

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No. 22 of 2012  
In  
COMPANY APPLICATION No. 503 of 2011  
In  
COMPANY PETITION No. 100 of 1997  
With  
CIVIL APPLICATION No. 90 of 2012

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

HONOURABLE MR.JUSTICE MOHINDER PAL

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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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KOTAK MAHINDRA BANK LTD - Appellant(s)

Versus

OFFICIAL LIQUIDATOR OF M/S GUJARAT B D LUGGAGE LTD & 4 -  
Opponent(s)

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**Appearance :**

MR NAVIN K PAHWA for Appellant(s) : 1,  
RULE NOT RECD BACK for Opponent(s) : 1,  
MS AMEE YAJNIK for Opponent(s) : 1,  
RULE SERVED for Opponent(s) : 2 - 3.  
MR BH BHAGAT for Opponent(s) : 3,  
RULE UNSERVED for Opponent(s) : 4,  
MR TR MISHRA for Opponent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

and

**HONOURABLE MR.JUSTICE MOHINDER PAL****Date : 31/07/2012****ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE P.B.MAJMUDAR)**

1. Leave to delete ***RESPONDENT NO.4***.

2. This appeal was admitted by the earlier Division Bench of this Court, by an order dated 26.03.2012. By an order dated 26.06.2012, the appeal was fixed for final hearing on 09.07.2012.

3. Today, the matter is place before us for hearing.

4. By way of this appeal, the appellant has challenged the order passed by the learned Single Judge, dated 23.12.2011, below note for Speaking to Minutes filed by the present appellant. The appellant, herein, was the original respondent No.4 in Company Application No.503 of 2011. Aforesaid company application was filed by IFCI Limited, who is respondent No.2, herein. The learned Single Judge, by the impugned order dated 23.12.2011, gave certain directions as to how the Official Liquidator should distribute the amount. The learned Single Judge also found that the disbursement, as ordered, is preliminary and the same shall be subject to the final report of the Chartered Accountant and the financial institution

shall file the usual undertaking with the office of the Official Liquidator. Subsequently, the present appellant, who was respondent No.4 in the aforesaid company application, submitted a note for speaking to minutes for necessary correction in the order. The learned Single Judge passed a detailed order, while disposing of the said note for speaking to minutes on 23.12.2011, and issued further directions in furtherance of the original order dated 23.11.2011. Being aggrieved thereby, the appellant has preferred the present appeal.

5. On behalf of the appellant, learned Counsel, Mr. Pahwa, submitted that by passing the impugned order, below the note for speaking to minutes filed by the appellant, the learned Single Judge has virtually modified the original order, as if, the learned Single Judge was deciding a review application or an application for modification/clarification of the original order. It is also submitted that the order of the learned Single Judge below the note for speaking to minutes is, therefore, beyond the powers of this Court of deciding such a note.

6. We have also heard Ms. Yajnik, learned Counsel for respondent No.1 and Mr. Bhagat, learned Counsel for respondent Nos. 2 and 3. It is argued by them that such a lengthy order, by which the original order is modified to a great

extent, could not have been passed by the learned Single Judge below the note for speaking to minutes, which virtually amounts to modification the original order.

7. We have heard learned Counsel for the parties at length and we have also gone through the order of the learned Single Judge passed below the note for speaking to minutes. It is required to be noted that once, a judgment/order is pronounced and if, any party to the same wants any rectification of any typographical or clerical mistake regarding date or number, such a party may apply to the concerned Court for correcting such an error in the judgment/order. After dictating a judgment/order, if any, mistake on factual aspect has crept in while transcribing the same, same can be corrected by way of filing a note for speaking to minutes, by either-side. If argument of either side is missed in the order, then also, on such a note, the concerned Court can add such argument in the original order to give complete effect to it. However, a note for speaking to minutes cannot be considered at par with a review application or in a given case with an application for clarification/modification of an order. A note for speaking to minutes can never be considered to be an application of such a nature. Such a note is, therefore, not even given any number by

the Registry. A note for speaking to minutes is, required to be entertained only for the limited purpose of correcting a typographical error or an error through oversight, which may have crept in while transcribing the same. The present note for speaking to minutes was filed only for the limited purpose of drawing the attention of the Court to a particular mistake and the scope of deciding such a note was, therefore, extremely limited. Surely, while deciding such a note, there is no scope for modifying the original order or to give further direction in connection with the earlier order and as such the original foundation of the order cannot be changed by passing a subsequent order below note for speaking to minutes.

In the instant case, while passing the impugned order, the learned Single Judge has given further directions, and thereby, has virtually modified the original order. Such a course was not open to the learned Single Judge, while deciding a note for speaking to minutes. When a note for speaking to minutes is filed, it is not required to be argued, as if the Court is deciding the main issue and no judgment is required to be given below such a note. Since, the learned Single Judge has traveled beyond his jurisdiction in regard to the scope of deciding a note for speaking to minutes, we have no option

but to set aside the impugned order. It is noteworthy that while admitting the present appeal, the earlier division bench of this Court stayed the impugned order, observing that the directions given by the learned Single Judge in the impugned order are contrary to the provisions of Section-529(A) and Section-530 of the Companies Act, 1956. As stated above, while deciding a note for speaking to minutes, there is no scope of giving any further direction in the matter.

8. In view of what is stated herein above, the appeal is **ALLOWED** and the impugned order dated 23.12.2011 is **QUASHED** and set aside. The original order of the learned Single Judge, dated 23.11.2011, shall continue to **OPERATE**. Appeal is **DISPOSED OF**, accordingly.

Since, appeal is disposed of, civil application shall not survive and it also stands **DISPOSED OF**, accordingly. No order as to costs.

(P.B. MAJMUDAR, J.)

(MOHINDER PAL, J.)