

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL NO. 449 of 2014****In SPECIAL CIVIL APPLICATION NO. 14524 of 2013****With****CIVIL APPLICATION NO. 3573 of 2014****In****LETTERS PATENT APPEAL NO. 449 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE VIJAY MANOHAR SAHAI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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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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MEHSANA DISTRICT AND COOPERATIVE BANK LTD....Appellant(s)**Versus****BHAGWANBHAI REWABHAI PATEL & 1....Respondent(s)**

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Appearance:

MR GM JOSHI, ADVOCATE for the Appellant(s) No. 1
NOTICE NOT RECD BACK for the Respondent(s) No. 1 - 2

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CORAM: **HONOURABLE MR.JUSTICE VIJAY MANOHAR
SAHAI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 29/04/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE K.J.THAKER)

1. By way of the present Letters Patent Appeal, the appellant - original petitioner has challenged the order dated 21.10.2013 passed by the learned Single Judge in Special Civil Application No. 14254/2013, whereby the learned Single Judge was pleased to allow the said petition.

2. In the writ petition, the appellant herein - original petitioner has challenged the order dated 2.7.2013, below Application Ex. 32, in Recovery Application No. 12 of 2011, passed by the Labour Court, Mehsana. The writ petition was essentially under Article 227 of the Constitution of India, and writ of certiorari was issued, despite that, while allowing the petition, the learned Single Judge could not have directed the petitioner to make payment of Rs. 4,50,000/- to

the respondent no. 1, within a period of two months, and therefore, the petitioner has been aggrieved with the clarificatory order, would not mean that the learned Single Judge has issued writ of certiorari in favour of the appellant-petitioner and against the respondent. The writ of certiorari was issued and qua that, there is no challenge, but the challenge is to the subsequent direction, and therefore, in our opinion, it is only a modification and not issuance of writ of certiorari.

3. The Five Judges Full Bench of this Court in the case of **Gujarat State Road Transport Corporation v. Firoze M. Mogal and another, 2014 GLH 1** has held as under :-

"x) If the Special Civil Application is described as one not only under Article 226 of the Constitution, but also under Article 227 of the Constitution of India and the Court or the Tribunal whose order is sought to be quashed, is not made a party, the application is not maintainable as one for the relief of certiorari in the absence of the concerned Tribunal or Court as party, but the same may be treated as one under Article 227 of the Constitution of India. If the Court or Tribunal is not impleaded as a party respondent in the main petition, then by merely impleading such court or tribunal for the first time in the Letters Patent Appeal will not change the nature and character of

the proceedings before the learned Single Judge. By merely impleading such a Court or Tribunal for the first time in the LPA, the appeal could not be said to be maintainable, if the proceedings before the learned Single Judge remained in the nature of supervisory proceedings under Article 227 of the Constitution.

xi) If the learned Single Judge, in exercise of a purported power under Article 227 of the Constitution sets aside the order of Tribunal or Court below and at the same time, the essential conditions for issue of writ of certiorari are absent, no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself and such an order can be challenged only by way of a Special Leave Petition before the Supreme Court.

xii) If a learned Single Judge, in exercise of a purported power under Article 227 of the Constitution modifies the order of Tribunal/Authority or Court below and thereby partly allows a petition to a certain extent, then in such circumstances, it could not be said that the Court exercised its certiorari jurisdiction and no appeal will be maintainable against such order in view of the specific bar created under Clause 15 of the Letters Patent itself."

4. In view of the aforesaid Full Bench decision, the present Letters Patent Appeal is not maintainable as the learned Single Judge has exercised jurisdiction under Article 227 of the Constitution of India. Hence, the present Letters

Patent Appeal stands dismissed as not maintainable. We, however, make it clear that we have otherwise, not gone into the merit and the dismissal of this appeal will not stand in the way of the appellant in seeking appropriate remedy before the appropriate forum in accordance with law. The order of the learned Single Judge should be complied with within a period of two months from today.

4. As the main appeal is dismissed, Civil Application No. 3573 of 2014 is also dismissed.

(V.M.SAHAI, J.)

(K.J.THAKER, J)

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