

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16962 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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

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HARISINH SONJI PUROHIT

Versus

PATAN NAGRIK SAHKARI BANK LTD.

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Appearance:

1. Special Civil Application No. 16962 of 2003  
MR HARMISH K SHAH for Petitioner No. 1  
MR BG JANI for Respondent No. 1  
MR DHARMESH V SHAH for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/09/2004

ORAL JUDGEMENT

Rule. Mr. BG Jani, learned advocate waives service of Rule on behalf of respondent No.1 and Shri Dharmesh V. Shah, learned advocate waives service of Rule on behalf of respondent No.2. With the consent of the parties, the matter is taken up for final hearing

today.

2. In this petition under Article 227 of the Constitution of India, the petitioner-guarantor has challenged the legality and validity of the order passed by the Gujarat State Cooperative Tribunal dated 23rd September 2003 in Revision Application No. 237 of 2002 in dismissing the same and confirming the order passed by the Board of Nominees, Mehsana, below delay condonation application at Exhibit 24 in Lavadh Suit No. 617 of 2000.

3. The respondent No.1 Bank had filed Lavadh Suit against the petitioner as well as respondent No.2. So far as respondent No.2, Principal Debtor is concerned, his Application for Leave to Defend is already pending before the Board of Nominees, Mehsana and it is yet to be decided on merits. So far as the petitioner-guarantor is concerned, he had submitted an application for Leave to Defend after a period of one year and therefore the application for condonation of delay, Exhibit 24 was submitted by him. The learned Board of Nominees, Mehsana, dismissed the said application and did not condone the delay caused in preferring the Leave to Defend Application. Being aggrieved and dissatisfied with the same, the petitioner had preferred a revision application before the Gujarat State Cooperative Tribunal by way of Revision Application No. 237 of 2002. The Tribunal, by its order dated 23rd September 2003 had dismissed the said revision application confirming the order passed below Exh. 24 application by the Board of Nominees in Lavadh Suit No. 617 of 2000. Shri Shah, learned advocate appearing on behalf of the petitioner has submitted that the learned Board of Nominees as well as the Tribunal ought to have considered the application of the petitioner for leave to defend on merits by condoning the delay more particularly in view of the fact that the application submitted by the respondent No.2 Principal Debtor for Leave to Defend is still pending and is to be decided on merits.

4. Shri Jani, learned advocate appearing on behalf of respondent No.1 Bank has submitted that the only cause given by the petitioner for submitting the application in delay is that he was trying to settle the dispute. However till this date the petitioner has not deposited any amount to show his bonafides. At this stage, Shri Shah, learned advocate appearing on behalf of the petitioner has submitted that to show his bonafides the petitioner would like to deposit an amount of Rs. 50,000/= with the respondent No.1 Bank.

5. Heard the learned advocates appearing on behalf of the parties. The resultant effect on account of non-consideration of the Application for Leave to Defend would be that a decree would be passed against the guarantor without any trial. The Board of Nominees as well as the Tribunal ought to have appreciated and considered the fact that while condoning the delay in considering the application for leave to defend, ultimately the application for leave to defend should be considered on merits more particularly when so far as the Principal Debtor is concerned, his application for leave to defend is already pending before the Board of Nominees and which is yet to be decided on merits. In that view of the matter, the order passed by the learned Board of Nominees, Mehsana below Exh. 24 in Lavadh Suit No. 617 of 2000 as well as the judgment and order passed by the Gujarat State Cooperative Tribunal dated 23rd September 2003 in Revision Application No. 237 of 2002 are hereby quashed and set aside, on condition that the petitioner shall deposit an amount of Rs. 50,000/= with the respondent No.1 Bank within a period of four weeks from today. On deposit of the aforesaid amount with the respondent No.1 Bank, the learned Board of Nominees, Mehsana, is directed to consider the application of the petitioner for leave to defend on merits along with the application of the respondent No.2, original Principal Debtor. The aforesaid deposit of amount of Rs. 50,000/= would be without prejudice to the rights and contentions of the petitioner. Rule is made absolute to the aforesaid extent with no order as to costs.

[ M.R. Shah, J. ]

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