

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 115 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO

GUJARAT SIDDHI CEMENT COMPANY LTD.

Versus

BABLUBHAI VIRABHAI & COMPANY

Appearance:

MR HARIN P RAVAL for Petitioner
MR ANSHIN H DESAI for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 25/01/2001

ORAL JUDGEMENT

#. Rule. Learned Advocate Mr.Ashin Desai appears on
caveat and waives service of Rule. In facts and
circumstances of the case, this matter is taken up for
final hearing today, by consent of learned Advocates for

parties.

#. This revision application arises out of the order passed by the learned Civil Judge (Senior Division), Veraval in Special Civil Suit No.211 of 2000 below Exh.5 on December 15, 2000.

#. The present revisioner is the original defendant against whom the present opponent preferred the suit for recovery of Rs.38,49,054/-. While instituting the suit, the plaintiff also preferred an application Exh.5 under Order 38, Rule 1 of the Civil Procedure Code for the attachment before judgment with an alternative prayer of directing the defendant to furnish the security. The learned trial Judge at the very first instance passed the impugned order directing the defendant / revisioner to furnish the security on the next date and thereby finally disposed of the application Exh.5. Aggrieved by the said order, the original defendant has approached this court.

#. Mr.Raval, learned advocate appearing for the revisioner submitted that the learned trial Judge has finally decided the application without affording any opportunity to the revisioner to contest the application. No reasons are assigned for directing the revisioner to furnish the security except that the plaintiff may not be able to recover the suit amount if ultimately the decree is passed.

#. Learned Advocate Mr.Ashin Desai states that, by passing the impugned order, the learned trial Judge has only tried to protect the interest of the plaintiff. No interference is required in this order.

#. Having regard to the facts and circumstances of the case and the rival side contentions raised by the parties, it appears that, the learned trial Judge has run into an error in passing the impugned order ex parte and in disposing of the application by directing the revisioner to furnish the security of Rs.38,49,000/approximately. No opportunity is afforded to the revisioner to contest, controvert or rebut the allegations made in the application seeking the attachment before judgment or in an alternative to furnish the security. No cogent and germane reasons are indicated by the trial court for passing the order. Under the circumstances, the order cannot be permitted to stand. Revision Application deserves to be allowed.

#. Revision Application is allowed. The order in question is set aside and the matter is remanded to the

trial court. The trial court will decide the application Exh.5 after affording an opportunity to the revisioner to contest the said application on merits. The trial court shall decide the application Exh.5 in Special Civil Suit No.211/2000 as expeditiously as possible preferably within three months from the receipt of the writ. Decision on the application shall be taken strictly in accordance with law without being influenced by this order. Rule is made absolute. No costs.

(A.L.Dave,J)

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