

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**APPEAL FROM ORDER No. 72 of 2004****With****CIVIL APPLICATION No. 1914 of 2004****In****APPEAL FROM ORDER No. 72 of 2004****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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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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SHRIMANT SANGRAMSINGH PRATAPSINGHRAO GAEKWAD -
Appellant(s)

Versus**MRUNALINIDEVI PAUR & 2 - Respondent(s)**

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Appearance :

MR. PRABHAV MEHTA FOR NANAVATI ASSOCIATES for Appellant(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,
1.2.5, 1.2.6,1.2.7

- for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 17.12.2008****CAV JUDGMENT**

1. Present Appeal from Order under Order 43 Rule 1
of the Code of Civil Procedure is preferred by
the appellant original plaintiff-applicant

challenging order dated 20.11.2003 passed by the learned Civil Judge(S.D.) Vadodara in Special Civil Suit No. 725 of 1991 below Exhs. 89 and 112, by which the learned trial Court has dismissed the aforesaid applications submitted by the appellant under Order 39 Rule 2(A) of the Code of Civil Procedure taking appropriate action against the defendants for having committed willful breach of contempt of the Court and / or disobedience of the order passed since 15.1.1992 and subsequently extended and confirmed.

2. Heard Shri Prabhav Mehta, learned advocate for the appellant original plaintiff. None for respondents original defendants.
3. The facts leading to the filing of present Appeal from Order are as under:
4. The appellant original plaintiff had instituted Special Civil Suit No. 725 of 1991 in the Court of learned Civil Judge (S.D.) Vadodara for the partition of the suit properties and for declaration and perpetual injunction against the defendants. At the time of the institution of suit, the plaintiff preferred application for appointment of Commissioner for inventory of the suit properties. The plaintiff preferred application Exh. 5 for interim injunction. During the pendency of the same, the plaintiff

preferred application Exh. 22 for ad-interim injunction/status quo on 26.2.1991 with respect to the properties stated in para 21 of the plaint. The learned Civil Judge did not grant any ad-interim injunction, however passed an order kept for hearing. Against the aforesaid order the plaintiff moved this Court by preferring Appeal from Order No. 556 of 1991. This Court vide order dated 15.1.1992 directed the defendants to maintain status quo in respect of the suit properties and directed the learned trial Court to hear the application Exh. 22 on or before 27.1.1992. It appears that application Exh. 22 was not decided as directed by this Court and, therefore, the plaintiff again preferred Appeal from Order No. 38 of 1992 and MCA No. 143 of 1992 in Appeal from Order No. 556 of 1991 for extension of status quo granted by this Court. Vide impugned order dated 21.9.1992 this Court extended the earlier order passed of status quo till final disposal of the application Exh. 22 by the learned Civil Judge. Learned Civil Judge (S.D.) Vadodara vide order dated 16.3.1992 rejected the said application Exh. 22. Being aggrieved and dissatisfied with the order passed by the learned trial Court passed below Exh. 22, the plaintiff preferred Appeal from Order No. 181 of 1992 before this Court and this Court vide order dated 9.4.1992 disposed the said Appeal from Order directing the learned trial Court to expedite the hearing

of the application Exh. 5 before 30.4.1992 and extended the order of status quo till 8.5.1992. Vide order dated 3.7.1992 in M.C.A. No. 810 of 1992, the order of status quo was further extended till 10.8.1992 as the hearing of the Exh. 5 was not completed in time. Vide order dated 7.8.1992 below Exh. 5, the learned Civil Judge (S.D.) Vadodara partly allowed the application Exh. 5 and directed the defendants to maintain status quo in respect of the suit properties described at para 21 till the final disposal of the suit and also directed the defendants to maintain separate accounts of the suit properties towards expenses. Vide order dated 7.8.1992 the learned trial Court dismissed the application Exh. 6 submitted by the plaintiff for appointment of Court Commissioner and/ or for taking inventory of the suit properties. Against the order passed below Exhs. 5 & 6 the defendants preferred Appeal from Order No. 464 of 1992 and against the order passed below Exh. 6 the plaintiff preferred Civil Revision Application No. 1253 of 1992 before this Court. As according to the plaintiff, inspite of the order of status quo in operation, the defendants have disposed of the movable properties i.e. "Golden Gun", the plaintiff preferred application Exh. 89 under Order 39 Rule 2(A) of the Code of Civil Procedure on 2.4.1993 against some of the defendants before the learned trial Court for willful disobedience

of the Court's order. Plaintiff filed another application Exh. 112 also under Order 39 Rule 2(A) of the Code of Civil Procedure for willful disobedience of the Court's order of status quo. Vide judgment and order dated 4.5.1995 this Court allowed the said Appeal from Order No. 464 of 1992 preferred by the defendants against the order passed below Exh. 5 and rejected the Civil Revision Application No. 1253 of 1992 which was filed by the original plaintiff passed below Exh. 6 in not appointing the Court Commissioner for inventory. Against the aforesaid order, the plaintiff preferred SLP No. 17018 of 1995 before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide order dated 9.8.1995 disposed of the aforesaid SLP directing the parties to submit the list of the properties owned by deceased ruler by submitting that it would be subject to the rule of "*Lis pendens*"

It is the case on behalf of the original plaintiff that for the first time since filing of the suit, the defendant namely Smt. Shantadevi Gaekwad came out with the statement denying the existence of several invaluable and priceless properties as described in para 21 of the plaint. In reply Exh. 122, she filed her written statement on 6.9.1992. It appears that against the said written statement, the plaintiff preferred application Exh. 174 praying for direction to the defendants to furnish details of the properties allegedly disposed of

by the defendants and the learned trial Court partly allowed the said application vide order dated 6.3.1996. It appears that in response to the said order dated 6.3.1996, the defendants submitted an affidavit vide Exh. 133 stating that golden canon has been sold by the defendants on 19.11.1991 i.e. before the order of status quo granted by the learned trial Court. It is the case on behalf plaintiff that for the first time while filing the written statement vide Exh. 122 on 6.9.1992 the defendants i.e. Smt. Shantadevi Gaekwad has stated that the "Golden Gun" along with other properties are not in possession of the defendants. Vide Exh. 131 the opponent has declared on affidavit that "Golden Gun" was sold on 11.9.1991. The plaintiff preferred application Exh. 148 to strike out the defence. It is the case on behalf of the plaintiff that the status quo was in operation for a period of 15.1.1992 to 9.8.1995 i.e. the day on which the Apex Court disposed of the SLP. Thereafter, the learned Civil Judge (S.D.), Vadodara vide his common order dated 20.11.2003 below Exhs. 89 & 112 submitted under Order 39 Rule 2(A) of the Code of Civil Procedure rejected both the applications. Against the aforesaid common order dated 20.11.2003 passed by the learned Civil Judge (S.D.) Vadodara passed below Exhs. 89 & 112 in dismissing the said applications and not taking any action for breach of

injunction/status quo selling the "Golden Gun" during the continuous order of status quo, the appellant original plaintiff has preferred the present Appeal from Order.

5. Shri Prabhav Mehta, learned advocate for the appellant has vehemently submitted that the learned trial Court has committed an error in not allowing the applications Exh. 89 and 112 and by not taking any action against the defendants for committing breach of order of status quo by selling "Golden Gun, which was sold during the order of status quo in operation. It is submitted that order of status quo was in operation between 15.1.1992 to 9.8.1995 i.e. the day on which the Hon'ble Apex Court disposed of the SLP and till written statement vide Exh. 122 was filed by the defendant namely Smt. Shantadevi Gaekwad on 6.9.1995 wherein it was not declared that the "Golden Gun" has already been disposed of /sold on 19.11.1991. It is submitted that an impression was created and/or came out all throughout that the opponent original defendants are in possession of the suit properties described in para 21 of the plaint. It is also further submitted by Shir Prabhav Mehta that for the first time vide affidavit Exh. 133 the said Shantadevi Gaekwad declared on affidavit that they are not in possession of some of the invaluable properties. It is further submitted

by Shri Mehta learned advocate for the appellant that even defendants have not disclosed to whom they have sold the "Golden Gun" as alleged on 19.11.1991.

6. It is also further submitted that even earlier defendants have admitted the existence and possession of the properties described in para 21 of the plaint. In reply dated 25.5.1992 and earlier they have never disclosed that they are not in possession of the some of the properties and / or that "Golden Gun" has already sold on 19.11.1991. Therefore, it is submitted that disposing of the golden canon on 19.11.1991 cannot be believed and the same shows the prima facie conduct of the opponents, which amounts to willful breach and disobedience of order of the status quo and, therefore, the impugned order passed by the learned trial Court dismissing the applications Exh. 89 & 112 preferred by the plaintiff under Order 39 Rule 2(A) of the Code of Civil Procedure deserves to be quashed and set aside. It is also further submitted by Shri Prabhav Mehta, learned advocate for the appellant that even otherwise the said "Golden Gun" could not have been disposed of without statutory permission in view of the provisions of Antiquities and Art Treasures Act, 1972. Therefore, also the learned trial Court has committed an error in dismissing the aforesaid applications. By making above submissions, it is

requested to allow the present Appeal from Order by quashing and setting aside the order passed by the learned trial Court passed below Exhs. 89 & 112 and to punish the defendants having committed breach of the order of status quo.

7. Heard Shri Prabhav Mehta, learned advocate for the appellant at length and also gone through the relevant papers as well as the impugned order passed by the learned trial Court rejecting the applications submitted by the appellant original plaintiff submitted under Order 39 Rule 2(A) of the Code of Civil Procedure, by which it was requested to punish the defendants for committing breach of the order of status quo alleging inter alia that the "Golden Gun" has been sold out somewhere between 15.1.1992 to 9.8.1995 during the period when order of status quo was in operation. At the outset, it is required to be noted that aforesaid applications at Exh. 89 & 112 were submitted by the original plaintiff for taking action for breach of injunction /status quo order under Order 39 Rule 2(A) of the Code of Civil Procedure. It cannot be disputed that the same would have a very serious consequence. Therefore, a party alleging disobedience himself must prove the allegation not less stringently than in a criminal case and a party cannot be held guilty for violating the order of injunction till only allegation made against the

such parties are proved to the satisfaction of the Court. When violation of order of status quo is alleged unless there is a clear evidence a person cannot be punished on mere surmise. In light of the above principle, the impugned order passed by the learned trial Court requires to be considered.

8. It is the case on behalf of the plaintiff that there was an order of status quo between 15.1.1992 to 9.8.1995 i.e. day on which the Hon'ble Supreme Court disposed of the SLP and only when the Hon'ble Supreme Court while disposing of the SLP vide order dated 9.8.1995 directed the parties to submit the list of the properties owned by the deceased ruler, for the first time, since filing of the suit, the defendant namely Smt. Shatnadevi Gaekwad came out with a statement dated 6.9.1995 denying the existence of several invaluable and priceless properties as described in para 21 of the plaint, in a reply at Exh. 122. It is also the case of the plaintiff that after filing the said written statement, appellant preferred application vide application Exh. 174 praying for direction to defendants to furnish details of the alleged properties disposed by the defendants and learned Civil Judge partly allowed the said application vide his order dated 6.3.1996. The defendants filed an affidavit vide Exh. 133 stating that the golden

canon has been sold by the defendants on 19.11.1991 i.e. before the status quo order was granted. Therefore, it is alleged that till 1995 the defendants did not disclosed about the disposing of the golden canon, it is to be presumed that the the golden canon has been disposed of during the period of status quo. Now, certain averments/pleadings in the application under Order 39 Rule 2(A) of the Code of Civil Procedure are required to be considered which are as under:

"The plaintiff says and submits that the existence of otherwise of the golden gun is a matter of simple verification. The defendants have deliberately evaded addressing themselves to this aspect of the matter, but a Court Commissioner will straightaway verify the facts. The Plaintiff is constrained to proceed on the assumption that the gun has been disposed of, having regard to the suspicious behaviour of the defendants and their evasive and clandestine conduct. The only way of verifying the existence of the gun is by appointing a Court Commissioner. The plaintiff submits that if a Court Commissioner is appointed to verify this averment, it would be immediately seen that the allegation voiced by the plaintiff is real. The plaintiff has also reasons to believe that Heirloom Jewellery, gold ornaments, diamonds, valuable paintings, antiques, silver cannon and gold and silver carriages etc. worth crores of rupees have been or at any rate, would be dealt with, so as to replace valuable items like

diamonds etc. by items of inferior value. Under theses circumstances, it is in the interest of justice to pass order for "Appoint of Court Commissioner for Inventory" and inspection of all the moveable properties left behind by the late Maharaj Smt. Fatesinghrao Gaekwad of Baroda".

9. It appears that it is a specific case on behalf of the plaintiff that, she came to know somehow before 2.4.1993 that the defendants and Smt. Mrunalinidevi Puar who is constituted attorney for defendant No.1 have disposed of the "Golden Gun" by willfully committing breach of order of status quo, therefore, it is alleged that they dispossessed the "Golden Gun" somewhere in 1992-93 when the order of status quo was in operation. It is also the contention on behalf of the plaintiff that even the defendants have not disclosed to whom they have sold the "Golden Gun". Mainly on the above pleadings and above submissions the plaintiff wants to see that the defendants are punished for breach of order of status quo. From the material on record and the pleadings in the application, it appears that the plaintiff has miserably failed to prove and establish the fact that any of the defendants or their constituted attorney Smt. Mrunalinidevi Puar has sold out the "Golden Gun" somewhere before 1.4.1993. The allegations and the averments in the application committing breach of order of status quo are too vague and only on

surmise. Merely on the ground that earlier the defendants have never disclosed the disposing of the "Golden Gun" and in fact admitted that they are in possession of the suit properties and for the first time disclosed the disposing of the "Golden Gun" and not in possession of certain precious properties mentioned in para 21 of the suit. The plaintiff wants to see that the defendants are punished for breach of order of status quo. Even on considering the reply filed by the defendants it cannot be said that the defendants have specifically admitted the existence of the "Golden Gun". Under the circumstances, only on the basis of the some vague allegations and that to on the basis of surmise, the defendants cannot be punished under Order 39 Rule 2(A) of the Code of Civil Procedure for breach of order of status quo.

10. Now, so far as the submissions of the learned advocate for the appellant that defendants have not disclosed to whom the "Golden Gun" has been sold is concerned it is required to be noted that even the plaintiffs has not submitted any application and / or notice calling upon the defendants to disclose to whom the "Golden Gun" has been sold. Under the circumstances, no adverse inference can be drawn against the defendants.

11. Now, considering the Order 39 Rule 2(A) of the

Code of Civil Procedure what is required to be proved by the person alleging contempt is that the other person who is alleged to have committed the breach of order of status quo and / or injunction has sold the properties and / or committed breach of order of status quo during the period that the order of status quo and / or injunction was in operation and the same is deliberate and willful. As stated hereinabove, to punish the person under Order 39 Rule 2(A) of the Code of Civil Procedure can have a very serious consequence therefore, a party alleging disobedience must prove the allegation not less stringently in a criminal case and party held guilty for violating order of injunction unless the allegation made against the such parties are proved to the satisfaction of the Court. Unless there is a clear evidence, a person cannot be punished on mere surmise. Under the circumstances, when the appellant original plaintiff has miserably failed to establish the case and / or make out a case by leading proper evidence that the "Golden Gun" has been sold prior to 1993 during the period which the order of status quo has in operation, the defendants cannot be punished for breach of order of status quo under Order 39 Rule 2(A) of the Code of Civil Procedure. Under the circumstances and in the facts and circumstances of the case, it cannot be said the learned trial Court has committed an error in dismissing the

aforesaid applications Exhs. 89 & 112.

12. For the reasons stated above, there is no substance in the present Appeal from Order and deserves to be dismissed and is accordingly dismissed.

CIVIL APPLICATION NO. 1914 OF 2004

In view of the dismissal of the Appeal from Order, no further order in Civil Application.

(M.R. SHAH, J.)

kaushik