

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CIVIL REVISION APPLICATION No. 804 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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**M B PARIKH FINSTOCKS LTD.**

**Versus**

**SHRIJI INVESTMENT AND ANOTHER**

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**Appearance :**

MR AJ YAGNIK for the applicant

MR TARESH J BHATTJI for Opponent No.1

MR MRUGESH JANI for Opponent No.2

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**CORAM : HONOURABLE MR.JUSTICE  
P.B.MAJMUDAR**

**Date : 28/02/2006**

**ORAL ORDER**

This revision application under Section 115 of the Code of

Civil Procedure is filed by the applicant challenging the order passed by the District Judge, Vadodara dated 26.04.2001 below Exhibit 13 in Arbitration Petition No.249 of 2000. By the said order, the learned District Judge has dismissed the said application at Exhibit 13 submitted by the present applicant. The aforesaid Arbitration Petition has been preferred by respondent No.1 herein on the ground that the applicant had entered into an agreement in connection with purchase and sale of shares with the original opponent No.1 (present applicant herein). It is the case of the original applicant (respondent No.1 herein) that a dispute arose between the parties on the subject of payment of transactions and delivery of shares and the opponent No.1 herein referred grievances on his part by application to the N.S.E. The N.S.E. was pleased to appoint one of the arbitrators from the panel to adjudicate the dispute between the parties i.e. opponent no.1 herein and the present applicant. A sole arbitrator one Shri G. Venkataramani gave his award on 14.8.2000. The opponent No.1 herein thereafter gave an application to the District Court, Vadodara for setting aside the award on 21.11.2000. The said application was filed against the present applicant as well as respondent No.2 herein.

In the aforesaid application before the District Court, the present applicant filed an application at Exhibit 13 requesting the learned District Judge, Vadodara to decide the preliminary issue regarding the jurisdiction of the Court before deciding the main application. The learned District Judge rejected the said application by his order dated 26.4.2001. Being aggrieved by the said order, the applicant herein has filed this revision

application under Section 115 of the Code of Civil Procedure.

The case of the present applicant before the District Court in the said application at Exhibit 13 was that the District Court at Vadodara has no jurisdiction to decide the application of opponent No.1 herein and that said Arbitration Petition No.249 of 2000 was required to be rejected in limine. It is alleged in the application that both the parties are having their business at Bombay and Vadodara Court has no jurisdiction to decide the application. A copy of the application Exhibit 13 is annexed at page 4 in the present proceedings. It is also averred in the said application that the arbitrator declared the award after hearing both the sides and against that the original applicant before the District Court had not filed any appeal or had taken up any proceedings for setting aside the said award. It is the case of the present applicant in the said application Exhibit 13 that since the award has been declared after following the procedure under Section 34 of the Arbitration Act, the said award cannot be set aside and such application is not maintainable before the District Court. It is alleged that respondent No.1 - original applicant was required to prefer appeal before the Bombay High Court. Under the circumstances, it was prayed that the said question of jurisdiction be decided as a preliminary issue as according to the present applicant, the District Court at Vadodara has no jurisdiction to decide the application in question.

The learned District Judge, however, rejected the application on the ground that the decision on the said application will decide the fate of the entire proceedings. The

District Court found that in order to find out the jurisdiction, the Court will have to consider the facts of the case and will have to take into consideration the evidence, documentary as well as oral, submitted by the parties. The District Court found that in order to arrive at a final decision in the matter, the evidence is required to be considered. The Court found that instead of deciding the question by framing a preliminary issue, it would be better to have a decision on all the points arising in the proceedings. The learned Judge accordingly decided to hear all the issues together including the question about maintainability.

It is required to be noted that in its limited jurisdiction under Section 115 of the Civil Procedure Code this Court would not like to interfere with such an interlocutory order as the District Court has kept the said issue pending and has decided to adjudicate all the points together. Ultimately, the Court after considering the evidence on record may decide whether such an application is maintainable or whether the Court has jurisdiction to decide such application. Under the circumstances, instead of entertaining this revision application, the learned District Judge is directed to decide the main application expeditiously and may decide all the issues together and may dispose of the same finally within a period of six months from the date of receipt of writ of this Court. It is required to be noted that when the District Court has decided to hear all the issues together, it cannot be said that he has committed any error of jurisdiction which calls for interference of this Court in its limited jurisdiction under Section 115 of the Civil Procedure Code. Under the circumstances, subject to the

direction issued to the District Court to decide the pending application within stipulated time, this revision application is rejected. Rule is discharged. No order as to costs.

(P.B.Majmudar, J.)

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