

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 18046 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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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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JAYESHBHAI MAGANBHAI BARIA - Petitioner(s)

Versus

DR MANRANJAN MOHANLAL VARIA - Respondent(s)

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Appearance :

MR SURESH M SHAH for Petitioner:1

MR YM THAKKAR for Respondent:1

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 31/07/2007

ORAL JUDGMENT

1. The present petition has been preferred against the
order dated 07.07.2007 passed by the learned
Principal Senior Civil Judge, Godhra, Panchmahal

District, below Exh.43 in Regular Darkhast No.333 of 2006 whereby the amendment preferred by the present petitioner (original judgment debtor) has been dismissed.

2. Having heard the learned counsels for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order dated 07.07.2007 passed by the learned Principal Senior Civil Judge, Godhra, Panchmahal district, below Exh.43 in Regular Darkhast No.333 of 2006, for the following facts and reasons:

- 2.1 The present petitioner is a judgment debtor. It appears, from the facts of the case, that initially suit bearing Regular Civil Suit No.813 of 1984 was preferred by the respondent against the present petitioner. The suit was decreed. Appeal was preferred bearing No.117 of 1986, which was also dismissed vide order dated 24th March, 2004. Thereafter Second Appeal was preferred bearing No.110 of 2006 which was also dismissed vide order dated 17th January, 2007 against which SLP was preferred bearing No.7712 of 2007 which was also

dismissed by the order dated 07th May, 2007. Meanwhile execution proceedings bearing No.333 of 2006 was preferred by the respondent (decree holder) and objections were raised below Exh.34 by the present petitioner.

2.2 It is submitted by the learned counsel for the petitioner that initially an order was passed by the Competent Court to deposit Rs.7,000/- towards Court fees in which following direction was given on 19th February, 1998.

“ It is hereby held that:-

1. For want of proper Court fee stamp, suit of plaintiff can not be dismissed.
2. Under Section-6(v) Appe.II, plaintiff is ordered to pay Court fees on the value of land, which is Rs.7000/- (Seven Thousand).
3. This findings be sent to Honourable II Extra Asstt. Judge Saheb's Court, Godhra.”

And therefore an objection was raised below Exh.34 in the Execution Proceedings by the present petitioner that the decree is not executable in view of Section 13 of Gujarat Court Fees Act, 2004. Section 13 of the Gujarat Court Fees Act, 2004 reads as under:-

“ Section-13: (1) In a suit proceeding the difference, if any, between the fee actually paid and the fee which would have been payable, on delivery of judgment, be taxed by the court and shall be leviable from the plaintiff and if not paid by him within thirty days from the date of the judgment be recoverable according to the law and under the rules for the time being in force for the recovery of an arrears of land revenue.

(2) The Court shall send a copy of the decree or order or award passed in such suit to the Collector.

(3) No decree passed in any suit by the Court shall be executed, until a certificate to the effect that such difference is paid or recovered, signed by the Court which passed the decree or by the Collector who recovered the amount, is produced along with the application for such execution.”

(Emphasis Supplied)

3. In view of aforesaid provision and as already contention was taken in the objection below Exh.34, an application for amending the reply below Exh.43 was given, by narrating in detail the objection. This amendment application has been dismissed by the court below. Looking to the provisions of Section 141 read with Section 153 of Code of Civil Procedure, 1908 and looking to the facts and circumstances of the case, the Trial Court has not properly appreciated the aforesaid provision. Amendment application below

Exh.43 is not changing the original objection but it gives further details of the objection. In view of these facts, the order passed by the Trial Court deserves to be quashed and set aside.

4. It is also contended by the learned counsel appearing for the respondent that in pursuance of the order passed in Second Appeal bearing No.110 of 2006 dated 17th January, 2007, a separate undertaking alongwith affidavit was tendered, and, therefore, present amendment ought not to have been allowed by this Court.

5. This contention is not accepted by this Court mainly for the aforesaid provision of law and even otherwise also as stated hereinabvoe, the amendment is not changing the original nature of the objection raised by the present petitioner below Exh.34 in Regular Execution No.333 of 2006.

6. Learned counsel appearing for the respondent submitted that the aforesaid contentions of the executionability of the decree were already raised in the Second Appeal and, therefore, amendment was rightly not allowed by the court below. This

contention is also not accepted by this Court mainly for the reason that never contention of executionability of the decree was raised by the present petitioner in the Second Appeal. In fact, in execution proceedings, petitioner is entitled to raise all the defences which he has raised below Exh.34. The present amendment application below Exh.43 is an extension of argument already raised below Exh.34.

7. The contention raised by the learned counsel appearing for the respondent that amendment application was given at a much belated stage and no explanation is coming forth as to why this amendment was not incorporated in the original objections below Exh.34. This contention is also not accepted by this Court for the reason that Exh.43 amendment application is really not changing the nature of objections already raised below Exh.34. Secondly, by allowing this amendment no additional right is given to a judgment debtor.

8. Looking to the facts and circumstances of the case, as stated hereinabove, there is already the contention raised about the Court Fees. Details of the objection,

are given in an application below Exh.34. Exh.43 i.e. amendment application of reply is nothing but detailed narration of objections already raised. In view of these facts, the order passed by the Trial Court is quashed and set aside. Amendment application below Exh.43 is allowed.

9. I hereby direct the Trial Court to expedite the hearing of Regular Darkhast No.333 of 2006. I also direct the Trial Court to complete the proceedings of the Execution Application No.333 of 2006 as expeditiously as possible preferably on or before 31st December, 2007.

10. At this stage, learned counsel appearing for the respondent prayed for stay of the above order to which learned counsel appearing for the petitioner raised an objection. In view of the facts and circumstances of the case, request made by learned counsel for the respondent is not accepted by this Court. Rule is made to the aforesaid extent.

(D.N.PATEL, J.)

Amit/-