

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12806 of 2004

HON'BLE MR.JUSTICE K.S.JHAVERI

- =====
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

TRIDENT INDIA LTD

Versus

BANK OF BARODA

Appearance:

MR DV PARIKH for Petitioner No. 1
MR KM PARIKH for Respondent No. 1
MR AS VAKIL for Respondent No. 2-14

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. Rule. Mr. K.M. Parikh waives service of rule
for respondent no.1. and Mr. A.S. Vakil waives service
of rule for respondent nos.2 to 14.

2. At the joint request of learned counsel for the respective parties the matter is taken up for final hearing today.

3. Heard the learned counsel for the respective parties.

4. The petitioner herein has challenged the order of the Tribunal dated 3rd August 2004 at Annexure K and the Showcause notice issued by the Recovery Officer dated 15.9.2004 at Annexure L to the petition.

5. From the record it emerges that before passing the impugned order, the Tribunal has not heard the petitioner and has passed the order dated 3rd August 2004 whereby the rights of the petitioner are prejudicially affected. This position is not disputed by the learned counsel for the respondents. Mr. K.M. Prikh, learned counsel for the respondent no.1 submitted that as it is a consequential order, no notice is required to be issued to the petitioner. In my view, the contention of Mr. Parikh for the respondent cannot be accepted since the petitioner is affected by the impugned order and therefore he should have been heard before passing the impugned order. Only on this ground the impugned orders are required to be quashed and set aside.

6. In view of the above, the impugned order dated 3rd August 2004 and the show-cause notice dated 15th September 2004 are quashed and set aside. It will be open for the respondent Bank to file appropriate application in Garnishee application before the Tribunal if they require any order against the petitioner. If such an application is filed the Tribunal shall consider the same in accordance with law. It is made clear that the present order has been passed only on the basis that the impugned order has been passed in violation of principles of natural justice and this Court has not gone into the merits of the matter. It will be open for the petitioner to raise all the contentions before the Tribunal which are raised in this petition on merits of the matter. Rule is made absolute to the aforesaid extent with no order as to costs. D.S. permitted to the parties.

[K.S. JHAVERI, J.]

ar