. The learned Counsel for the petitioners in rejoinder to the submissions made by the learned Counsel for the respondent no.1 fairly conceded that he has no objection in case this Court directs the learned Trial court to decide all the issues together. He further conceded that he has no objection in case instead of deciding issue no.7A the matter is sent back to the learned Trial Court for decision on all issues.

6. In view of the consensus between the learned Counsel of the parties, I do not consider it to be proper and necessary in this revision application to decide the matter finally on issue no.7A. After the law on which the reliance is placed by the Trial court has been explained by the Apex court as what the learned Counsel for the petitioners contended I find sufficient justification in the contention of the learned Counsel for the respondent no.1 to send this matter back to the Trial court for deciding the matter afresh in the light of the subsequent decisions of the Apex Court. As both the learned Counsel for the parties are in agreement that all the issues framed in the suits are to be tried together to give a direction to the Tribunal to adopt this course also cannot be taken to be objectionable.

In the result, this revision application succeeds in part and the order dated 16.11.92 below Exh.83 of the second Joint Civil Judge (SD) Surendranagar in Special Civil Case No.65/86 is quashed and set aside. The learned Trial Court is directed to decide the issue No.7A afresh taking into consideration the subsequent decision of the Apex Court and without being influenced what it has decided under the impugned order which is quashed by this court in this Civil Revision application. However as per the agreement of the learned Counsel of the parties it is hereby ordered that the learned Trial Court to decide all the issues together. To make it clear by way of clarification that all issues including issue no.7A needs to be decided together and not in piecemeal. Interim relief if any granted by this Court stands

vacated. No order as to costs. Revision application and rule stand disposed of accordingly.

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