

(2004) 05 GUJ CK 0007
In the Gujarat High Court
Case No : Appeal From Order No. 421 of 2002

Ajendraprasadji Narendraprasadji Pande	APPELLANT
Vs	
Swami Keshavprakashdasji Narayanpraydasji	RESPONDENT

Date of Decision : 06-05-2004

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 18, 19, 20, 21, 22
Civil Procedure Code, 1908 (CPC) — Order 23 Rule 1, Order 39 Rule 3, 151
Hindu Minority and Guardianship Act, 1956 — Section 9(1)(5)

Citation : (2004) 3 GLR 2081

Hon'ble Judges : C.K. Buch, J

Bench : Single Bench

Advocate : S.B. Vakil and A.S. Vakil, for Petitioner No. 1-2, for the Appellant; S. N. Shelat and Prashant G. Desai, Counsel for Resp. No. 1, P.M. Raval and Prasang G. Desai, for Resp. No. 2, for the Respondent

Judgement

C.K. Buch, J.—This Appeal from Order under O. 43 R. 1(r) of CPC (CPC for short) is preferred by the appellants- original defendants against the order dated 1.10.2002 (hereinafter referred to as "impugned order" passed by Id. 3rd Jt. Civil Judge (S. D.), Nadiad below application exh. 5 in Spl.Civil Suit No. 156/2002. By the impugned order, Id. Civil Judge has allowed the application exh. 5 and has granted prohibitory order restraining the appellants-original defendants from acting for themselves and with their supporters and entering the temple under Vadtal Gadi at Vadtal, Gadhada, Junagadh region under the pretext of carrying of "Dhoon" without prior permission of the Managing Trust Board or the Government and not to organise any meeting in the above-said areas. Appellant no. 1 is further restrained by the order under challenge from discharging and/or performing any activities as "Acharya" till final disposal of the suit.

2. Being aggrieved and dissatisfied with the impugned order dated 1.10.2002, the present appeal is preferred on various grounds stating out mainly in para-3 of the appeal and it is submitted that the order under challenge is even

otherwise illegal, unjust and erroneous and the same requires to be quashed and set aside.

3. For the sake of convenience, the application preferred under O. 43 R. 1 & 2 R/w Sec. 151 of CPC by the original plaintiffs in the above-said Civil Suit- exh. 5, has been referred for short as "exh. 5 application". The appellants are hereinafter also referred to as the original defendants and respondents herein as the original plaintiffs. During the discussion word "Acharya" is used for defendant no. 1 and at some place defendant no. 1 has been referred as "Acharya". The Id. 3rd Jt. Civil Judge (S. D.) Nadiad has been referred to as the Lower Court, or Id. Civil Judge.

4. I have heard Id. counsel appearing for the parties at length. Id. Sr. Counsel Mr. S. B.Vakil appearing with Id. counsel Mr. A.S. Vakil for the appellants, Id. Sr. Counsel Mr. S. N.Shelat & Id. Sr. Counsel Mr. P.M.Raval with Id. Counsel Mr. P.G.Desai for the respondents. Id. Counsel Mr. S. B.Vakil has taken me through the facts till the relevant date referred to in the plaint as well as in the memo of the appeal i.e. 11.5.2002, the day on which the alleged Satsang Mahasabha was convened and defendant no. 1 on the basis of the resolution allegedly passed in very Satsang Mahasabha, came to be deposed from "Gadi" or "Pad" and status of Acharya.

5. To appreciate the rival contentions raised by the Id. counsel appearing for the parties and various facts emerging from the record and the submissions made before the Court, it is necessary to mention certain basic facts leading to present Appeal from Order.

(i) The plaintiffs have initially moved the jurisdiction of the Id. Civil Judge (S. D.) Bhavnagar by filing Spl.Civil Suit No. 144/2002 (hereinafter referred to as the Bhavnagar Suit) praying declaration and permanent injunction that as per the resolution dated 11.5.2002 of the Satsang Mahasabha (hereinafter referred to as the Mahasabha), defendant no. 1 Shri Ajendraprasadji is not the Acharya of Vadtal Diocese of Swaminarayan Sect and, therefore, defendant no. 1 be restrained from acting and/or performing as and carrying on activities as Acharya of Vadtal Diocese. Supplementary proceedings under O. 39 R. 1 & 2 and Section 151 of CPC were resorted to and the plaintiffs also filed an application for temporary injunction in terms of prohibitory relief prayed in the main suit. Defendants appeared in Bhavnagar suit and vide application exh. 19, raised a contention that the Id. Civil Judge (S. D.), Bhavnagar has no jurisdiction to hear and decide the suit. The application for injunction was also resisted by a detailed reply with documentary evidence. The Bhavnagar Court was pleased to dismiss the application exh. 19 of the defendants and granted an application for temporary injunction. The order granting temporary injunction was passed on 1.7.2002, but it is contended that in the month of June-2002, by an order below application exh. 15 in Bhavnagar Suit, the Court deleted original plaintiff no. 3 of that suit. So, on the day on which the temporary injunction was granted by Id. Civil Judge (S. D.), Bhavnagar, the original plaintiff no. 3 of the civil suit was no

more a party in the said suit. It is relevant at this stage to note that the original plaintiff no. 3 has also signed the Vakalatnama and the present suit plaint presented on 6.9.2002.

(ii) The order rejecting application exh. 19 filed in the Bhavnagar Suit by the defendants dated 14.6.2002 was challenged by way of filing Civil Revision Application No. 650/2002. On appearance of the other side, after hearing the parties, the following order came to be passed by this Court on 8.7.2002:-

" Heard the learned advocates for the parties. In view of the fact that the dispute is also pending before the Arbitrator, who is a retired Hon"ble Judge of this Court for orders. S. O. to 23.7.2002. In the meantime trial of the suit is stayed."

(iii) By that time, Id. Civil Judge (S. D.), Bhavnagar passed an order below exh. 5 on 1.7.2002 and granted temporary injunction as prayed against the defendants. The said order came to be challenged by way of an Appeal from Order being A.O. No. 284/2002. This Court admitted the AO preferred by the defendants and vide order dated 11.7.2002 in Civil Application for stay, issued notice to the other side.

(iv) Pending the AO No. 284/2002, one Civil Application No. 4612/2002 was filed by the appellants of the AO and this Court (Coram: Ravi R. Tripathi, J), while dealing with the said application, passed following order on 11.7.2002:-

"The present Appeal from Order is filed against the order below exh. 5 in Special Civil Suit No. 144 of 2002 by the learned 2nd Joint Civil Judge (Senior Division) Bhavnagar dated 1.7.2002. After the matter was heard for quite some time, taking into consideration the nature of the controversy involved in the matter, it is deemed fit that the following orders be passed in the matter:

(i) The present appellants should be allowed to enter all the temples under "Vadtal Desh" (southern diocese) in their individual capacity for performing Darshan and Puja including Arti.

(ii) Rest of the order shall not operate on an assurance given by appellant no. 1 who is present before the Court that he will not be organising Dhun or any other proceedings under the same and will not be holding any meeting/congregation. He will also refrain from addressing such meeting within the premises of any temple of Vadtal Desh (southern diocese).

Order accordingly.

2. The above orders to operate till 25.7.2002. Adjourned to 25.7.2002."

(v) Thereafter, AO No. 284/2002 and CRA No. 650/2002 were listed for hearing before this Court where the Court (Coram: Miss R. M.Doshit,J) has passed following order on 14.8.2002:-

"Heard Mr. H. M.Parikh for the appellants and Mr. H. B.Shah, learned senior advocate with Mr. Prashant G.Desai, learned advocate for the respondents.

The learned advocate Mr. Shah states that since the jurisdiction of the Court

below to entertain the suit in the present nature is questioned, the plaintiffs shall withdraw the suit with a view to presenting the same before the appropriate forum.

In view of the statement made by Mr. Shah, neither the Appeal nor the Revision Application shall survive. The Appeal and the Revision Application are accordingly disposed of. The impugned orders made by the Court below Applications Exhibits 5 & 19 stand vacated. On plaintiffs' making application to that effect, the Court below shall return the plaint to the plaintiffs for presentation before the appropriate forum.

Civil Application stands disposed of. There shall be no order as to costs. "

(vi) After the order passed by this Court on 14.8.2002 referred to above, the Court of Id. Civil Judge (S. D.), Bhavnagar was approached for appropriate orders and Id. Presiding Judge passed an order for return of plaint of Bhavnagar Suit under O. 7 R. 10-A of CPC. The said plaint, thereafter, was presented in the court of Id. Civil Judge (S. D.), Ahmedabad (Rural) on 4.9.2002. The said suit came to be registered as Special Civil Suit No. 190/2002. It is not in dispute that this very suit was withdrawn on the day on which it was presented before the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural) on a request that the plaintiff was tendered through mistake and that the same is required to be filed before the appropriate Court in District Kheda i.e. before the trial Court. The contention of the appellants is that the order from the court of Id. Civil Judge (S. D.), Bhavnagar was obtained behind the back of the defendants and it was also incorrectly stated in the application filed before the Id. Civil Judge (S. D.), Ahmedabad (Rural) that the Court in the District Kheda i.e. trial Court would have jurisdiction. The order returning the plaint back to the plaintiffs dated 4.9.2002 passed by the Id. Civil Judge (S. D.), Ahmedabad (Rural) has reference of the order passed by the High Court. According to the defendants, this order has been obtained under some misrepresentation.

(vii) The present suit is filed in the trial Court on 6.9.2002 along with the application exh. 5 under O. 39 R. 1 & 2 CPC praying temporary injunction pending the suit. Id. Civil Judge granted ex-parte ad-interim prohibitory order on the same day i.e. on 6.9.2002 as prayed for. On 16.9.2002, defendants appeared in the suit and delivered first resistance vide application exh. 15 under O. 7 R. 11 of CPC and written reply to exh. 5 application came to be filed on 27.9.2002 along with the list of documents. The Court was to hear the applications exh. 5 and exh. 15 on 30.9.2002, but on 30.9.2002, the plaintiffs filed an application exh. 24 for necessary amendment in the plaint and also produced further documentary evidence with a list exh. 25. The parties were heard on both these applications on 30.9.2002. After conclusion of the oral arguments by the parties, the plaintiffs also tendered their written submissions. On 1.10.2002, the Court passed order below applications exh. 5 & 15. The trial Court also granted amendment prayed vide application exh. 24. The defendants vide application exh. 27 prayed for suspension of the order passed below exh. 5 to enable them

to prefer an appeal before this Court. But that application has been rejected by the Id. Civil Judge vide order dated 1.10.2002.

(viii) The defendants challenged the order dated 1.10.2002 passed below exh. 27 by preferring Special Civil Application No. 10096/2002 invoking the jurisdiction of this Court under Articles 226 & 227 of the Constitution of India, but the same has been dismissed by this Court vide order dated 8.10.2002 (Coram: A.M.Kapadia, J). The defendants then preferred present appeal.

6. It is the say of the appellants that after the impugned order dated 8.10.2002, the plaintiffs and some other persons held meeting and started taking steps to nominate new Acharya in place of defendant no. 1 Shri Ajendraprasadji with a view to frustrate the appeal which was under contemplation.

7. One of the main arguments advanced by Id. Sr. Counsel Mr. S. B.Vakil for the appellants is that the order passed by the Id. Civil Judge (S. D.), Bhavnagar initially and thereafter subsequent order passed below exh. 5 firstly ex-parte and thereafter bipartite in the application exh. 5 by the Id. Civil Judge (S. D.), Nadiad granting prohibitory injunction against defendant no. 1 Acharya, are contrary to the scheme framed by this Court for the trust of Shri Swaminarayan Dev Gadi (Diocese) at Vadtal and temples subordinate to it and also against all the religious sanctity of Shri Swaminarayan Sect. Developing the arguments on this point, Id. Sr. Counsel has attempted to point out certain aspects and according to him, these aspects are very relevant and go to the root of the propriety and validity of the order under challenge. It would be proper to narrate these aspects and points in brief:-

(i) conduct of the plaintiffs which is apparently not bonafide as they have obtained the order of return of plaint from the Court of Id. Civil Judge (S. D.), Bhavnagar even behind the back under O. 7 R. 10 & 10A of CPC;

(ii) the act of withdrawal of the suit No. 190/2002 from the Court of Id. Civil Judge (S. D.) is malafide and under misrepresentation because the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural) had jurisdiction to hear and entertain the suit because the Mahasabha passing the resolution dated 11.5.2002 was convened at Sarangpur and that area is within the territorial jurisdiction of the Id. Civil Judge (S. D.), Ahmedabad (Rural);

(iii) The withdrawal of the suit-plaint may have been prayed under any reason or pretext, but when the same is not conditional, then the suit filed before the trial Court would not be maintainable in light of the scheme of O. 23 and especially O. 23 R. 4 of CPC;

(iv) The trial Court was requested to grant amendment in the plaint vide application exh. 24 by the plaintiffs along with the list of documents exh. 25. This compilation of documents submitted with the list exh. 25 contains about 300 to 400 pages and after conclusion of the arguments on 30.9.2000, Id. Presiding Judge decided the application exh. 5 & 15 on the next day i.e. on 1.10.2002 and

it is specifically averred by the appellants that the order under challenge was pronounced before 12.00 noon running into 45 pages and where typed written submissions on behalf of the plaintiffs were running in about 22 to 23 pages. The procedure adopted, according to Id. Sr. Counsel Mr. Vakil, is strange and unusual.

(v) the locus of original plaintiff no. 3 has been ignored.

(vi) the principles of natural justice have been grossly violated even by Satsang Mahasabha before deposing plaintiff no. 1 and while passing resolution in condemning or derogatory language and the concept of "Abhimukh" and especially "Vimukh" has not been at all considered before granting prohibitory order having a serious effect on the thousands of followers of plaintiff no. 1 and/or of Shri Swaminarayan Sect including the disciples and followers of Vadtal Gadi.

8. All these points require appreciation in light of the arguments advanced by Id. Sr. Counsel Mr. P.M.Raval & Sr. Counsel Mr. SN Shelat appearing for the plaintiffs.

9. According to Id. Sr. Counsel Mr. Vakil, the scheme framed by the High Court is elaborate and clauses 4 to 12 of the scheme provides for the powers and duties of Acharya and as per Clause 4(1) and (A) & (B) provides that Acharya is the supreme religious and spiritual authority of the Southern Diocese and Acharya has authority in the matter of religious, tradition, precepts, conventions, festivals, sampradays and ritual Seva in the temple has to prevail over. The Acharya is under obligation and enjoying privilege to give "Diksha" accordingly to religious precept after considering the recommendations of the Chief Kothari. Clause 5 provides that trust property shall be held by Acharya as custodian trustee. Mr. Vakil has taken me through other relevant clauses i.e. 6 & 7 of the Scheme framed by this Court. First scheme of the trust of Shri Laxminarayan Dev at Vadtal and temples subordinate to it is framed while dealing with First Appeal No. 543/1970 and confirmed in L.P.A.No. 183/1973 on 4.12.1986. It would be proper to quote clauses 6 & 7 because the deposition/removal of the Acharya by Satsang Mahasabha is on account of certain unwarranted acts and some material omission or say inactions on the part of Acharya viz. defendant no. 1.

"(6) The Acharya shall concur in and perform all acts necessary to enable the Board to exercise their powers of management or any other power or direction vested in them, unless the matters in which he is required to concur is a breach of trust and he shall not be held liable for any act of default on the part of the Board or any of them unless he so concurs.

PROVIDED that in the event of Acharya failing to perform and carry out a particular act or decision of the Board, within a period of fortnight from the date of the decision of the Board it shall be performed and carried out by the Board in the manner prescribed by it and such act of the Board shall be as effective and binding as if carried out by the Acharya.

PROVIDED FURTHER that the Acharya in that case shall not be personally responsible for such acts or decisions unless he expressly concurs thereto;

(7) All the sums received by the Acharya, whether in nature of Dharmada, Namvero or Bhet of any kind or description whatsoever, either to himself or to his wife or son, shall be paid over to the Board or to such person as it may direct or into such Bank to the credit of such person as may be directed by the Board and in that case he shall be exonerated from seeing to the application thereof and shall not be answerable for any loss or misappropriation thereof."

10. The parties have placed reliance on certain portion of the "Lekh" known as "Desh Vibhagh-No Lekh" (hereinafter referred to as the "Lekh"). There is no controversy on the fact that Lekh is written by Lord Swaminarayan and it provides for appointment of Acharya. In fact, the Lekh is mainly expressing certain wishes and desires of Lord Swaminarayan. Wishes and desires expressed in the Lekh are at some places of advisory in nature and some part of the Lekh casts obligations and also directs all the classes of devotees including Acharya who were asked to adorn respective both the Gadies (diocese) viz. Southern Diocese and Northern Diocese. One of the arguments of Mr. Vakil is that this very document- the only document dealing with precepts, conventions and religious seva in temple, does not contain any provision for removal of Acharya. The Lekh is produced in the suit and this Court is also provided copy thereof. According to Mr. Vakil, Acharya is the source of power, faith and religious rites and rituals and ultimately, everything vests in Acharya so far as both the Dioceses are concerned. Ex-parte prohibitory order granted by Bhavnagar Court on 6.9.2002 was a mechanically granted and without application of mind and, therefore only, the plaintiffs withdrew the suit behind the back and the Presiding Judge of the Court of Id. Civil Judge (S. D.) of District Kheda at Nadiad seems to have granted similar type of prohibitory order; that to ex-parte, under some misconception, but while confirming the order allowing the application exh. 5, Id. Civil Judge was supposed to consider the effect of presentation of the suit in the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural) and it's withdrawal. Placing reliance on the decision in the case of Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., , it is submitted that the strength in the case of the plaintiffs and chance of certain success requires to be seen. The observations of the Apex Court in the case of Colgate Palmolive (supra) in paras 7 to 12, 16, 20 & 24 have been referred and the ratio of the decision in the case of M/S S. M. Dyechem Ltd. Vs. M/S Cadbury (India) Ltd., is also pressed into service by Mr. Vakil, submitting that the comparative strength is more relevant and the impugned order does not deal with this very relevant aspect. Of course, Mr. Vakil has accepted that one suit filed by defendant no. 1 Acharya was already pending in the Court of Id. Civil Judge (S. D.) at Nadiad and in that suit, no favourable order granting interim relief was passed, but the application allowed by the trial Court in the present suit does not deal with multiplicity of the suit and similar point involved in interim relief prayed in both the suits. It is submitted that the plaintiffs have abused the process and have approached the Court not with clean hands. While developing arguments on this point, Mr. Vakil has placed reliance on the following decisions:-

(i) Bai Virkor, D/o Mulsing Ramsing v/s Prajapati Damodar Bhogilal 20(2) GLR

652 (relevant page 663)

(ii) Dahyabhai Ranabhai Vaghela v/s Bloom Dekor Ltd. & Ors. 1995(1) GLH 865

(iii) Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another, .

11. It is argued that no clear right to sue is emerging from the say of the plaintiffs against Acharya and that too with a prayer of declaration that defendant no. 1 is no more an Acharya of Southern Diocese where the plaintiffs are claiming themselves as disciples and devotees or followers of Vadatal Diocese of Shri Swaminarayan Sect headed by defendant no. 1 Acharya. Mr. Vakil has alleged "forum shopping" against the plaintiffs. However, there was no reason for them to get the order of withdrawal-return of the plaint on false representation. When there is no affidavit by the Advocate on record, it should not be accepted that the suit was presented in Ahmedabad Court through oversight. There was no reason for the plaintiffs to make false statement before Ahmedabad Court that it has no jurisdiction. The present suit, therefore, is likely to fail being successive suit on the alleged same cause. Drawing attention of the Court to the proceedings drawn by the trial Court more particularly from 6.9.2002 to 1.10.2002 the day on which the application exh. 5 was allowed, it is argued that Id. Presiding Judge was inclined to grant ex-parte injunction, but while confirming the injunction granted at the earliest, the point of jurisdiction and sustainability of the suit being a successive suit, was required to be decided at the earliest, then other seriously disputed facts such as giving of Diksha, alleged irregularities in Charan-Bhet, Dharmada or alleged fraud played with the trust qua the amount received against the foreign tour of defendant no. 1. Two major aspects in reference to the status qua the rights and obligations of Acharya is apparently divided in the scheme framed. One part can be addressed as religious duties and authority in religious matters and the second part can be addressed as temporal matters i.e. status as "custodian trustee". According to Mr. Vakil, in light of the provision to Clauses 6 & 7 of the scheme referred to hereinabove, there is no scope to hold an Acharya responsible for any wrong in temporal matters. The Scheme is nothing but a constitution. So, clauses 44 & 47 of the Scheme if read together, there is no scope of removal of Acharya. In absence of any specific clause as to removal of Acharya, the directions from the High Court is must. Undisputedly, the registration of the trust is u/s 18 of the Bombay Public Trusts Act. The constitution of the Board of Managing Trustees is as per Clause-18 of the Scheme. Clause-18 requires to be read in reference to clauses 14, 16 & 17. So, Acharya is above the Board of Managing Trustees being a "custodian trustee". If a custodian trustee is required to be removed, the suit under Sec. 50 of the Bombay Public Trusts Act (hereinafter referred to as the BPT Act) requires to be filed. In case of necessity of removal of custodian trustee without proposing any change in the scheme of the High Court, the District Court should be approached in a suit filed under Sec. 50 of the BPT Act. Every suit of such or similar nature, according to Mr. Vakil is prepared under Sec. 80 of the BPT Act.

Satsang Sabha had no authority to pass any resolution for removal of Acharya or to replace the custodian trustee. Satsang Mahasabha also can not dictate Acharya in temporal matters. Merely because Satsang Mahasabha has taken such or similar decision, would not acquire the jurisdiction over the matter. Mr. Vakil after reading relevant portions of "Desh Vibhag-no Lekh", "Shiksha-Patri", "Sansthan-nu-Jivan" and "Vachanamrut" being main holy and highly respected documents/verses, has pointed out that such Satsang Mahasabha is not recognised in any of the four documents/verses highly respected religious books in respect of temporal matters and such Satsang Mahasabha can not remove Acharya. Judgment of the Id. District Judge, Ahmedabad in Civil Suit No. 22/1902 mark 25/16 deals with "Desh Vibhag-no Lekh" and method of appointment of Acharya. Temporal management part is taken care of by the scheme framed by the High Court. Judgment of Gonda Court does not provide any guideline nor interpret any of the above four religious books/verses. The Judgment of Gonda Court is nothing but a solution and no congregation can take care of the situation which has been created by the resolution passed by Satsang Mahasabha in the present case. The judgment of Gonda Court was challenged by way of an appeal in Allahabad High Court. Mr. Vakil has taken me through the relevant pages of the judgment of Allahabad High Court i.e. pages 111 to 115 and pages 143 to 148 of Vol. 5 of the paper-book supplied to the Court during the course of hearing. Mr. Vakil has also drawn my attention on issues framed in the above-said Ahmedabad suit and the facts discussed by Id. District Judge in paras-12 to 16. It is submitted that congregation of Satsang Mahasabha has no right to remove Acharya. So, obviously therefore, such congregation has no right to appoint anybody as Acharya. The word "follower" is capable of and include all class of followers. The question posted by Mr. Vakil is that who is the judge? or who can judge Acharya ? Satsang Mahasabha is the mix and can not over throw the foundation placed by Lord Swaminarayan by remaining inside the sect. One misconduct of similar nature makes that follower "Vimukh" and assembly or congregation of such "vimukh" individual can not overthrow Acharya, are the questions which were required to be replied by the trial Court. Mr. Vakil for the purpose of cutting root of the resolution relied upon by the plaintiffs for the cause of the present suit, has also questioned the formation of Satsang Mahasabha and has submitted that very limited small group of persons have done this venture.

12. While developing his arguments, Mr. Vakil has drawn my attention on facts which I would like to refer in brief:-

** The test of the prima facie case is the relative strength of the cases of the two parties and not mere existence of a triable issue.

** When the suit was filed, arbitration proceedings were pending before Mr. Justice S. D. Dave ((retired) of Gujarat High Court. The present suit is not a representative suit, but is a suit filed by three plaintiffs in their individual capacity.

** The Satsang Mahasabha had no jurisdiction to depose the appellant no. 1 as Acharya on any ground related to clause 4(b), 7, 10, 12, 16 and 42 of the scheme, nor would the Civil Courts have any jurisdiction to grant any relief on such matters whether on the basis of any resolution of Satsang Mahasabha or at all.

** Section 80 of the Bombay Public Trusts Act, 1950 declares that no Civil Court shall have jurisdiction to decide or deal with any question, which is by or under the said Act to be decided or dealt with by any officer or authority under the Act or in respect of which the decision or order of such officer or authority has been made final and conclusive. Section 50 of the Act provides for the filing of a suit to obtain a decree inter alia for the reliefs of the removal of any trustee or manager, the appointment of a new trustee or manager and the settlement of a scheme or variations or alterations in a scheme already settled. For filing of such suit persons having an interest in the trust have to apply to the Charity Commissioner in writing for his consent.

** Scheme u/s 92 CPC was finalised in appeal and under which liberty was reserved to the parties to take any matters connected with the Gadi to that Court for decision.

** In accordance with the High Court's order the suit was required to be filed in the Court at Nadiad.

** That the order of the Court of Ahmedabad (Rural) has to be read in a meaningful and not in a formal manner and the illusion of return of the plaint for presentation to proper Court is required to be dispelled.

** The trial Court has relied upon the fact that office of Acharya is not hereditary and there is a previous instance of Acharya Laxmiprasadji having been deposed or dethroned.

** Judgment dated 14.09.1948 of Civil Judge, Gonda in Regular Civil Suit No. 30 of 1947 P.118. All these cases are strong evidence of the fact that the relinquishment of the Gadi was a voluntary act on the part of Laxmiprasadji and was not brought about by any fraud, coercion or undue influence.

** As there was no provision for the appointment of an Acharya by a congregation or committee of the Satsangis it can not be said that the nomination and installation was made in accordance with the rules of the Gadi as given in the Lekh or as found in the usage as practice prevalent.

** A truly representative Satsang Mahasabha must be duly representative of all Satsangis, viz. Haribhaktas and Tyagis. Haribhaktas are lakhs in number and Tyagis are about 2000. Tyagis comprise Brahmcharis, Sadhus and Parshads or palas. The number of Sants or Sadhus is about 800 to 900. Admittedly, there is no registration or any authorised enrollment or list of Satsangis. There is no mention of any method or procedure for convening any meeting of Satsang Mahasabha in any religious work or scripture or any scheme framed by any Court

or elsewhere. There can not be a validly convened meeting or Mahasabha of Satsangis unless all Satsangis were given opportunity to remain present either in person or through their representative at the meeting.

** On 14.5.2001, it was resolved that since the Acharya of Vadtal did not give Diksha to Diksharthis, Sant Sabha was grateful to Tejendraprasadji Maharaj who was helpful in giving Sant Diksha to parshads of Southern region and requested him to give Diksha and performed other religious functions by coming to Vadtal region and requested the Vadtal Board Committee to request Tejendraprasadji to do so.

** Defendant No. 1 was not invited to attend the meeting of the so-called leading Sants at Sarangpur. The said meeting did not consider any question of deposing defendant no. 1.

** The Board passed a resolution that in view of the proceedings of the leading Sants at Sarangpur speedy proceedings were required to be taken in the interest of the Sampraday for which the Circular Resolution was passed. This Circular Resolution condemns the following actions of the Acharya:-

(i) Acharya was not informing the Chief Kothari of the dates of giving Diksha.

(ii) Acharya's act for giving diksha for certain Parshads without the recommendations of the Chief Kothari was contrary to traditions.

(iii) The objects of the founder Shri Swami Narayan Bhagwan were breached by not giving diksha.

(iv) The Acharya was creating a new system by requiring Diksharthis to be subjected to test.

(v) The Acharya was posed a question whether he was bound to follow the decisions of the Sants.

(vi) Acharya Maharaj Shri Tejendraprasadji of Ahmedabad be contacted in person and requested to come for giving dikshas for installation of idol and other religious programme.

** Under the scheme framed by the High Court, the Acharya's duty is to give diksha in accordance with the religious tenets which requires that diksha should be given only after testing or subjecting the Diksharathi to a test. Moreover, the right to give diksha is of the Acharya in his region and not of Acharya of any other region or territory. Therefore, the ground that the defendant no. 1 insisted on giving diksha only after taking a test of the Diksharthis is contrary to religious tenets and incompetent. In fact, it was the conduct of the Sadhus and the Board of Trustees contrary to the Sampraday's religious tenets to call Acharya of the Ahmedabad territory for giving diksha to Diksharthis in the territory under the Vadtal temple.

** Acharya does not need the consent or recommendation of the Cheif Kothari,

who is a Sant, to give diksha to a diksharathi.

** Person born in the dynasty of Dharmadev only shall be Acharya and the said Acharya only will take test of the religiousness of the disciple before giving diksha, because if the Guru gives diksha to the disciple without taking appropriate test of capacity to follow the religion the disciple's sin attaches to the Acharya in the same way in which a King suffers the sins of his minister or a husband suffers the sins of his wife.

12-A. In no religion, self-crystled body has been expected to overthrow the highest person i.e. head of the sect. There is a circular resolutions dated 5.5.2001, 14.5.2001 which talk about one of the subject that deals with number of points and one such point is giving of Diksha. Mr. Vakil has taken me through the process required to be followed for conferring/ giving Diksha. No follower of Swaminarayan Sect can deviate the process and referring relevant portion of the book "Satsang Jivanam", it is argued that before giving Diksha, Acharya is entitled to take "pariksha" (test). The appellant defendant no. 1 had insisted for such test, but the same was objected because there is internal politics especially in the background of election and right to vote as per the scheme framed by this Court. Even than, referring Adhyaya (Chapter) No. 47 of "Satsang Jivanam" and the document at page 121 of Vol. II supplied to the Court by the parties, Satsang Mahasabha has attempted to invite Acharya of Northern Diocese i.e. Ahmedabad Gadi to give Diksha and to thank him for the obligatory gesture. As per the book "Desh Vibhagh-no-Lekh", there is no scope for overlapping or overriding jurisdiction. There is clear prohibition in the directions flowing from the said book that Acharya of Ahmedabad Gadi- Northern Diocese is not supposed to give Diksha to any Tyagi. Even than, Satsang Mahasabha and the persons supported by the plaintiffs have assumed powers to invite Acharya of other Diocese to give Diksha to Tyagies which are disciples and followers of Southern Diocese. This conduct of one small group indicates that they were bent upon to remove appellant no. 1 Acharya Ajendraprasadji dissolving his status. Any disciple or group of disciples can not assume powers to remove Acharya. Acharya is the Trustee only. Appropriate legal proceedings should be taken and no such shortcut of passing resolutions and filing of suit should have been resorted to. It is an illegal way so far as temporal aspects are concerned.

13. I have carefully gone through one judgment delivered by Id. District Judge of District Ahmedabad in Civil Suit No. 179 of 1914 (Vol. IV) wherein wish of the founder of Swaminarayan Sect and deliberate intentions has been discussed. A congregation is a subject of reformation and Satsang Mahasabha if legitimately called, can suggest reformations and put deliberations which may help the beneficiaries of the Trust. One another judgment is also cited by Mr. Vakil which has been delivered by Id. District Judge, Gonda and ultimately dealt with by Allahabad High Court, and Mr. Vakil has submitted that there is no provision in the book "Desh Vibhagh-no Lekh" as to appointment of Acharya and the finding recorded by Gonda Court and thereafter by Allahabad High Court in Appeal, there

is no similarity either of logic or of findings. Undisputedly, there was no vacancy. Vacancy can not be created for appointing another person as Acharya by Satsang Mahasabha. As there was no vacancy, there can not be any valid appointment of a new Acharya. When Satsang Mahasabha has no powers either to appoint or depose Acharya, how it can be decided prima facie that the plaintiff had any case and there is a scope of success because the backbone of the relief prayed is the act of removal/ deposing of existing Acharya- present appellant.

14.(i) According to Mr. Vakil, there are thousands of followers of Swaminarayan Sect under Vadatal Gadi (diocese). There was no real representation in the so-called Satsang Mahasabha. Vadatal Gadi has mainly three types of devotees/ followers. Devotees who are "Sansari" are known as "Haribhakta" and they are in lacs. The second group is of Sadhus & Sants (Saints). One another small group which is an inner circle amongst Tyagies are known as "Palas". There is further classification i.e. Tyagi Brahmchhari. There is no constitution or rules of functioning of Satsang Mahasabha. It is submitted that there is no satisfactory and convincing evidence on record that who called or who took decision to convene Satsang Mahasabha for the purpose of removal of appellant and nature of evidence available clearly indicates that the same was not initiated by large number of followers. On the contrary, limited invitations were issued. Lacs of Haribhaktas were not even informed properly. So, there was no proper representation of large number of Haribhaktas. The suit is not filed by a representative appointed by Satsang Mahasabha nor Satsang Mahasabha had decided to institute a suit for the reliefs which have been prayed before the Court. One Shri Narayanpriyadasji- one of the plaintiffs, had no cordial relations with appellant Acharya. Out of three plaintiffs, name of one was deleted when suit was before Bhavnagar Court. Language of resolution which is at page 108 & 109 referred by Mr. Vakil, talks about the constitution of Satsang Mahasabha. In first meeting, no agenda of deposing Acharya was discussed nor proposed. Point of Diksha which was sensitively taken while passing captioned resolution of removal of Acharya. There was no subject/agenda in the said meeting. It is not the subject of the temple Board. Board meetings were called as if appellant no. 1 Acharya was accountable in temporal matters. List of 153 leading Saints is also produced (page-81) who had attended the first meeting. This meeting had approved certain acts of Acharya Shri Tajendraprasadji of Northern Diocese, can be said to be acts which are anti-religion as the same were contrary to the directions flowing from the book "Desh Vibhagh-no Lekh".

(ii) Formation of Tyagi Panch as per resolution No. 3 in the name of ancient tradition at local level is also not permissible or is in accordance with the Scheme framed by this Court. Such resolution can not make any change directly or indirectly in the Scheme. Certain unwarranted decisions were also taken in the said meeting contrary to the scheme and/or principles flowing from the books "Shikshapatri" and "Desh Vibhagh-no-Lekh". Acharya-Head of the Sect was not a subject for a Tyagi Panch. On the contrary, there is an element of selection of favourable persons from amongst lacs of Haribhaktas. This has been pointed out

from Resolution No. 2 dated 17.10.2001. Advance approval from Coordinator of Tyagi Panch was also called for. There was no semblance of sanctity and representation from all corners because followers are in lacs. No effective say from Parshad-Pala of Brahmcharis is found in the resolution passed in the meeting of 10.10.2001 and it can be said to be congregation having representation of semblance or sanctity from very large number of followers. Mr. Vakil has also taken me through resolution passed in the meeting dated 27.8.2001 called at Dabhan. Referring to resolution no. 4 (page 112 Vo. II), it is submitted that an attempt to add members was made and entry of Gadipati of Northern diocese Shri Tajendraprasadji at Vadtal is also emerging from the proceedings. Serious allegations were made in the meetings called on earlier occasions, but no opportunity to appoint Acharya was offered to explain so-called allegations. As per Clause 4(b) of the Scheme, power to give Diksha is with Acharya and chief Kothari can only recommend the Diksharthi (Itchhuk). There is no base for the allegation of collection of money and property and allegation of not returning "Charan-bhet" (offerings) to the temple Board is also vague. In each cases where financial irregularities are alleged, the otherside should be given an opportunity to explain and clarify his stand on the subject. No such gesture has been shown by the members of the temple Board and, therefore, it can not be made a basis of discussion for deposition of Acharya.

(iii) According to Mr. Vakil, so far as religious matters are concerned, there is no scope of removal of Acharya unless a grave wrong either in performance or non-performance of religious duties is found to have been committed. Temporal matters which are covered by the Scheme can not be made basis for removal of Acharya. Privilege of taking test of a Diksharthi (Vanchhu) recommended by Chief Kothari has to be exercised. Values of life are very relevant and they are to be tested. Method of test is also stated in "Satsang Jivanam". Mr. Vakil has placed reliance on relevant pages of "Satsang Jivnam" viz. page nos. 567, 592 and 594 and the same are considered carefully. Undisputedly, when Acharya of other Diocese was called to confer Diksha, the present appellant was still there as Acharya on the Gadi and no formal decision of his removal was taken. Such conduct of devotees/followers is condemned by Lord Swaminarayan and the persons indulged in such act have been addressed as "Chandaltulya" (like Chandal) and such persons even can be heard is the question posed by Shri Vakil.

(iv) Referring the contents of the booklet published and titled "Diksha Vidhan", it is submitted by Mr. Vakil that role of a Guru is of different nature. Role of Acharya of a particular diocese is also described. Role of Acharya when he is visiting the area of other "Desh", is also described. Privileges of the wife of Acharya have been described and they case some obligations on the temple Board itself. The effect of removal of Acharya would automatically result into removal of privileged lady viz. wife of Acharya addressed as "Gadiwala" in the said booklet tendered to the Court for reference. In the same way, authority to instal an idol is also with Acharya which is other important religious work. There is no role either of Tyagi or Saint in installation of an idol in Swaminarayan

Sampraday and in the same way in giving Diksha. Principles flowing from above-referred 4 Holy-books should be read in reference to the Scheme framed by this Court. Where the Scheme is silent, principles and/or directions flowing from abovesaid four holy-books should be relevant. In the instant case, Satsang Mahasabha has no power or authority to remove the existing appellant Acharya. In support of the submissions advanced before the Court, Mr. Vakil has referred a letter dated 24.3.1995 (page 203 Vol. III) written by the appellant. Creation of a condition is not relevant or acceptable. He has taken me through a letter dated 4.4.1995 and old stamp paper used for swearing affidavit against the appellant. He has also pointed out that as per the facts emerging from Page 201, Diksha was given to 2 devotees-Itchhuk. Total 5 persons were Itchhuk. One of them was denied Diksha. Thereafter, two devotees were given Diksha. Mr. Vakil has taken me through Agenda of meeting dated 12.4. 1995 (P.217 & 218) and the resolution passed and minutes drawn at page.219 dated 14/15.4.1995 respectively. It says history of 165 years and about the duties and obligations. It was per majority. Complaint of non-performance of religious functions and that too of giving Diksha emerged in the year 1995, 1997 & 2000 are reflected on pages 224 to 235 Vol. III. One person who was denied Diksha, was denied for some reason and it is submitted by Mr. Vakil that for this purpose, the Court should see and appreciate the facts reflected on page nos. 231 & 232. Test can not be taken by a Sadhu Guru (page 242 Vol. III). Plaintiffs and a group supporting the plaintiffs have made misinterpretation of certain verses (shlokas). The question of giving Diksha is a religious function and it is not a cultural activity. This attempt has been made by the Board of Trustees, but by stating it as "cultural norm", the same can not be brought within the compass of Board's powers. Tradition can not take place of basic principles of Swaminaryan Sect. Word "Rivaj" i.e. custom or tradition (P.241 Vo. III Resolution 16) is new introduction only with a view to condemn the appellant. When there is conflict between religious precepts v/s cultural tradition, religious precepts should prevail and there can not be any imposition of so-called cultural tradition on Acharya which is a Head of Swaminarayan Sect. There can not be even delegation of powers to Sadhu-Guru as there is no provision to give such authority to Sadhu-Guru so far as privilege to confer Diksha or installation of idol are concerned. Till a Dikshavanchhu- Parshad-Pala recommended by Chief Kothari clears the test to be taken by Acharya, he will remain as Parshad. Acharya can test his intellectual level, capacity to understand spiritual things, tolerance, obedience etc. An arrogant or a person found disobedient to the basis principles of the Sect may not be given Diksha. Mr. Vakil has also referred Chapter-51 Sloka 3 to 6 (P.242) of holy book Satsang Jivanam. Sadhu- Gurus have no say in Diksha Vidhan. A group of persons, if attempts to instigate other devotees against Acharya, can be termed as a wrong-doer (Vimukh). It seems that both the groups have induced each other. There should not be any confusion as to the frequent use of words "Guru, Acharya" and same are used in different context in reference to the book "Satsang Jivanam". While describing the status and religious importance of the appellant Acharya so far as his religious duties and obligations are concerned, Mr.

Vakil has taken me through various types of Dikhas being given to devotees of Swaminarayan Sect from Chapter IV of Satsang Jivanam and referring Chapters 48 to 51, during the course of hearing, Mr. Vakil has referred "Diksha" in reference to Chapter-51 and has submitted that there are different types of Diksha; namely

(i) Samanya (General) Diksha;

(ii) Bhagwati Diksha, and

(iii) Vasudevi Diksha.

(v) The meeting of Satsang Mahasabha convened at village Sarangpur is contrary to all basic principles of shlokas and directions of Swaminarayan Sect and mainly written in "Desh Vibhagh-no Lekh", "Satsang Jivanam" and "Shikshapatri". Appellant no. 1 was rightly exercising privilege and taking test of the candidate recommended by Chief Kothari and the directions or wishes flowing from the aforesaid three holy religious books and the same are bidding to Tyagies including Acharya of other Diocese. Referring page nos. 80,87 and 88, it is argued that there is no case so far as original plaintiffs are concerned. Even basic agenda issued (page 66) can not be said to be a legal one signed on behalf of the temple Board and resolution passed on 14.5.2001. Resolution No. 2 P.67 had no binding force to Acharya. He has also pointed out that same is the situation so far as the proceedings (facts) reflected from Pages 90 & 91 dated 18.5.2001 and 19.5.2001. According to Mr. Vakil, many disputed questions are to be replied by the trial Court especially when no reasonable opportunity to explain was offered to appellant. An attempt to enlisting supporting Haribhaktas was made so that they can be called in Satsang Mahasabha, needs to be viewed seriously. Letter dated 10.5.2001 can not be considered either as an offer or acceptance of offer to explain the appointment of Acharya.

15. So far as not depositing an amount of Rs. 55 Lacs is concerned, it is submitted by Mr. Vakil that Id. Lower Court ought not to have given any weightage to that fact because it is a dispute in controversy already pending before this Court. There is a stay granted by this Court vide order dated 15.10.2003 in Civil Revision Application No. 823/2001 (Coram: M.C. Patel,J).

16. So far as allegation as to not returning "Charan-bhet" (offerings) to temple Board or not giving accounts in respect of Receipt Book given to Acharya by the Board, is concerned, they are baseless and Acharya could have explained his stand. Reasonable efforts should have been made by the Board for the purpose. No specific demand was ever made or conveyed to Acharya and, therefore, according to Mr. Vakil, principles of natural justice have been grossly violated . In support of this submission, Mr. Vakil has placed reliance on following decisions:-

(i) Shivprasad Umashanker Vs. Municipality of Palitana, .

Referring paras 8, 10 & 11, it is argued that Acharya could not have been condemned by so-called Satsang Mahasabha in his absence and without offering

him an opportunity.

(ii) Shiv Sagar Tiwari Vs. Union of India and others, .

Reliance is placed on paras 46 to 50.

(iii) Chimanbhai R. Patel v/s Anand Municipality & Ors. AIR 1983(1) GLR 67

(iv) P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others,

(v) The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anothers Vs. State of Karnataka and others, .

Placing reliance on the aforesaid decision, Mr. Vakil has argued that ratio of these decisions would squarely apply to the present case even though the facts of the cited decisions may not be similar. This is a case wherein, according to Mr. Vakil, in such types of cases, post decision opportunity also could have been afforded before taking any harsh and illegal step. In light of the ratio of the decision in the case of Baldev Singh and Others Vs. State of Himachal Pradesh and Others, , prior opportunity of hearing must be granted in a case where there are serious civil consequences likely to follow. This case would not fall in the category where such an opportunity of being heard is not required to be given. Where there are adverse civil consequences, an opportunity normally should be given. Whether decision will have any civil consequences or not, is doubtful. In that cases also, reasonable opportunity should be given especially when there is no misconduct as to the use of his offence as Acharya. Merely because a person is recommended by Chief Kothari, appellant Acharya was not supposed to give Diksha to him. Some confusion as to the accounts of Air Tickets offered to appellant brought on record by other side is a matter of appreciation of evidence. It would not be a matter of either prudence or wisdom for anybody to reach to a conclusion that such or similar aspect would be sufficient to remove a religious head when there is no provision for the same in the Scheme. Appellant no. 1 how was offered Gadi-Pad by his father is also brought to the notice of the Court by Mr. Vakil and he has submitted that the Id. Judge has reached the erroneous conclusion that the plaintiffs have prima facie case. The point of balance of convenience is also considered in correct perspective. At one point of time, Mr. Vakil has indirectly submitted that Id. Lower Court has accepted the entire say of the plaintiffs submitted by way of written arguments ignoring the resistance put forward by the present appellant no. 1 and the fact that the suit filed by appellant no. 1 praying certain reliefs and grant of which would have direct impact on the present suit, ought to have rejected application. The existing Acharya is not legally appointed Acharya of Southern Diocese. If he is addressed and treated as Acharya on the strength of interim arrangement that has taken shape because of the orders passed by this Court, on allowing appeal, this arrangement would automatically disappear.

17. The present Acharya acting as an Acharya on the strength of the

arrangements made by the orders of the Court and mainly on the facts and circumstances which have taken shape in the period in-between, can not be accepted or installed as Acharya unless it is approved by the appropriate Scheme. As there is no provision of removal of Acharya in the original scheme sanctioned by this High Court, the appellant no. 1 Acharya can not be prevented from discharging his religious and temporal duties of an Acharya. For that purpose, a suit as contemplated under the BPT Act is filed and relief to depose Acharya is granted. Bare resolution of so-called Satsang Mahasabha would not change the status of the present Acharya nor such SATSANG MAHASABHA can assume jurisdiction to pass such or similar resolution. Supervisory functions conferred on the Acharya and if appellant no. 1 Acharya is to be asked to remain outside, whether such decision can be said to have a decision related to administration only, is the question not properly replied by the Id. Civil Judge while dealing with the point of prima facie case. But it is relevant to note that considering the scheme, replacement of the Acharya or the restriction and fact of taking over of Diocese by successor, is not required to be decided by the High Court and it is not necessary to get the Scheme amended. The present Acharya has taken over from the custodian trustee Shri Narendraprasadji, the then Acharya and father of the present appellant no. 1 and appropriate entry ultimately came to be inserted in the Register maintained by the Charity Commissioner. As per the proceedings initiated under Change Report No. 220/1984, previously entry was made on 6.6.1984 and change report came to be granted by the Asstt. Charity Commissioner, Nadiad Region, Nadiad vide final order dated 20.11.1984. It is not the case of the plaintiff that the name of newly appointed Acharya and decision to depose the present appellant no. 1 be recorded by the Charity Commissioner, nor any relief has been prayed which would fall in the ambit of a suit which requires to be instituted with the prior approval/ sanction as per the Scheme of Sec. 50 R/w Sections 79 & 80 of BPT Act.

18. Mr. P.M. Raval, Id. Sr. Counsel appearing for respondent No. 1 has taken me through Chapter:IV of Holy Book Satsang Jivanam and types of Dikshas given to the devotees and Satsangis which mainly deals with four different types of Diakshas and the procedure which requires to be followed by a person who is conferred Diksha and the Acharya who is giving Diksha. He has submitted that at present, Dikshas which are being given are popularly known as (i) Samanya Diksha, (ii) Bhagwati Diksha, (iii) Vasudevi Diksha etc. The procedure to be followed for all four types of Dikshas referred to in Chapter;IV talks not only about the simple procedure, but it also says about the obligation, religious as well as spiritual casted on both i.e. a person accepting Diksha and the Acharya giving Diksha. Chapters 48, 49, 0 and 51 deal with all the four different types of Dikshas and Sr. Counsel Mr. Raval has tried to point out that the followers of Southern Diocese were placed under a great religious as well as spiritual dissatisfaction and frustration and they were compelled impliedly to have blessings of Acharya of Northern Diocese and before adopting that that situation

as via-media, number of efforts were made by Temple Board and thousands of followers of Southern Diocese. Referring relevant paras of documents from Vol. I which is a part of record (page-49 and especially paras 2, 6, 5, 13, 22, 23 & 24 of the documents), it is submitted that with these facts situation, it would not be proper for the appellants to say that there was no opportunity of being heard before the harsh action of deposing him from Gadi was taken by SATSANG MAHASABHA. Plaint of RCS No. 45/2002 filed by the present appellants on 12.12.2002, According to Mr. Raval, is a clear reply to the arguments advanced on the point of violation of the principles of natural justice. The right to file a suit for the reliefs prayed in RCS No. 45/2002 for the appellants is accepted, then it would not be legal or justified to say that any Satsangi or devotee having tremendous faith in Swaminarayan Sect can file a suit of the present nature. A right to file such or similar suit if is not accepted, then what will be the opportunity for the devotees if they have lost faith and spiritual feelings in Gadipati. Para-18 which talks about arbitrary proceedings taken to Mr. Justice S. D. Dave (Retired), High Court of Gujarat and para-16 of the said suit No. 45/2002 talks about the cause of action. In this very suit, the present appellants have prayed for ad-interim relief and Id. Civil Judge was not pleased to grant any of the reliefs though prayed specifically. When the competent Civil Court has not granted any interim relief then the impugned resolution dated 11.5.2000 should not be condemned on the point that the same is passed without affording an opportunity of being heard. On the contrary, the letter dated 10.5.2002 page 106-107 (Vol. II) sent through a messenger on that very day, clearly indicates that the appellant no. 1 himself had expressed his wish and privilege to attend SATSANG MAHASABHA, but for the reasons best known to him, ultimately appellant no. 1 had not attended that meeting otherwise, he could have appreciated the feelings of the followers who have gathered in the meeting at Sarangpur. According to Id. Sr. Counsel Mr. Raval, the arguments advanced by Id. Sr. Counsel Mr. Vakil as to the validity and genuineness of SATSANG MAHASABHA called and convened, can not be looked into at this stage because the jurisdiction of this Court is limited, but especially when validity of SATSANG MAHASABHA is not challenged in reply. It is now point or allegations which are not levelled against the plaintiffs in reply, can not be considered. There are various allegations made in the impugned resolution and without filing clear cut reply meeting with the case of the plaintiff, the appellants had prayed for vacating the interim relief.

19. The jurisdiction was not challenged. An application under O. 7 R. 11 of CPC and an application exh. 5 under O. 39 R. 1 & 2 of CPC have been decided together. In support of this submission, Id. Sr. Counsel Mr. Raval has pointed out relevant pages i.e. page nos. 31 to 34 of Vol. I. While giving background to this Court through number of proceedings that has taken place which were initiated from 1925 to 1975 including the Scheme framed by the Bombay High Court which is popularly known as an Old Scheme. According to Id. Sr. Counsel Mr. Raval, as per the Old Scheme framed by the Bombay High Court, Acharya was

sole-holder and is a constructive trustee. Clause:3 of that Scheme, relevant clause and decision of the Bombay High Court is reported in 25 BLR P.747. But as per the New Scheme framed by this Court referred to herein above, the property has vested in the Temple Board Committee as per Clause:6 of Final Scheme of the trust. As per Clause 4(B), Acharya as supreme religious and spiritual authority in the Southern diocese is casted with the duty as Acharya to initiate and give Diksha in accordance with the religious percepts of Swaminarayan Sampraday after considering recommendations, if any, of the Chief Kothari. So, the recommendations of Chief Kothari is the condition precedent, but it is simultaneously obligatory for Acharya to initiate devotees as well as Chief Kothari to make recommendations of deserving followers- Satsangis. Which was optional for Acharya as per old Scheme, was made compulsory in the new Scheme. The management or administration of the Trust remain vested with the members of the Board whose position would be that of Managing Trustee so far as management of the trust properties are concerned as per Part:III of the Scheme. Appellant No. 1 took over as Acharya in the year 1984, but ultimately the appellant no. 1 after taking over as Acharya in the year 1984, suspended mainly all religious activities. Page No. 195 of Vol. III talks about Diksha and letter at page 196, both are shown to the Court. Point out relevant date i.e. 28.3.1998 and the contents of the letter, it is argued by Id. Sr. Counsel Mr. Raval that when such hostile approach was shown to the members of the Temple Board and thousands of devotees, the presence of the persons who are members of the Board of Trustees were not there. Right to take examination of a person recommended for giving Diksha by Chief Kothari is not the reason or any other aspect which can be said to be religious or spiritual. It is submitted by Id. Sr. Counsel Mr. Raval that idea, according to the plaintiffs was to bring all temporal matters under control. Resolutions were passed by the followers on 1.4.1988 and 8.5.1988 at two different places being Resolution Nos. 18 & 1. Thereafter, all methods of persuasion were applied. Pointing out the contents of page-200 and P.203, it is argued that for several years, thousands of followers waited for appropriate wormy response from the spiritual head - present appellant no. 1. There is no need or provision of taking examination before giving Diksha recommended by Chief Kothari and it would be wrong to say that nobody else than the Gadipati himself can give Diksha. Appellant no. 1 was requested to reconsider all previous harsh decisions taken. Referring to page-201, it is argued that when Brahmchari and Parshad popularly known as Pala are to be given Diksha on the recommendations made by the Chief Kothari, these recommendations depend on so many other things as provided by religious books namely Satsang Jivanam etc. There are other Branches of Swaminarayan sect at present existing and these branches are also having thousands of followers where there is no Acharya. So, merely because an attempt to take Diksha from Acharya of Northern Diocese is made or his presence and holy services are solicited, and when only Mantra Diksha was to be given, then it would not be appropriate to say that all such attempts would make devotee of Southern Diocese "Vimukh". Only Mantra Diksha is to be given by Acharya. Prior

to the day determined for giving Mantra Diksha at appropriate time as per "Muhurtam", Acharya has to give Mantra Diksha following rituals mentioned in Adhyaya (Chapters) 50 & 51 of Satsang Jivanam. In case of Narendra Bhagat, Chief Kothari had recommended that he may be given Diksha, but from the endorsement made in the Form of Parshad Narendra Bhagat, it can be inferred that appellant no. 1 was not acting either cordially or in accordance with the Scheme with the members of the Board and this conduct was contrary to the obligations casted on appellant by the Scheme when he was adorning a Gadi. Clarifying the situation as to why very old non-judicial stamps were used for preparing affidavits of various Parshad, followers and Sadhus, Mr. Raval has submitted that the trust purchases such non-judicial stamp papers in advance as the trust is having number of properties and other activities where such stamps are required to be used and so those stamps are used, but the correct date of affidavit is mentioned when these affidavits were sworn-in. According to Mr. Raval, giving of Diksha would automatically affect the strength of voters who would elect a particular number of persons in the Temple Board. If Diksha is not given, voters' strength would be affected and that may not lead to constitution of the Board and control over it. Referring one suit filed at Vadodara, Mr. Raval has submitted that the reason is emerging from Vadodara suit as to why Narendra Bhagat was not given Diskha. There is nothing on record that what initiatives were taken by the present appellant no. 1 when was adorning Gadi of Acharya for betterment and spiritual development of the followers of the Northern Diocese or in giving Diksha.

20. Use of old non-judicial stamp papers to get the affidavit affirmed pointed out by Id.Sr. Counsel Mr. Vakil and contents of the suit filed at Vadodara and some other points of controversy pointed out by the contesting parties, I am afraid, may not have any effective impact on the outcome of the suit when tried on merits. It is true that many small points if are placed together are able to create a big dot, but so far as main issues involved in the matter are concerned, the effect of certain acts or omissions pointed out by rival parties and allegations and averments made against each other does not require elaborate discussion or finding thereon, otherwise the decision of this Court would prejudice the case of the either party during the regular trial. I have not considered the findings recorded by this Court while passing orders in Civil Application no. 7250/2002 dated 30.1.2003 (Coram: R. P.Dholakia, J) so far as the observations made as to the past practice and the existence of SATSANG MAHASABHA etc. and the finding recorded to the effect that Satsang Jivanam has been written after heavenly abode of Shri Sahajanand Swami, are concerned. Obviously, these findings being tentative findings pending disposal of the appeal, can not be made basis for while deciding the entire Appeal from Order on merits. Even this decision was taken before the Apex Court. The Apex Court while dealing with SLP (C) No. 3351/2003, dated 7.7.2003, passed the following order:-

"Restrictions imposed in the first part of the order need necessarily to be understood in the light of the other directions further made by granting liberty to

perform darshan like any other common man and they only can not perform darshan or puja in the capacity of Acharya. Hence, having darshan or offering worship like any other devotee-common man has not been, in our view, restrained by the order under challenge. The restriction on the holding meeting also would be in respect of such meetings in the temple campus. "

The observations made by the Apex Court are relevant whereby the restrictions imposed by the Court have been modified and to some extent have been interpreted.

(This appeal, I am told was initially listed for hearing on merits before the Id. Single Judge who heard the matter earlier, but thereafter, a note was circulated by the Id. counsel appearing for appellants and Hon"ble Acting Chief Justice was requested to reconsider the decision and to notify and place this appeal before the Judge concerned for Final Hearing and to re-notify the same before appropriate Court.)

21(i) The point of justification placed before the Court by the plaintiffs in support of their say needs some consideration because as per the settled legal proposition, the plaintiffs are not supposed to point out only triable issues which needs proper adjudication, but they are also simultaneously supposed to satisfy the Court, prima facie, that there is enough strength in their case and they have a chance to succeed in the litigation. So, the scope of passing favourable decree or order requires to be placed on record. The say of the appellants before this Court is that considering the past practice, religious needs and traditions which are being practiced and followed since more than about 165 to 170 years, the plaintiffs have no scope to succeed. No Acharya can be removed or otherwise impeached by the followers or even by the Temple Board constituted under the Scheme as:-

(i) there are no provisions in the Scheme for the purpose;

(ii) there is no such tradition also in the Swaminarayan Sect.

(iii) Acharya being Gadipati enjoys sovereignty being religious head unless he voluntarily quits and appoints his successor.

(iv) in selecting successor before appointing him as Gadipati, certain obligations casted on Acharya by themselves would not certain his privilege to adorn Gadi of Acharya.

(ii) Any misconduct or disobedience or insubordination to Acharya or his wish, would make each follower irrespective of his status in Swaminarayan Sect, as "Vimukh" and such vimukh individuals or Sadhus or Sanyasis and Palas or Haribhakhats collectively can not remove or decide to remove or depose Acharya. Such people can not be said to be legitimately authorised participants and even SATSANG MAHASABHA and its decision would not adversely affect Acharya and points of objections raised by plaintiffs and some of the members of Temple Board while participating in SATSANG MAHASABHA are trifling matters and

most of them fall under the area of exclusive privilege of Acharya as Gadipati and Head and decision taken by Acharya in each such matter is in accordance with the guidelines flowing from above-referred religious Holy Books. But the Court is not prima facie convinced that sovereignty is absolute and I am afraid there was no intention of Shri Sahajanand Swamiji to confer such absolute power otherwise Swaminarayan Sect could not have accepted and recognised the importance and high status of Sadhus and Tyagies in the Swaminarayan Sect. Importance of Sadhu, Tyagi, Pala and Haribhakta and their role as taken shape with the change of time, but seeds are found and apparent even in Desh Vibhagh No Lekh and the guidance in the form of wish of expressed by Sahjanand Swamiji when Sahajanand Swamiji established two different Diocese ie. Northern and Southern Diocese and for this purpose when this Court is to consider the strength of the case of the plaintiffs, prima facie, if part Clauses 13, 28 & 29 and language used in Clauses 31 to 34 of Desh- Vibhagh- No- Lekh are considered, at more than one places, Sahajanand Swamiji has casted obligations even on Acharya and certain acts and omissions clearly suggesting what to do and what not to do are important facets along with other so many spiritual and religious aspects and with the change in time, these aspects have taken different shape. If some part of Harililamrutam and Vachanamrutam are considered, Sadhu and Sanyasis are put on very high pedestal.

(iii) Litigations at various places have reached the Courts and Courts were compelled to record their findings on the issues of controversy and conflict. In each decision, socio-economic scenario of the society in general and followers of Swaminarayan Sect in particular, is found reflected which have been placed before the Court by Id. counsel appearing for the parties. It would not be proper to comment upon the findings recorded and the facts discussed in various decisions placed before the Court including the observations made by this Court while framing the scheme vide its decision in First Appeal No. 543/1970 and as confirmed in LPA No. 183/1973, in reference to the specific averments made by the plaintiffs in the suit as well as in the hearing of the suit filed by the present appellants for certain reliefs in their favour i.e. Spl.Civil Sui No. 45/2002 pending at present in the Court of Id. Civil Judge (S. D.), Anand. However, to evaluate the rival contentions, It is not required to reproduce certain parts read over to me of the orders/judgments during the hearing of the present appeal from order from the :-

(i) Finding recorded by the Jt. Judge, Ahmedabad in Civil Suit No. 179/1914;

(ii) Suit No. 62/1919

(iii) Suit No. 30/1947 Lucknow, Allahabad High Court.

(iv) First Appeal No. 67/49 arising out of the judgment of Gonda Court.

But, I have considered the basic tune that is being heard from the aforesaid verdicts.

22. It would be difficult to accept the arguments advanced by the appellants that as some arbitration proceedings i.e. proceedings in the nature of conciliation and endeavour to bring the dispute to an end with the help of a Mediator were pending, the plaintiffs can not be granted any of the reliefs as prayed by them. The suit is likely to fail being filed pending the suit proceedings or for very reasons can be construed to have filed the suit prematurely. Undisputedly, the plaintiffs are not the parties to any proceedings undertaken by Justice S. D.Dave (Retired). Undisputedly, there is no arbitration agreement between the parties and none of the parties especially present plaintiffs are signatories of such agreement. There is no evidence on record to show prima facie that mediation or attempts to resolve the disputes were made by the parties who have requested Mr. Justice S. D.Dave (Retired) to help them to come out and to help them in getting their grievances redressed, which would not make this suit unsustainable. Mr. Justice S. D. Dave (Retired) was required and appointed to mediate between the parties by the Government. He was not to function as an Arbitrator as required under the provisions of the Arbitration & Conciliation Act and it is on record that Hon"ble Mr. Justice S. D.Dave (Retired) himself had withdrawn from the said proceedings. It is not even the say that the suit filed by the plaintiffs is based upon the scheme framed by the High Court and Mr. Justice S. D.Dave (Retired) was also not requested to work out on fresh or new/modified scheme.

23. Placing facts of formation of the Scheme by this Court and similar other proceedings which were taken up by the Bombay High Court in the past, it is argued that in view of the statutory bar provided under Sec. 80 of the Bombay Public Trusts Act, 1950 the suit of the plaintiffs is likely to fail and Civil court at Nadiad has no jurisdiction to deal with the issues raised by the original plaintiffs and, therefore, it should be held that this weakness is inherent. Sec. 80 of the Bombay Public Trusts Act reads as under:-

"80. Bar of Jurisdiction :

Save as expressly provided in this Act, no Civil Court shall have jurisdiction to decide or deal with any question which is by or under this Act to be decided or dealt with by any officer or authority under this Act, and in respect of which the decision or order of such officer or authority has been made final and conclusive.

24. Having considered the nature of the reliefs prayed for, if cause for filing of the suit is considered in light of other proceedings which were initiated in the past and the fact that present appellant himself has filed a suit of similar nature and pressing for reliefs prayed therein, it is a matter not of dispute that there is no application as contemplated under Sec. 18 to 22 of the BPT Act or any one of the aforesaid sections. Sec. 79 of the BPT Act, as submitted, shall not have any application. It is true that the question of framing of the Scheme is covered under Sec. 50 & 51 of the BPT Act, but that by itself would not attract Sec. 80 of the said Act. The case of the plaintiffs is mainly based on :-

(i) Resolution passed by SATSANG MAHASABHA deposing the present appellant

no. 1.

(ii) decision of SATSANG MAHASABHA is not taken under any undue haste.

(iii) inaction of the appellant no. 1 as Acharya in some of the material aspects directly related to traditions and rituals which are being followed and required to be followed by each of the followers of Swaminarayan Sect including Acharya.

(iv) some overdoing which was not befitting the status of Acharya (for this grievance, number of instances and illustrations have been brought before the Court by way of examples and the affidavits placed by way of affidavits as well as documents viz. allegation against the appellant no. 1 that he was instrumental to the installation of minor Acharya on the Third Gadi i.e. Vadhavan Gadi, and the act of taking suo motu guardianship of minor son of Hirendraprasadjji along with other allegations as to the irregularities in accounts, charan-bhet and allegations made by some of the NRIs (Non Resident Indians) followers of Gadi of Southern diocese and temple).

(v) intervention of the Court on occasions in regulating the conduct of Acharya or even Temple Board in a given set of circumstances in last about more than 100 years.

(vi) act of issuance of commands to Satsangis not to pay "Nam Vera".

(vii) hidden political motivation in the background of election process of the members of Temple Board under the Scheme and either giving or not giving Diksha irrespective of the recommendations made by Chief Kothari.

So in short, it will be difficult for this Court at this stage to say that the suit is barred because of the provisions of BPT Act including Sec. 80 of the said Act.

25. The parties have tried to develop their case by referring some parts of above-referred four religious Holy Books from Siksha Patri to Satsang Jivanam. One another sequence of religious saying (shlokas) is also respected and followed by practically all sects of Swaminarayan Sampraday since decades and the same is "Harililamrutam". In Harililamrutam Part-II (Kalash-8, Vishram-46, Pad-17) it is written:

26. In the order under challenge, Id. Judge has tried to discuss relevant aspects placed before him while hearing application exh. 5 and has recorded a finding that if the injunction is not granted then the SATSANG MAHASABHA and other large number of followers who have taken a decision to depose Acharya may be thrown to frustration, inconvenience and hardship and the same would lead to number of complications that may affect adversely the religious feelings and faith of the followers and Satsangis of the entire Swaminarayan Sect as a whole. While recording so, the Id. Judge has tested the strength of the case of the plaintiff. The appellants have placed reliance on the opinion of some Pandits of Banaras and on the other hand, respondents have placed reliance on the opinion of Shri Ghyanprakasdasji Guru Trikamchandradasji regarding the rights and procedure

for giving Diksha. Whether the act of the members of the Temple Board and other followers of Vadtal Gadi can be said that they have committed an act that may place them in the category of "Vimukh" on the moment on which they invited Acharya of Northern Diocese i.e. Ahmedabad Sect, to give Diksha to Mumukshu of Southern Diocese or if Gadipati of Vadtal Gadi gives Diksha to any of the Mumukshu of Northern Diocese can be said to be an act against Swaminarayan Sect, is the question placed before the Court when conduct of either party in reference to the sanctity of Swaminarayan Sect. Considering two different opinions, of course they are not totally contradictory, but can be said to be overlapping opinion, if considered in light of above-referred Pad-17 from Harililamrutam, it would be difficult to conclude at this stage that plaintiffs in their individual capacity or through the persons to whom the plaintiffs are indirectly representing, have acted with malice or only with a view to lower down the high pedestal of the appellant no. 1 Acharya. This may not require consideration on merits. Mr. Raval, Id. Sr. Counsel has rightly argued that tolerance was shown by the Temple Board and all Satsangis, Tyagies and Sadhus since 1995, 1996 & 1997 and they have restrained themselves and have respected the appointment as Acharya. Celebrations of religious festival and formal functions of the appellants were celebrated and participation of the followers was huge keeping aside the controversy. Attempts made by the appellants to downsize very senior Sadhus, Sanyasis and Tyagies who are very literate, very well educated and having profound wisdom, has been taken seriously during their oral submissions by Sr. Counsel Mr. Raval and Id. Advocate General Mr. S. N. Shelat. They have also tried to demonstrate the inner strength of some of the highly respected Sadhus and Sanyasis and number of followers under their command. It would not be proper for this Court to state anything in this regard because it would be premature to say anything unless the facts pointed out are evaluated on merits during the trial, but the fact remains that day to day administration of practically about 30 "Shikharbandh Temples" are being managed mainly by their respective heads working under the Temple Board. It would be neither legal nor proper to conclude at this stage when this Court is considering prima facie case of the plaintiffs whether entire Temple Board or majority of the members of the Temple Board have lost faith and trust in Acharya, but it emerges even from the say of the present appellants that Temple Board has attempted to enter into certain activities which can be said to be the activities of "Vimukh". The word "Vimukh" may not be indicating the hostility or dissented attitude/approach, but the prime question which needs consideration is that what actually led this big mass including very senior, experienced and literate Sadhus and elected members of the Temple Board in acting in a particular fashion or manner. Whether this is a power-hunger or dedication or loyalty to the entire sect or lacs of followers of Gadi is the question which could be answered only at the end of trial, but at this stage, it would be imprudent to say personal inimical feelings between some of the members of the Temple Board and appellant no. 1 Acharya has dragged the entire Southern Diocese to this unhealthy controversy. There is some logic in the arguments

advanced by Id. AG Mr. Shelat and Id. Sr. Counsel Mr. Raval and that allegation of the Temple Board is changing process. There are no lifetime trustees as per the Scheme and so far as membership is concerned, only the Acharya being the head of Southern diocese is enjoying permanent trusteeship who is in a position of custodian trustee. The members of the Board who are in the position of Managing Trustees are subject to election. In the name and under the umbrella of Acharya- a supreme religious head and controlling authority- elections are being conducted and number of members have changed since 1995. So, it is not correct to say that some ill-feelings between the Board and Acharya has taken a bad shape. On the contrary, number of proceedings read over to the Court during the lengthy hearing which has consumed several hours and days, that missing of rampo and points of controversy was there since about 10 years from the date of passing of resolution to depose Acharya at Sarangpur. A question was posed before the Court which has some strength, by Id. Sr. Counsel Mr. Raval that if the appellant no. 1 had any virtues through which he can command the Temple Board and lacs of followers, then at least one Board in between last about 10 years would have refrained itself from entering into the controversy especially in reference to the duties and obligations casted on Acharya by above-referred four religious sayings (Shlokas) reflected in Harililamrutam and the scheme whereby the constitution itself has casted certain duties on the Acharya. I have carefully considered the main allegations in the plaint against the present appellant no. 1. There are about 10 averments and the same should be read in reference to the paragraphs showing cause of action and reliefs prayed. That qua the following averments extracted herein below, the plaintiffs have produced number of documents and proceedings of meetings convened and discussion that has taken place in those meetings:-

(a) That even though the head for the Northern Diocese is not Ahmedabad Temple, the Defendant No. 1 Acharya Maharaj is trying to act as Acharya Maharaj of Wadhwan Gadi.

(b) While carrying on various duties as Acharya Maharaj has not deposited the amount obtained by him from the Vadtal Trust.

(c) The Acharya Maharaj i.e. Defendant No. 1 isn't depositing the Bhet given to him with the Trust.

(d) A sum of Rs. 55.00 Lakhs collected at the time of Shatamrut Mahotsav is not deposited in the Trust in spite of the order of the District Court.

(e) The Defendant No. 1 has filed a suit against the Nautam Swami etc. vide Regular Civil Suit No. 45 of 2002 in the Court of Civil Judge (Sr. Division), restraining the Nautam Swami from a declaration that the defendant in the suit have no rights to force him to be removed from the Gadi, in the consequent relief of injunction. The trial Court in the said suit has not granted any injunction.

(f) In spite of the aforesaid facts and even though the defendant No. 1 has no power, authority or jurisdiction to install his son i.e. Defendant No. 2 herein as

Acharya, he has started process for installing him as Acharya.

27. The day on which SATSANG MAHASABHA of Brahmchari Sangh, Parshad (Pala) and Satsangis passed resolution on 11.5.2002 at Sarangpur deposing the present appellant no. 1 from Vadtal Gadi as Acharya a particular business had transacted namely :-

(i) Shastri Shri Haricharandasji Gurupuran Shri Hari Sevasdasji was elected as the President.

(ii) The action of Acharya Maharaj of ordering the followers not to pay 1/10th and 1/20th of the income to Sadhus was criticised.

(iii) Since the Acharya Maharaj declined to give the Namvero, Dashansh, and Vishansh to the Saints after referring to various texts, a resolution was passed to request the Acharya Maharaj of Northern Diocese to give Diksha. A Tyagi Panch was constituted by resolution No. 3 consisting of 5 Tyagis from Vadtal, 5 Tyagis from Gadhada and 5 Tyagis from Junagadh. The aforesaid Resolution is found at page-136 of Volume:3.

(iv) On account of this circular resolution was passed on 14th May, 2002.

(v) On account of this a circular resolution was passed on 14th May, 2002.

A plain reading of the resolution passed indicates that the proceedings must have taken place in a disciplined manner. In the foundation of the meeting convened on 11.5.2002, there is one another circular resolution passed on 14.5.2002. There was a meeting conducted on 27.9.2001 wherein 62 leading saints from Vadtal, 24 leading saints from Junagadh and 18 leading saints from Gadhada had participated and in that meeting Haricharandasji Guru Jyogipriyadasji was elected as President and Addl. members were inducted into Tyagi Panch constituted on 14.5.2001. A decision was taken to take steps against declaration of certain Saints as "Vimukh" by the appellant no. 1 in the capacity of Acharya. This resolution is in Vol. III P.159. Agenda for the meeting of Saints or thousands of devotees dated 14.5.2001 to be held at Sarangpur is at page No. 134 in Vol. III. On 17.10.2001, a meeting of Tyagi Panch was held at Gurukul Chharodi wherein one Shri Ghyanjivandasji Guru Radhramandasji was elected as a Chairman. The grievance of Id. Sr. Counsel Mr. Vakil is that some interested persons who are very few in number qua the total number of lacs of followers, had initiated process to secure the goal to remove Acharya with some ulterior motive and there was otherwise no need to constitute a Tyagi Panch or to call frequent meetings against the highest religious and spiritual head of the Sect.

28. I have carefully considered the contents of one letter written by the present appellant no. 1 Acharya to Chief Executive Kothari of Vadtal stating that he had come to know about the proposed meeting to be held on 11.5.2001 at Sarangpur wherein appellant no. 1 Acharya has categorically averred that "in view of the feelings of Haribhaktas and in his right, he will positively remain present in the said meeting." But, it is not a matter of dispute that ultimately appellant no. 1

did not attend that meeting nor had issued any direction to dissolve the meeting by sending written directions. The Court can not ignore one fact that on that day, it was possible for the appellant no. 1 to attend and participate in that meeting or all of them or at least main persons could have been called to Vadatal or at the place where appellant no. 1 was there in those days in reference to the earlier letter received by him. Appellant no. 1 does not dispute the fact that he has been addressed number of letters by Temple Board or by Chief Kothari and many other Tyagis and Haribhakhats expressing their grievance, but what were the attempts to resolve those grievances made shall have to be brought on record during trial because no such documents which can convince the Court that all such reasonable efforts were made before resolution could be passed, are produced on record at this stage.

29. While dealing with the Appeal No. 62/1919 along with Cross Appeal No. 164/1919 with other group of appeals, the Bombay High Court was put to notice of various facts including the contents and structure of above-referred four Religious Holy Books relating to the position and rights of Acharya as ruling spiritual preceptor and followers (Satsangis) in both dioceses since the Swaminarayan Sect got two distinct identity as Southern Diocese and Northern Diocese in the year 1826. It is true that Bombay High Court was dealing with preliminary decree drawn on 23.1.1919 drawn on the strength of judgment passed by the then Judge of Ahmedabad Court. Appellant Shri Shipatprasadji was installed on the Gadi in place of Shri Laxmiprasadji who was deposed in 1912. Shri Laxmiprasadji had brought a suit being Civil Suit No. 365/1912 on the original side of Bombay High Court to set aside the proclamation and for declaration that he was still Acharya and that all the properties were his private properties. Copy of the plaint was also before the Bombay High Court. In the said appeal, the Bombay High Court has made certain observations and said at once place that Acharya is the manager so far as all donations and gifts received and properties accumulated- surplus of the income of the temple. It is the tradition of the Sect which is reflected in some of the documents and observations of the Bombay High Court that to meet with the expenses for maintenance of temple, Acharyas are asking their followers for payment of Tithes (Tithi), Dharmavero (Religious tax) etc. Some ask for money to be paid for a specific purpose viz. maintenance of Sadhus, expenses for worshiping, feeding of poor and some ask money to be paid to deity, but none of them have asked money for Acharya himself. This fact situation shall have to be appreciated by the trial Court in the background of the allegations made in the plaint and the points of defence placed before this Court mentioned herein above while referring to the submissions of Id. Sr. Counsel Mr. Vakil for the appellants. Mr. Vakil has fairly accepted that no resolution of the Committee of the Temple Board in any manner pertaining to the management of the property or internal economy of the Institution should be disregarded by any of the Acharyas except for the reasons that he may record in writing and communicates to the Committee. So, Acharya being a custodian trustee-cum-manager having status also of religious and spiritual head, is

expected to respond the followers in general and to the members of the Board Committee in particular. It emerges from the record that to a war type situation must have started affecting the tolerance and basic fibre giving strength to the solidarity to religious and spiritual upliftment of individual followers and especially of followers who are moulded their lives strictly in accordance with the Verses (shlokas) flowing from Shiksha Patri, Satsang Jivanam and Vachanamrutam. The Court is aware that the decision rendered in original Civil Suit No. 22/1902 by the Id. District Judge, Ahmedabad Mr. R. Naik dated 23.6.1905 has no binding force according to the accepted principles of jurisprudence, but when the strength of prima facie case and balance of convenience are at the touchstone before this Court, then this Court can anticipate the type of evidence that can be led by the parties in the suit. In this decision, Id. District Judge has recognised the influence of leading Sadhus and Sanyasis at the Head Quarters, in the matter of appointment of Acharya. While holding that Shri Purshottamprasadji was appointed as per the norms accepted by Swaminarayan Sect, the Id. District Judge has observed that practice as regards the appointment of the Acharya is for each incumbent to nominate his successor with the consent, express or implied, of all his followers or of the majority of them. (emphasis for the purpose of present AO)There is no case on record in which General Body of followers or any large members of them have been expressly consulted regarding the appointment, but nomination seems to have been made with the knowledge and approval of the leading Sadhus and Satsangis at Head Quarters, who have reasonably been assumed to represent the views of the congregation. So, though there is no express privilege with the followers to select their Acharya and to install him on the Gadi as Acharya, but it is apparent that when the appointment is required to be made in this way, then the very congregation or Satsangis or Sadhus can have their voice, if situation of great frustration, disappointment and missing faith starts emerging at the horizon, is the question which needs to be answered by the trial Court and on this point, the plaintiffs have placed comparatively good arguable case with documents in support of their case.

30. The Society is changing fast. Intellectual level, standard of education, upliftment of female in society, strive to have mental peace and relaxation from stress, is the need of time. Religious and spiritual Institutions can contribute and some of such Institutions are contributing in this direction. The say of Id. Sr. Counsel Mr. Vakil is that the present appellant no. 1 is the Acharya duly appointed/ installed on the Gadi of Southern Diocese as there is no provision in the Scheme framed by the High Court nor there is any system or procedure mentioned in any of the religious books and the followers or their so-called congregation have no jurisdiction or authority to depose the supreme religious and spiritual Head. Temporal matters and religious and spiritual aspects are two different parts of the duties and functions of Acharya and there was no scope for SATSANG MAHASABHA convened at Sarangpur to challenge or to deny the spiritual leadership and supremacy of appellant no. 1 as Head of Southern

Diocese. With this situation, the plaintiffs have no scope of success, is one of the backbone of the submissions.

31. This Court when was dealing with First Appeal No. 343/1970 and 769/1970 along with Civil Application, it was one of the limbs of the arguments that there was no need to make any modification or change in existing scheme and there was no justification also in the modification and variance made by the trial Court by revising the scheme. It was also one of the submissions that there was no evidence which would warrant any modification or variation which would ensure for the benefit of trust consistent with the objects of foundation. After referring certain factual aspects and contentions raised by Id. Sr. Counsel Mr. Vakil appearing for appellant no. 1 Acharya including the submission that this would reduce the position of Acharya against the office of Trust, this Court observed :-

"I am not prepared to agree with this extreme contention urged on behalf of the Acharya that it is human to err and what has failed and lacking in this trust is merely on account of the weakness of the human beings. The view of the trial Court is that it is this absolute power of managing the temporal as well as religious affairs of the institution vested in the Acharya with no effective check on them in the present scheme, has brought this institution to this sorry and tragic state of affairs. None of the counsels on behalf of the appellants has been able to strongly challenge this view of the trial Court. On the contrary, all the three counsels on behalf of the appellants have agreed that the Acharya should be divested of this authority to manage the temporal affairs of the institution. Mr. Nanavati has on behalf of the present Acharya- deft. No. 1 assured the Court that he also wants this Court to evolve such a scheme, if in the opinion of this Court there are substantial grounds to modify or alter the present scheme so that the amended scheme may operate beneficially in a manner consistent with the objects of the foundation. I am of the opinion that the plaintiffs have made out sufficient grounds in this suit so as to justify that the present scheme requires suitable modifications. I am of the opinion that on account of the passage of time since the settlement of the present scheme by the High Court of Bombay in the year 1922 the extent of the trust properties and income thereof have considerably increased during this period of half a century many changes have been brought about on the minute statute book in respect of the trust institution and its properties and the trustees thereof, which this Court should also bear in mind while considering what modifications or alterations should be made in the present scheme. This Court should also consider in modifying the present scheme which has provided an elastic frame work for the interplay of the three important constituents of this institutions, namely Acharya (Preceptor), Tyagis (Ascetics) and Grahsthis (lay followers) so as to absorb stress and strain arising as a result of the working of the scheme. This Court has to bear in mind that it is dealing with an institution peculiar of its kind which has neither a characteristic of a Math nor a temple in its classical sense. In order to appreciate the peculiar nature of this institution, I can do so better than to remind myself of that classical passage of the District Judge Knight in original Civil Suit No. 22 of

1922 in respect of Ahmedabad temple, which has been approved and adopted by the High Court of Bombay in First Appeal No. 62 of 1919 and other companion appeals. The passage reads as under:-

"I have now received the first hand evidence supplied by documents of paramount authority emanating from the founder himself, and it is manifest, I trust, that the institution as created constitutes a phenomenon as distinct from a monastic foundation on the one hand as from a mere temple endowment on the other. His object was neither the provisions of facilities for public worship nor the establishment of a centre of the elogical learning. Both temple and monastery were embodied in his design, but as mere accessories to its general scheme, just as earthedrial and the convent both find their place in the organisation of the Christian church. The vital and essential characteristic of his foundation lies in the recognition of the congregation, whose encouragement or maintenance in the path of righteousness was the grand objective of reformation, in all the Shashtras he preached, that command is most worthy of reverence which links the worship of God with righteousness in action (Shikshapatri Scho. 101-103) faith without works is dead. he founded the monastery and he endowed the temple, but not for the sake of story of worship. Mankind at large, or at least such portion as would hearken to his teachings, was the primary beneficiary in the scheme, and the temple and the monastery were nothing but means to the end."

The position of Acharya as can be spelt out from the basic documents is that of a teacher of mankind charged with special task of inculcating and fostering righteousness (Schl.12 and 29 of Satsangi Jivan). In appointment of successor Acharya, the predecessor has to bear in mind that he should be "a son beloved of the people who can best guard the righteousness of the disciples". (Scho 51 of Satsangi Jivan). This position is also borne out by reference to Shiksha Patri where the purpose of appointment of Acharya be defined as guarding of the Dharma of all the founders voteries, coupled with duty of initiating new members (Schl.127). The importance of other constituents namely Sadhus and Grahasthis can be had from conception of the organisation that Sahajanand had founded. As described in Satsangi Jivan the assembly to which Sahajanand addressed composed of all sords and conditions of men and women viz. Brahmins, Kshatriyas, Vaishyas, ascetics and layman. It is remarkable indeed that Swami Sahajanand though himself a celebrate ascetic envisaged the appointment of a layman with family as head of the institution propagating religion as a supreme preceptor of both Grahasthis and Sadhus who are equally commanded to pay unflinging respect and obedience to him. It is significant to note that the lay members of the sect as constituents of the organisation have been placed on par and given the same importance as to other constituents, namely Sadhus and ascetics. That treatment of equality between these two different constituents varying materially in its size, sacrifice and devotion can be inferred from the basic documents, especially Desh Vibhag Lekh and Shiksha Patri, the major portion of which has been addressed to the religious duties and obligations of the

lay followers. The position of the Acharya has been described in the judgment of the Bombay High Court in First Appeal No. 82/1919 and other companion appeals after elaborate consideration of all the basic documents and particularly Desh Vibhag Lekh and Satsangi Jivan, as that of trustee-cum-Manager. "

In the very decision, while discussing the status of Acharya, his powers and duties, it has been observed by this Court as under:-

"However, this apprehension of the Charity Commissioner is not justified because the properties of the trust vest in the Laxminarayan God as held by the Bombay High Court and the Acharya is merely a Custodian-cum-Manager of the same. However, it should be noted in fairness of the learned Assistant Government Pleader that he also conceded that innovation of the type mentioned above, which this Court proposes to make is legally permissible. I am therefore, suggesting hat the Acharya shall be the preceptor and head of the spiritual affairs of the trust institution and a custodian-trustee of all the properties, moveable as well as immovable, title deeds, ornaments and cash and all the properties of whatsoever kind belonging to this trust institution. The management of the trust properties and the exercise of any power or discretion exercisable by the trustees under the trust shall remain vested in other trustees who are the members of the Temple Committee for the time being in force and who will be designated as Board of Managing Trustee. The Acharya as a Custodian trustee shall concur in and perform all acts necessary to enable the Managing Trustee to exercise their power of management, or any other power or discretion vested to them, unless the mater in which he is requested to concur is a breach of trust or involves personal liability upon him. But he shall not be held liable for any act or occasion on the part of the managing trustees or any of them unless he so concurs. The Acharya as custodian trustee shall be entitled to receive or pay all sums payable to trust properties, or payable out of its income or capital provided that he shall pay the income, interest or dividend derived from the trust properties to the Managing Trustees or to such other person the Committee may direct or into such bank to the credit of such person as the Committee may direct, and to Acharya shall in that case be exempted from seeing to the application thereof and shall not be answerable for any loss or disappication of the same. The Acharya shall not have as a Custodian trustee any right either to take part in the management except otherwise provided above, or to remain present and vote in the meetings of the Temple Committee. This Court shall have power on application of either of the Acharya or any of the Managing Trustees or any beneficiaries and on proof of its satisfaction that it is the general wishes of the beneficiaries, or that on other ground, it is expedient to terminate the Custodian's trusteeship, make an appropriate order for that purpose and give consequent directions. I am of the opinion that this modification may be able to satisfy the conflicting view points of Acharya on one hand and the followers in the congregation on the other hand."

32. During the course of oral submissions, one another aspect was brought to

the notice of the Court that one Nautam Swami Guru Vasudevji had preferred AO No. 69/2003 against the order passed by the Id. Civil Judge granting ex-parte injunction in Spl.Civil Suit No. 17/2003. In the said Civil Suit, injunctory order was issued in terms that "it is hereby ordered that defendant no. 1 shall not act as Acharya and defendant nos. 2 to 9 shall not give any duty to defendant no. 1 till 26.2.2003 without seeking prior permission of Hon"ble High Court as per the scheme framed by the Hon"ble High Court in FA No. 553/1970 and confirmed in LPA No. 183/1973 on 4.12.1976 and AO No. 421/2002 (present AO) as per the religious books namely Desh Vibhagh No Lekh, Satsang Jivanam etc." While dealing with that appeal against an ex-parte order, this Court vide its oral judgment and order dated 27.2.2003 (Coram: P.B. Majmudar, J), (reported in 2003(1) GLR 560) after referring the ratio of the decision in the case of Harish Chander Verma v/s Kayastha Pathshala Trust & Ors., reported in JT 1988(1) SC 625 and Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., , the Court has observed and held as under:-

"...however, this argument is not required to be dealt with in the present proceedings, especially when this very question, about the powers of the Satsang Sabha and the matter of removal of Acharya, is pending before this Court in AO No. 421/2002. In the present Appeal from Order, I am more concerned with the question whether the trial Court was right in granting ex-parte injunction without following the provisions of Order 39 Rule 3 CPC."

33. In that suit, it was prayed that defendant no. 1 (i.e. new Acharya appointed) may be restrained from functioning as Acharya and it may be declared that defendant no. 1 has no right to continue as Acharya of Swaminarayan Sampraday (Southern Diocese) and defendant nos. 2 to 9 have no right to give appointment to new Acharya. Ex-parte prohibitory injunction was granted as referred to herein above and this Court while dealing with the Civil Application in above AO No. 69/2003, has observed that :-

"9. There is nothing on record to show that the defendants of the earlier suit had admitted before this Court (in Appeal From Order No. 421/2002) that they had given consent before this High Court that the defendant shall not appoint Acharya, yet they have appointed the Acharya. The trial Court has even not tried to ascertain from the plaintiff as to on what basis such statement was made before the Court. If the learned trial Judge had taken little more care, he would not have made the mistake by incorporating the said arguments in the order, and, therefore, it was all the more necessary to issue a short notice to the other side to ascertain whether the statement made by the plaintiffs is correct or not. When the order of this Court in the said Appeal From Order is very clear as to why the statement, which was made by the respondents of the said Appeal from Order, is not further extended, it means that they were free to appoint new Acharya. If the trial Court before giving ex-parte order had issued notice to the other side, this fact could have been brought to the notice of the learned trial Judge by the defendants of the pre-suit.

The learned Judge has considered the arguments of the plaintiff to the effect that new Acharya is appointed at midnight of 31st January, 2003, however, the learned trial Judge himself passed the order after 16 days without complying with the mandatory requirement of law and granted such order by entertaining the suit on Sunday at his residence for which prima facie nothing is shown as to why such order was required to be passed in such a manner, though prim facie it seems that there is no urgency to entertain the suit in such a manner.

Considering the facts and circumstances as indicated above and considering the fact that the mandatory requirement of Order 39 Rule 3 CPC is not complied with by the trial Court and considering the fact that the learned trial Judge has completely misread the judgment of this Court in Appeal From Order No. 421/2002 and considering the fact that the interim relief which is not granted by the High Court in the said appeal is granted by the trial Court though in favour of the other plaintiffs, the Appeal from Order, in my view, is maintainable before this Court, even though, the trial Court has not finally disposed of Exh. 5 application and it is only at a show cause notice stage. In the facts and circumstances of the case, the order of the trial Court is required to be suspended, and I will be failing in my duty if such order of the trial Court is not suspended forthwith. "

For short, impliedly because of the effect of the order passed by this Court, new Acharya appointed is adorning Gadi of Swaminarayan Sect. So, it can be said that willingly or unwillingly by the orders of the Court;-

(i) order of issuance of notice only in the application under O. 39 R. 1-2 in Civil Suit No. 45/2002 dated 12.2.2002 and non-grant of ex-parte prohibitory order.

(ii) Ex-parte injunction granted by Id. Civil Judge (SD) in Civil Suit No. 45/2002 dated; 6.9.2002

(iii) decision in AO challenging the ex-parte order granted in Spl.CS No. 17/2003.

(iv) other orders passed by the Apex Court mentioned herein above.

(v) ex-parte injunction granted by Id. Civil Judge (S. D..) in Spl.CS No. 17/2003 and the order suspending ex-parte injunction granted in the said suit while disposing of AO No. 69/2003.

(vi) other directions and observations made and issued by this Court and Apex Court;

newly appointed Acharya at present is adorning Gadi as Acharya and decision and event of deposing the present appellant no. 1 has started the process of crystalisation.

34. Number of controversies, many of them can be said to be not major, are brought to the notice of the Court and during hearing, from the record tendered for perusal in different volumes. Of course, Id. counsel have pointed out those controversies from the record available to the Court and that was even placed

before the Id. Civil Judge. I am told that gist of controversies was also placed before the Id. Civil Judge and as mentioned herein above, written arguments were also placed before the Id. Judge. However, the controversy on the point of not accepting recommendations made by Chief Kothari to give Diksha to the legitimate incumbents is one of the major controversy and for that, as mentioned above, the Court is taken through the relevant chapters of Satsang Jivanam and types of Dikshas given to the incumbents as recommended by Chief Kothari. Considering the entire process, it transpires that willing incumbent has to surrender himself to any of the temples under the diocese and considering his temperaments, tolerance, dedication, discipline and anxiety to surrender for the services of the Sect etc., such willing incumbents are accepted as Parshad (Pala) and considering sincerity in discharging of the duties in the background of dedication, the concerned Guru would recommend his name for Diksha to Chief Kothari and Chief Kothari thereafter, if Parshad is in other temple than the Head Quarter at Vadtal, on scrutiny would recommend his name to Acharya. Various conditions are mentioned in the form which requires to be filled in and submitted, but it seems that certain conditions were incorporated by Acharya which were not there since decades. Appellant No. 1 justifies the introduction of new conditions and his authority to take test/examination of the candidate recommended by the Chief Kothari. The relevant portion of Satsang Jivanam indicates that there is a little scope to take test of the willing incumbent recommended because the process suggested in Satsang Jivanam can be visualised when relevant procedure is read from the book. In support of the contention, defendants -original plaintiffs have produced certain photographs when on earlier occasions Diksha was given to such willing incumbent. Real test is not the examination referred to in the conditions imposed by Acharya, is one of the submissions advanced by Id. Sr. Counsel Mr. Raval. Real test is evaluation during the entire process that is being undertaken from the date of entry of the willing incumbent in the temple. Educational qualification and intellectual level in each case may not be relevant, is also one of the submissions because the devotee who offers himself to the Sect have to serve the institution in various ways and methods. In some cases, average understanding with very good physical strength can be useful to the institution. So, Dikshas which are being given in Swaminarayan Sect to Brahmcharis is of different type. It is true that only Acharya can confer Diksha and no Saint, Tyagi or Brahmchari is authorised or empowered to confer Diksha. Bhagwati Diksha or Vasudevi Diksha when is being given/conferred, if Acharya wishes to converse with recommended candidate, he is authorised to follow that procedure. The examination referred to in the process is "Samyak Pariksha" of one's religious dedication and tolerance. It can not be equated with formal examinations which are being taken by some institutions while admitting the students or devotees in view of the process referred to in Satsang Jivanam. The process which was being followed till the controversy between the appellant no. 1 and temple administration reached to the litigations, Acharya was giving "Guru Mantra" in the right ear of the recommended incumbent. Even angle and directions of their respective seats

when this Guru Mantra is to be given, is also mentioned in the process narrated in Satsang Jivanam. So, prima facie, there is strength in the submissions of Mr. Raval that while giving Vasudevi Diksha, no such tests in the style of examinations were ever taken by any of the Acharyas nor the same is contemplated in relevant Chapter of Satsang Jivanam. Both the Id. Sr. Counsel referred different chapter of Satsang Jivanam in support of their say, but prima facie, the Court is convinced that Sr. Counsel Mr. Raval referred correct chapter (Chapter No. 51) so far as controversies between the parties in the present litigation is concerned. Whether the conduct of the appellant can be construed as implied denial to give Diksha and effect thereof will be the matter of appreciation. It is true that some incumbents have been given Diksha by the present appellant no. 1 in past i.e. upto 1998, but there is nothing on record to show that what type of test or examination was taken by Acharya . This aspect can not be ignored when the Court is supposed to evaluate the prima facie strength in the grievance pointed out to the Court. It is pertinent to note that controversy is not on the point of conferring "Maha Diksha".

35. Similar situation and controversy is regarding Murti Pratistha and there is sufficient evidence on record, prima facie, to show that on some occasion, appellant no. 1 has not co-operated the followers and devotees in Murti Pratistha Utsav, one of which was organised and was to be celebrated in a foreign country. I have considered relevant pages pointed out during the course of hearing i.e. page nos. 133, 134 and other documents in this regard. Only with a view to avoid prejudice, I am avoiding evaluation of the oral as well as documentary evidence produced before the Court.

36. The next controversy is regarding Nam Vero and Dharmada. If High Court Scheme Clause Nos. 7, 16 & 42 are considered, then all receipts in the nature of Dharmada, Nam Vero or Bhet require to be paid over to the Board or as directed by the Board. It was decided in the year 1985 (Vol. III P.163) that the Board shall issue receipts of the amounts given to Acharya as Bhet, on Guru Mantra procedure or received during the travel or visit of Acharya and for that one person was also nominated who can travel with Acharya and perform functions of issuing receipts etc. on behalf of the Board. In couple of days, appellant no. 1 had issued a circular to all Haribhaktas directing to deposit such Bhet or Dharmada with Managing Trustee Board and responsible person. It is submitted that normally such Dharmada or Bhet are being offered to Acharya personally if devotee is asked directly to go to the office and to pay the amount or article with a direction to get receipt, may not be found in accordance with the traditions followed by Swaminarayan Sect and cause dissatisfaction to each devotee. Where there is an element of religious or spiritual feelings existing, bureaucratic process normally should not be introduced. This Court can positively say that such a circular would not have carried any positive impression in the minds of thousands of followers and devotees. On careful consideration of documents which are at page Nos. 165 to 168 of Vol. III positively indicates that this may have to some extent, created dissatisfaction and frustration in the minds of

Managing Trustees as well as Haribhaktas which are anxious to invite Acharya at their respective residence and offer Dharmada or Bhet. Directly or indirectly, insistence not to receive Bhet also can be said to be not in consonance with the scheme as well as basic principles of Swaminarayan Sect. On 19.6.1996 (Vol. III P.185), the appellant no. 1 had informed the Trust Board requesting for publication of the letter in "Adhyadesh" published by the Institution that whatever things, material, cash or bhet or other Nam Bhet which Haribhaktas give to Acharya, should be entrusted to Shankarbhai Trikambhai Patel of Pij against proper receipt. Response of Shankarbhai is also at page 188. I have carefully gone through this set of correspondence and the comparative table of Charan Bhet received by Acharya and Vadtal Temple which is at page 193 Vo. II which also indicates certain unpleasant situation.

37. The next major controversy is about appellant's visit to temples at New Jersey & Los Angeles (documents are in Vol. III). The appellant had received a letter of invitation and so in turn Chairman of Trust Board was informed accordingly about Bhoomi Poojan arranged by Haribhaktas of Inter-National Satsangi Mandal, New Jersey & Los Angeles affiliated to Vadtal Temple and appellant no. 1 being Acharya was requested to attend the same with Lalji Maharaj, Saints and Parshads and that the return fare to be paid to him. Board passed resolution to pay the amount to appellant no. 1 Acharya. Thereafter, Chief Kothari was asked to pay Rs. 2,80,000/ by Demand Draft to Sahajanand World Travels to make up the amount of Rs. 5,30,981-00. Rs. 2.50 Lacs was paid on 1.10.1997. Thereafter, the Board requested appellant no. 1 as Acharya to deposit with the Institution the amount received during foreign trip as per the established norms and scheme (i.e. Rs. 4,97,668-99 = US \$ 12713). It is on record that the Temple Board was informed by Inter-National Swaminarayan Satsangi Mandal, Texas stating that in September-October,1997, US \$ 12730/ has been paid by the said Mandal. This amount was paid by Shri Bhairambhai Patel, Treasurer of the said Mandal. This controversy was taken to Asstt. Charity Commissioner, Nadiad and I am told the present appellant no. 1 has filed affidavit before the Charity Commissioner. This aspect as argued by Sr. Counsel Mr. Vakil can not be totally ignored merely because controversy is pending between the parties before the competent Court for adjudication. Correspondence between the Board of Managing Trustees and Haribhaktas in USA is not confidential and the amount isn't so meagre which could have been ignored by the congregation as trifle dispute when they had assembled to discuss and decide about deposition of the Acharya, because sensitivity gets more aggravated when it involves faith and trust both simultaneously shaken in such socio-religious matters.

38. Installation of a minor as Acharya of Vadhvan Temple which is otherwise geographically under the Northern Diocese, is also a similar type of issue and congregation might have felt that this venture was not at all required to be done and that itself may drag the entire Southern Diocese into controversy. Whether guardianship in such cases should be assumed or should be conferred voluntarily

also shall have to be appreciated by the trial Court when both the parties are at the extreme ends on the point of justification in this regard. It is true that this question was not raised before the meeting of leading Saints or of Tyagi Panch, but while evaluating the points on prima facie case and balance of convenience, the facts placed before the Court are to be evaluated when the plaintiffs hammer that SATSANG MAHASABHA was otherwise authorised to pass resolution which has been passed deposing Acharya and the same is not in contravention of any of the traditions or any of the above-referred Holy Books. It would be a matter of great debate whether in a personal capacity as elder cousin brother of minor Mahendra, appellant no. 1 can assume guardianship. The process initiated by Civil Misc. Application No. 41/1996 in District Court, Surendranagar under Sec. 9(1)(5) of Hindu Minority & Guardianship Act, 1956 was objected by several persons, is not a matter of dispute.

39 Strength of prima facie case is under evaluation. Submissions of Id. Sr. Counsel Mr. Vakil is not found acceptable at this stage religious scriptures or rights, is not a law. The ratio of the decision of the Apex Court in *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*, applies to the law which needs change because of passage of time or because of societal change, but it is not relevant in the present case, is the say of Id. Sr. Counsel Mr. Vakil. Para-1496 of Halsbury's Laws of England Vol. 12 has much relevance which says that :-

"Where the instrument is of ancient date, then whether the words are taken in their ordinary popular sense, or are taken in the sense given to them by a particular class or in a particular place, evidence will be admitted of the meaning of the words at the date of the instrument, and such evidence may properly be given by reference to historical and other works. "

In the judgment of Allahabad High Court, if considered in light of other earlier decisions dealing different types of disputes and especially the dispute as to the property and its management, it is clear that source of inspiration of faith is not to Acharya, but the religious Books in the name of Lord Sahajanand Swami, it has been symbolised mainly in Acharya + thereafter Sadhus + Sanyasis + Satsangis + other religious books such as *Desh Vibhag No Lekh*, *Shiksha Patri*, *Satsang Jivanam* and *Vachanamrutam* etc.+ Sarman in case of Saints including past conventions. Cumulative effect coupled with dynamism found make the Acharya the Head of the Institution, but it does not confer on him the status of "Kind". Leadership is like a "Pop". There should not be any vacuum and, therefore, some interim arrangement is required to be made and it would be premature to say that Sadhus who have expressed their opinion in the capacity of a member of the Tyagi Panch and thereafter as participants of Satsang Mahasabha, are not commanding high regards or the have limited followings. At this stage, it would be unfair to express clear opinion as to whether the real pillar of any of the diocese of Swaminarayan Sect is the Acharya or the congregation and Sadhus. Absence of statute or the scheme makes the case of the present

plaintiffs comparatively more stronger.

40. The argument that no suit would lie at the instance of three persons named as plaintiffs in their individual capacity, is not found, *prima facie*, sustainable. However, this would be an independent legal issue on procedural aspect. The fact that one of them had withdrawn himself from the proceedings when it was pending before the Id. Civil Judge (S. D.), Bhavnagar, whether would go the root of sustainability of the entire suit is also a question posed before the Court. If this aspect is considered, then it can be said that at the most there may not be any decree in favour of that particular plaintiff. At least, this very plaintiff technically should have been joined as formal party-defendant. This procedural error, I am afraid, would not go to the merits of the case. Ultimately, if this plaintiff who got his name deleted from the suit, if is joined as party-defendant, he may support the other plaintiffs when trial is conducted on merits or may remain neutral or may even support to the defendants also. For short, that would by itself not make the entire suit bad.

41. When the parties have submitted that their respective case placed before the Court is relatively stronger than the counter part, then the scope of success, *prima facie*, has to be seen first and if the Court is not satisfied, then he can not be granted any interim relief in the supplementary proceedings initiated under the CPC. If the plaintiffs are able to establish their *prima facie* case apparently at first look and are also able to place some triable issues, then the same shall have to be evaluated in light of the stand taken by the defendants or the parties resisting the interim relief or such injunction etc. While doing so, if the Court reaches to a conclusion that on evaluation of the case placed before it by the parties, the Court is of the view, *prima facie*, that this needs trial and the evidence that may be led by the parties in support of their contentions raised in their respective pleadings and in that eventuality, ad-interim relief granted earlier even ex-parte, should not be vacated. It is not necessary to enlist number of cases for the purpose and it is sufficient to make reference to the well-established principle that propounded by this Court. This Court (Coram : A.M. Kapadia, J) in the case of Envision Engineering v/s Sachin Infa Enviro Ltd. & Ors., 2002 (3) GLR 2227, in Para-29 of the said decision, has observed as under:-

"It is settled principles of law that in Appeal From Order challenge is against the exercise of discretion by the learned Judge of the lower Court in granting or refusing the injunction which is an equitable relief. In such appeals, the appellate Court will not interfere with the exercise of discretion of the Court of the first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle and the appellate Court will not reassess the material and seek to reach a conclusion different from one reached by the Court below if the one reached by that Court was reasonably possible on the material. The

appellate Court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage, it would have come to a contrary conclusion. If the discretion has been exercised by the trial Court reasonably and in a judicial manner, the fact that the appellate Court would have taken a different view may not justify interference with the trial Court's exercise of discretion."

This principle restricts the compass of the Court dealing with an Appeal from Order under O. 43 of CPC.

42. As referred and discussed herein above, initially, original plaintiffs are granted ad-interim relief as prayed and after hearing the parties, that relief has been made absolute till the hearing and disposal of the suit. Meanwhile, in another independent proceedings initiated, situation has been given some different shape by the order passed by this Court referred to as above vide order dated 27.02.2003 (Coram: P.B.Majmudar,J) in CA No. 1411/2003 in AO 69/2003. So, it is rightly submitted before the Court that when the Court is convinced that there is no error which can be said to be material or stained with an element of perversity or procedural illegality, then while dealing with the point of balance of convenience, events occurred in-between i.e. the day on which ex-parte injunction was granted by Id. Civil Judge (S. D.), Nadiad and the day on which this Court took up this appeal for final hearing, can not be ignored. On the contrary, the same should be given proper weightage to avoid other legal as well as procedural complications and multiplicity of proceedings between the parties.

43. The religious books and traditions followed by the people as per religious books, have been interpreted in number of decisions by various Courts of the country as discussed earlier. In the decision in the case of Shripatprasad Beharilalji Acharyashri v/s Lakshmidas Dungarbhai Barot, reported in 1922 BLR P.747, the Bombay High Court has held that the Acharya of the Swaminarayan Temple at Vadtal which is in the Southern Diocese of Swaminarayan Sect, is bound to treat the properties and income of the temple as forming part of the general funds of the institution. The Acharya of the Swaminarayana temple, though he does not occupy the same position as the Mahant of a math or the Shebait of a temple, is yet under a legal obligation to maintain the institution. (Emphasis for our purpose). The Acharya is a constructive trustee and he may be sued under S. 92 of the Civil Procedure Code, for his fiduciary position, that of a manager or custodian of the property held "for public purposes of a charitable or religious nature." Of course, status of Acharya as religious Head and fountain of spiritual strength flowing towards Sadhus, Tyagis, Satsangis and other Haribhaktas, to some extent is of different nature. When an individual is enjoying dual status and when an individual is adorned with various types of powers and obligations which make him a multidimensional personality, then in that case, confusion as to his role or conduct in the activities with regard to one branch or branches takes him to controversy. Such controversy, in most of cases, may not be serious. The case before the Court is of the type where the point of

controversy, an element of distrust, methodology to administer the institution etc. are under great controversy and it seems that they have affected the religious and spiritual tranquility amongst the followers in general and large number of followers in particular. The Court was not inclined to make this and other similar observations as have been made herein above and that may be made hereinafter in this order, but the language used and tenor of the correspondence in the background of the allegations and counter-allegations made against each other, has constrained this Court to do so.

44. I have carefully seen and considered the order passed by the Id. Civil Judge (S. D.), Ahmedabad ((Rural) and the contents of the application requesting the Presiding Judge to return the plaint. Apparently, there is no prayer for withdrawal of the suit under O. 23 R. 1 of CPC. The Court is not in agreement that the order passed by Id. Civil Judge (S. D.), Ahmedabad (Rural) should be construed as granting permission to withdraw the suit under O. 23 R. 1 of CPC. It is specifically mentioned that "by mistake, plaint was tendered before the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural) on 3.9.2002". There is some logic in the say of Id. Sr. Counsel Mr. Vakil that in view of the fact that resolution referred to in the plaint passed by SATSANG MAHASABHA at Sarangpur, if looked into, then it would be incorrect to say that Id. Civil Judge (S. D.), Ahmedabad (Rural) had no jurisdiction to try the suit because Sarangpur falls within the jurisdiction of Id. Civil Judge (S. D.), Ahmedabad (Rural), but it would be incorrect to presume that on that day, Id. Judge must not have agreed or shown inclination to grant ex-parte injunction and, therefore, the plaint was taken back under a wrong pretext. Apparently, on reading the application and order passed by the Court, the same do not indicate that the application preferred before the Id. Civil Judge (S. D.), Ahmedabad (Rural) was an application for withdrawal of the suit. It is true that Bhavnagar Suit was taken back with a permission to present it in the proper Court. Prior to that, one such similar suit filed by the present appellants was already pending in Kheda District i.e. Civil Suit No. 45/2002. Time and evidence during trial, will say as to whether the Advocate who was instructed to present the suit before the appropriate Court had opted the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural) for his convenience or whether he was not aware about the pendency of such similar suit filed by the appellants in the Court of Id. Civil Judge (S. D.), Kheda, or the request to return the plaint pleading "commission of mistake" can be said to be an application under O. 39 R. 1 of CPC, these questions can be answered during the trial because this would need recording of some evidence. It would not be legal for this Court at this stage to say that the suit in which interim relief is granted by itself is badly instituted suit and it would fail solely on this ground. Undisputedly, the suit filed in the Court of Id. Civil Judge (S. D.), Kheda at Nadiad i.e. Spl. Civil Suit No. 156/2002 and convention of the meeting of SATSANG MAHASABHA was accident selection of place and Advocate might have felt that he has committed mistake in tendering the suit in the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural). It is relevant to note that this application requesting to return plaint is signed by the Advocate

and not by the plaintiff. It would be premature to presume or assume that this application might have been placed on the on the query raised by the Id. Judge presiding over the Court of Id. Civil Judge (S. D.), Ahmedabad (Rural).

45. The point of natural justice argued at length by Id. Sr. Counsel Mr. Vakil and the decisions cited if are considered in light of the flexibility and elasticity found while reading Desh Vibhagh No Lekh in the background of doctrine of necessity, then the same by itself does not affect the prima facie case of the plaintiff. It is true that Satsang Mahasabha's authority and validity of so-called meeting of SATSANG MAHASABHA and the total number of participant members present in the said meeting was also brought under cloud by the appellants. But the concept of SATSANG MAHASABHA undisputedly is not a new concept. The same is the situation qua constitution of Tyagi Panch and its meeting. Removal of Acharya would not depose him personally only, but that would adversely affect the religious and spiritual status of the wife of the Acharya popularly addressed as "Gadivala". Undisputedly, the question posed that constitution of Tyagi Panch or SATSANG MAHASABHA would not be constitutionally valid qua the Scheme or under any other law, then on the strength of the decision of such congregation, a religious head who is functioning under the Scheme established by the Court, whether can be deposed ? But everything depends on the totality. The appellant himself apprehending his removal had moved the suit being Spl.Civil Suit No. 45/2002 to prevent his deposition on 12.2.2002. When the Court is asked to deal with the decision of domestic body, then insistence of the presence of the religious head in the meeting itself till the moment the Head is deposed, would even allow the individuals participating in the meeting to command upon the individual, is the question which required consideration. One fact, if is accepted that Sampraday is supreme then a person or sadhus are also commending practically similar respect and honour as supreme command, then removal should not be looked into from the angle of property right or any other civil right. When the appellant himself had conveyed in writing that he shall come and attend the proceedings of SATSANG MAHASABHA and when said intimation was not negatively responded, it would not be justified to say that SATSANG MAHASABHA was not in a mood to consider the say of the appellants. The plaintiffs simply said that decision taken by SATSANG MAHASABHA deposing Acharya needs to be enforced. So, when the plea of violation of natural justice is advanced, then, it should be construed in light of the ratio of the decision reported in JT 2003 Vol. 5 P.509 (relevant paras 30,31 and 32) and SATSANG MAHASABHA by itself not being the statutory body, it was not under obligation to afford an opportunity as if SATSANG MAHASABHA is taking some adverse or penal action against custodian trustee. It is rightly submitted by Id. Advocate General Mr. Shelat that in presence of the appellant as he was enjoying status of Acharya on the day on which all meeting including meeting of SATSANG MAHASABHA wherein resolution to depose the Acharya came to be passed, none could have expressed themselves freely and that too in the proceedings condemning the supreme authority of the Gadi. The principles of natural justice

when is pressed into service, then it should be construed in light of ancient documents and traditions which are being followed by the Swaminarayan Sect. The observations made by the Apex Court in the case of National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, (relevant para-7) are relevant for the purpose and same are reproduced as under:-

"....In making of a winding up order on a petition for winding up would therefore almost certainly have an adverse consequence on the workers inasmuch as the continuance of their services would be seriously jeopardised and their right to work and earn their livelihood would be disastrously imperilled. Now it is an elementary principle of law, well-settled as a result of several decisions of this Court and particularly the decisions in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, ; A.K. Kraipak and Others Vs. Union of India (UOI) and Others, and Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, that no order involving adverse civil consequences can be passed against any person without giving him an opportunity to be heard against the passing of such order and this rule applies irrespective whether the proceedings in which it is passed is a quasi-judicial or an administrative proceeding. The audi alteram partem rule which mandates that no one shall be condemned unheard is one of the basis principles of natural justice and if this rule has been held to be applicable, in a quasi-judicial or even in an administrative proceeding involving adverse civil consequences, it would a fortiori apply in a judicial proceedings such as a petition for winding up of a company. It is difficult to imagine how any system of law which is designed to promote justice through fair play in action can permit the Court to make a winding up order which has the effect of bringing about termination of the services of the workers without giving them an opportunity of being heard against the making of such order. It would be violative of the basic principle of fair procedure and unless there is express provision in the Companies Act, 1956 which forbids the workers, from appearing at the hearing of the winding up petition and participating in it, the workers must be held entitled to appear and be heard in the winding up petition. That is the minimum requirement of the principles of audi alteram partem which can not be ignored save on pain of invalidation of the order of winding up."

46. The documents which are being referred by the parties are the documents of living memory. So, the decision taken by SATSANG MAHASABHA and affairs handled by congregation including Tyagi Panch should be construed as proceedings of a domestic Panch. Entire correspondence at more than one places, clearly indicates the object of many letters written by either Chief Kothari or after the resolutions passed in last some years and conveyed to the appellant, were with the object to give notice and to afford an opportunity to explain the stand. Feelings of the followers, if conveyed to the Head of the institution, then such Head whether would succeed on the point of principles of natural justice, is the question placed before the Court and the Court is of the view that with these facts situation in light of the background of relevant law prevailing in this field, would not take the appellant to a success in the present appeal. SATSANG

MAHASABHA or Tyagi Panch were bound to afford an opportunity of being heard before passing the resolution deposing Acharya, I am afraid, would not be justified. The decision cited by the Id. Sr. Counsel Mr. Vakil would not help the appellants at this stage because the appellant No. 1. himself has taken an opportunity to place his case by filing Spl.Civil Suit No. 45/2002 and the Civil Suit filed by the respondents- original plaintiffs shall be before a forum where he can put up his say. These proceedings, obviously, would be an opportunity to put up the say of the appellant. It also prevents him from taking contrary stand. There are instances where the Courts have accepted where such opportunity is afforded before the decision is taken or impeachment effected. I am inclined to observe this because the procedure adopted in calling the meeting of SATSANG MAHASABHA at Sarangpur and the agenda which was likely to be discussed was within the knowledge of the appellant and legality of the constitution and status of congregation i.e. SATSANG MAHASABHA was not even seriously challenged by the Acharya when appellant no. 1 sent his wish to participate in the meeting of 11.5.2001.

47. In religious and spiritual matters of the society or of an individual, there is no element of subordination or loyalty towards either Guru or a spiritual head or deity. This is the matter of emotions, love and feelings coupled with an element of dedication and faith. One of the important limb of Desh Vibhagh No Lekh is dividing Satsangis, Tyagis and Sadhus under two different Gadis, obviously for convenience and it emerges that for this purpose, geographical dividing line has been drawn. This line is found notional if one thinks global. Southern diocese is named after Lord Shri Laxmi Narayan Dev (Lord Krishna and Lord's Consort Goddess Laxmi) and northern diocese is named after Lord Shri Nar Narayan Dev (Lord Shri Krishna and his principle devotee "NAR"). This is done by the founder and the fountain of the entire Sampraday. In the present case, the stand taken by the appellant is in the nature under which Acharya of Northern diocese even can be abused !! Of course, the practice to visit in each other region and to accept Bhet or Dharmada from the area of the other Diocese is also prevailing. In this fact situation, the objection in inviting Acharya of other diocese placed before the Court and that too to rebut strength of the prima facie case of the plaintiffs, shall have to be born in mind because the plaintiffs are very much relying on the doctrine of necessity for certain conducts of the followers, Sadhus and even Temple Board. Power and duty philosophy has to be kept in mind when such and similar references are found in the history of Sampraday. Reference of general assembly referred to in the decision of the Bombay High Court in the appeal preferred against the judgment and decree passed by the Id. Jt. District Judge of Ahmedabad in Civil Suit No. 179/1914 (para-15), it will be difficult to accept at this stage that the formation of Tyagi Panch or convention of SATSANG MAHASABHA has no reference anywhere in the history of Sampraday till the month of May-2002. The congregation if named as SATSANG MAHASABHA whether is ipsidixit is the question that shall have to be answered at the end of trial. In the same way, it is true that holding of Gadi of Acharya obviously is not

at the pleasure of the temple Board, but there is no provisions, the collective body's duty towards the Acharya and Acharya's obligation to all the followers requires focus. It is true that impossibility in affording an opportunity of being heard, can not be pleaded and hat too on account of some social event. The principle of Audi Alterm Partem, if applied in the present case, even then it is difficult to accept that as per the ratio propounded by the Apex Court in the case reported in AIR 1983 SC P.75 (supra) which would squarely apply, prior opportunity of hearing must be offered. Two other decisions i.e. The Scheduled Caste and Weaker Section Welfare Association (Regd.) and anothers Vs. State of Karnataka and others, and State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., are also considered. In the present case, more than one opportunities were available with the appellants as discussed, but the Court can at this stage, prima facie, say that post-hearing also can serve the purpose. The same SATSANG MAHASABHA, on observations of the Court or finding recorded by the Court, may repose the appellant no. 1 or any other contingency which may happen which one may not be able to foreseen. So, point of violation of principles of natural justice does not appeal this Court in disturbing the finding recorded while dealing with supplementary proceedings. The ratio of the decision reported in 1997(2) GLR P.1460 would not help the appellant where there is no element of apparent error, illegality or perversity.

48. One another element which has been placed by the plaintiff before the Court talks about the meaningful default and its magnitude of day to day management of the institution and fibre of faith amongst followers and Sadhus under Southern diocese. The same is the situation qua the conduct of the Board and large number of Sadhus & Sanyasi, but one fact which can not be ignored, is the dedication of Haribhakhtas and contribution of large numbers of Sadhus & Sanyasis and many of such Sadhus & Sanyasis are having very large number of followers, which is the real strength. It was rightly pointed out that God's Incarnation through Sadhus and Sanyasis is well-accepted feelings practically in all sects in Hindus. It is difficult to accept at this stage that the litigation initiated against the appellant is to put Chief Kothari to a higher pedestal then the Acharya and matter of conflict of ego of members of Temple Board and present appellants. Say of the appellants is not found acceptable at this stage that Acharya of Northern diocese by accepting invitation as dragged himself to a wrong and his act of conferring Diksha was not warranted and it is inconsistent to Desh Vibhagh No Lekh. Whether this plea has strength or the same is simply a bullshine, depends on the evaluation of evidence and other facts and circumstances that may emerge during the trial because Tyagis and Sadhus who are given Bhagwati Diksha or Satsangis who are given Vasudevi Diksha can have their access and continue their religious activities in any of the temples of either diocese. There is no watertight compartment because it is the mater of offering Seva, Pooja and Darshana.

49. The Court does not find that in the present case, plaintiffs" have selected to forum or this is a case of abuse of process of Court. It is also important to note

that the nature of suit filed and relief prayed is also relevant to the basic disputes brought for adjudication -some are new one. Consequence of decree would follow at Vadatal and when declaration and injunction are granted, then it is otherwise inconvenience to execute the decree in the area falling in the jurisdiction of the other Court, unless the said decree is transferred. It may invite other and further proceedings. If this would be the case of abuse of process, then the Apex Court could have rejected the stand of the plaintiffs on the first occasion itself. The question which requires to be answered by the trial Court while dealing with the point of jurisdiction and maintainability of the suit under the Scheme of O. 23 R. 1 of CPC, where the plaintiffs could have gone for implementation of the resolution passed by SATSANG MAHASABHA is the question to be decided. In this background, the Court is not inclined to throw the case of the plaintiffs holding hat the suit at Nadiad is a subsequent suit instituted without express sanction or permission of the Court of Id. Civil Judge, (S. D.), Ahmedabad (Rural). The Court does not find that the maintainability of the suit is under serious challenge as observed in the case of 2002(1) SCC 45.

50. One more point, of course the same has not been magnified by Id. Sr. Counsel Mr. Vakil, but he was serious and sensitive when he pointed out that this is an order under challenge running into 45 typed pages passed immediately on the next day on which hearing is concluded. Before couple of hours of the judgment/order, a big bunch of 100s of documents were tendered before Id. Civil Judge along with written arguments running in 23 pages and the appellants were surprised and shocked to have an adverse order on the next day and that too in the first part of the working day. Mr. Vakil has attempted to connect two aspects namely (i) request made to return the plaint on the ground that the same is presented under a mistake, and (ii) grant of ex-parte injunction by Nadiad Court on the day on which the suit was tendered for filing. Placing reliance on these two aspects, it is argued that the very Judge has allowed the application by passing a lengthy order on the very next day of conclusion of hearing. But this would not be relevant. In response to the query raised by the Court, Id. Sr. Counsel Mr. Vakil has gracefully not commented on the integrity of the Id. Judge and has fairly accepted while responding the query raised by the Court that he has no instructions whether typewriter used for typing the order passed is whether of the Court or the same is typed out on any other private typewriter. In the same way, nothing adverse is submitted as to the competence of the Id. Presiding Judge nor against his attitude to deal with urgent work. Hard workers and great servers are in every field and in each Institution, is the experience in life. The Court has considered the aspects placed by the Id. Sr. Counsel Mr. Vakil and in absence of any cogent serious allegations against the Presiding Judge and the fact that in some cases, Judges themselves are typing out judgments directly and some of them are very competent and speedy also, the same can not be accepted. The Court is not aware about the dedication of the stenographer or a person who might have been entrusted the work to take dictation. Considering the normal speed of a typist or a stenotypist or a stenographer, it is not humanly

impossible to keep the order ready on the next day especially when gist of all documents were available to the Id. Judge in the nature of written submissions and it would not be wrong to assume at this stage that merely a pressie of the submissions made on behalf of the appellant- original defendant might have also got prepared simultaneously when points were being canvassed. Reversing the order only on this ground would amount to do injustice to the Presiding Officer without affording any opportunity to explain this contingency. The order under challenge is in vernacular Gujarati. I am not in agreement, at this stage, with the submission, in absence of any cogent and convincing adverse facts and circumstances that, it is humanly impossible to deliver an order running into 45 pages in a day. For the sake of arguments, it is accepted that Id. Civil Judge while passing the order under challenge has practically adopted written submissions made by the plaintiffs, but that by itself, would not make the order bad. While dealing with the present appeal, such procedure or method adopted by the Id. Judge is found perverse or if this Court is of the view that the stand and the strength of the case of the defendants has been ignored totally and it is one-sided decision without application of mind, only then adoption of the written arguments of one side should be viewed seriously and the matter can be even sent back to the trial Court directing the Court to pass orders on merits after considering the rival contentions. In absence of such situation, the Court is not inclined to quash the order and condemn the Id. Presiding Judge indirectly.

51. I have considered the judgment referred to herein above cited by the Id. counsel appearing for the parties, but having considered the facts of the cited cases, I have not referred them in detail. However, the relevant ratio propounded in those decisions and the observations which are found relevant, are considered in arriving at this decision.

52. For the reasons aforesaid, present Appeal From Order is hereby dismissed. The order under challenge dated 1.10.2002 passed by Id. 3rd Jt. Civil Judge (S. D.), Nadiad below application exh. 5 in Special Civil Suit No. 156/2002 is hereby confirmed. It is, however, held and observed that this confirmation is tentative and findings recorded are subject to the final decision in the suit. The Court has considered subsequent events also along with the merits of the matter placed before the Court in the background of the ratio of the decision in the case of Ramesh Kumar Vs. Kesho Ram, and the situation which has emerged subsequently in light of the decision reported in the case Envision Engineering v/ s Sachin Infa Enviro Ltd.(supra). Hearing of the main suit is ordered to be expedited. Id. Civil Judge is directed to hear and decide the suit on merits as early as possible and preferably within one year from the receipt of writ of this Court. The parties appearing in the suit are directed to co-operate hearing and except for compelling circumstances, they shall examine the witnesses on day to day basis, if possible and shall submit oral as well as documentary evidence before the Court at the earliest available opportunity and in accordance with the provisions of CPC. Confirmation of the interim order till hearing and final dispose of the suit shall be construed in light of the observations made by the Apex Court

in the decision referred to above.