

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3373 of 2008****To****SPECIAL CIVIL APPLICATION No. 3376 of 2008****For Approval and Signature:****HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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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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RUTABEN DIPAKBHAI PATEL POA OF SURESHBHAI M PATEL**Versus****RECOVERY OFFICER AND ANOTHER**

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Appearance :

MR BS PATEL for the Petitioner

MR HP RAVAL for Respondent No.1

MR BIJU A NAIR for Respondent No.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**Date : 31/07/2008****ORAL JUDGMENT**

1. Heard Mr.B.S.Patel, learned advocate for the petitioner. The matter requires consideration.

2. **RULE.** Mr.Harin P.Raval, learned Assistant Solicitor General

of India, waives service of Rule on behalf of respondent No.1. Learned advocate Mr.Nair waives service of Rule on behalf of respondent No.2 – Bank of Baroda.

3. The petitioner, initially, challenged the action of issuing sale proclamation issued by the Recovery Officer-II, Debts Recovery Officer-II, Ahmedabad. Thereafter, a draft amendment was moved and order passed by the Recovery Officer-I, Debts Recovery Tribunal-II, Ahmedabad below Exh.T/66 is also challenged.

4. The short question involved in the matter is as to whether the immovable properties of the guarantor, which were not mortgaged, could have been included in the sale proclamation. The subsequent question which arises for consideration is as to whether the immovable properties, which are in the name of the family members of the guarantor, could be the subject matter of sale proclamation.

5. Mr.Nair, learned advocate for respondent No.3 – Bank vehemently submitted that the revenue entries do not decide ownership of the property.

Taking it as an abstract proposition of law, there cannot be any dispute about it, but then, in the present case, the facts and the law is required to be examined by the authority while passing order

on Exh.T/66.

6. Without prejudice to the rights and contentions of both the sites, order dated 22.02.2008 passed below Exh.T/66 in R.P.No.156 is quashed and set aside. The authority is directed to decide the same afresh after giving full opportunity to both the sides to present their case, supporting the same with the decisions of the Hon'ble the Apex Court.

Looking to the age of the matter, it is directed that the parties shall appear before the authority initially on 11.08.2008. The authority will then fixed its own time table for hearing of the matter, giving due priority to decide the same as expeditiously as possible, preferably within 3 months from the date of the first date of hearing.

7. With these directions, the petitions are disposed of. Rule is made absolute. No costs.

(RAVI R.TRIPATHI, J.)

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