

(2019) 07 GUJ CK 0064

In the Gujarat High Court

Case No : R/Special Civil Application No. 12387 Of 2019

Amitbhai Sitapati Kumar Varma

APPELLANT

Vs

Morbi Nagrik Sahkari Bank Ltd.

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code of Civil Procedure, 1908 — Section 115, Order 1 Rule 10

Citation : (2019) 07 GUJ CK 0064

Hon'ble Judges : A.J. Shastri, J

Bench : Single Bench

Advocate : Anshin Desai, Zalak B Pipalia, Ruturaj Nanavati

Final Decision : Dismissed

Judgement

A.J. Shastri, J

1. The present petition under Article 227 of the Constitution of India is filed for the purpose of seeking following reliefs :

â??A. Your Lordships may be pleased to allow this petition.

B. Your Lordships may be pleased to issue a writ of certiorari or writ in nature of certiorari or any other writ order or direction, for quashing and

setting aside the impugned order dated 7.5.2019 passed by the Ld. 2nd Addl. Senior Civil Judge, Morbi below Exh.226 in Special Civil Suit No.244 of

2002 in the interest of justice.

C. Pending admission, final hearing and disposal of the petition, Your Lordships may be pleased to stay the further proceedings of Special Civil Suit

No.244 of 2002 pending in the court of Ld. 2nd Addl. Senior Civil Judge, Morbi, in the interest of justice.

D. Your Lordships may be pleased to pass such order as may be deemed just and proper in the circumstances of the case.â??

2. The background of fact is that a Special Civil Suit No.244 of 2002 came to be filed originally against few of the defendants for the purpose of

recovery of Rs.1,29,18,122.22 ps. with interest and the same was filed in the Court learned Senior Civil Judge, Morbi by Morbi Nagrik Sahkari Bank

Ltd.

2.1 The premise on which the suit was filed that original defendant No.1 was, at a relevant point of time, serving as a Bank Manager and despite

knowing the policy and the terms with regard to dealing with the public money of the bank, he acted contrary to said policy and though it was resolved

by the bank to invest in Government security, divested the said amount in Rajkot District Cooperative Bank Ltd. and upon insistence of sonâinâlaw

â?" Mr.Tushar Mehta, the amount was sent through courier and a serious act against the interest of the bank said to have been committed and this is

in connivance with other defendants as well and, therefore, the suit came to be filed for the purpose of recovery and the relief prayed for is at pageâ?

38 in Para.16 of the suit.

2.2 It appears from the record that this irregularity was the subject matter of criminal case being M.Case No.22 of 2002 in which the chargeâsheet

came to be filed and the other parties were also ordered to be joined as party defendants and by taking note of every circumstance, the other

defendants were also joined in the suit. The detailed order which has been passed on such joining party application Exh.85 is reflecting on pageâ62 of

the petition compilation. Said order dated 5.8.2015 is making it absolutely clear that there was an act of connivance between the parties and the

defendants and as such, in the suit the same were also added. Now here is a case in which on a subsequent occasion, an application was filed for

deleting petitioners as defendant Nos.2 and 3 from the main suit proceedings. Since now the suit is at the admission and from crossâexamination of

plaintiff, it has appeared that there is no role played by the present petitioners and, therefore, having now disclosed in crossâ examination of the

plaintiff, the petitioners may be deleted from the suit proceedings. This application Exh.226 came to be contested and ultimately, by order dated

7.5.2019, the same came to be rejected and the cost was imposed upon of

Rs.2500/Â each as is reflecting in Para.2 of the operative part. Now, it is this order is challenged by way of present petition basically under Article 227 of the Constitution of India.

3. Mr.Anshin Desai, learned Senior Advocate with Mr.Zalak Pipaliya, learned advocate appearing on behalf of the petitioners, has vehemently contended that no doubt, on a different situation prevailing at a relevant point of time, the petitioners were joined as defendant Nos.2 and 3, but then during crossÂ examination of the plaintiff, it has been found that there is no role played by the present petitioners in respect of misappropriation, as alleged and, therefore, when that be so, the presence of the petitioners in the suit proceedings is no longer required and as such, the Court has ample power to delete by exercising power under Order 1 Rule 10 of the CPC.

3.1 It has further been contended that plaintiff, who is the master of the suit, whose evidence itself has clearly suggested that there is no transaction took place with present petitioners and the same has been come out from crossÂ examination, dragging the petitioners further in litigation would amount to abuse of the process against the petitioners and, therefore, they may be discharged from the proceedings. It has further been contended that whatever has happened might be with the company, but the petitioners being Directors are not responsible for such. However, the learned Senior Advocate has candidly submitted that the company in question is a private limited company and not a public limited company. By referring to crossÂ examination, learned Senior Advocate has submitted that simply because there is an objection raised, the same would not ipso facto permit the petitioners to be dragged on any further in the litigation which may take place years together and, therefore, in the larger interest of justice by exercising jurisdiction under Order 1 Rule 10 of the CPC, the petitioners may be deleted from the suit proceedings.

3.2 Mr.Anshin Desai, learned Senior Advocate, has submitted the discretion which has been exercised by the court below while dealing with application Exh.226 is not only unjust and improper, but is a laconic in nature. There is no justification available in the order itself and as such, this being a clear error of exercise of jurisdiction, the petition may be entertained. No other submissions have been made.

4. Having heard the learned advocate for the petitioner and having gone through

the material on record, first of all, it appears from the petition that the learned Judge while passing an order has applied his mind and after considering the material, has exercised the discretion within the bounds of his authority. It further appears that the criminal case in respect of alleged huge scandal is still pending, in which the present petitioners are also arraigned and in that criminal case, a charge sheet has also been filed and in view of the fact that the suit which of 2002 has now ripe for final disposal, to allow the defendants i.e. present petitioners to go away in the suit proceedings would be seriously prejudicing the adjudication itself.

5. Apart from this, it further appears that even during the course of investigation of the case, when it has appeared that certain other persons are also part of such alleged financial irregularities, have also been joined as party defendants and the detailed order which has been passed on 5.8.2015 below Exh.85 is also making it clear that it would not be in the interest of justice or in the overall interest of adjudication itself, to allow the petitioners to be deleted from the proceedings. Yet the detailed examination is to be conducted. It is merely on the basis of cross examination of plaintiff, such decision has rightly not been taken by the court below.

6. Additionally, looking at the detailed reasons which are assigned while passing the impugned order and looking to the material which has been attached to the present petition, this appears to be not a fit case to exercise the jurisdiction under Article 227 of the Constitution of India. The parameters are prescribed by several decisions on such exercise of jurisdiction, the Court would like to reproduce the same hereinafter :

(1) In the case of Mohd. Yunus v. Mohd. Mustaquim and Ors., reported in AIR 1984 SC 38, more particularly in para 7, the

Apex Court has observed as under :

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or

Tribunal functions within the limits of its authority and not to correct an error apparent on the face of the record, much less, an error of law. In this

case, there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned

Subordinate Judge to exercise jurisdiction nor did he act in disregard he act in disregard of principles of natural justice. Nor was the procedure adopted

by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.â??

(2) In the case of Sameer Suresh Gupta Through Holder v. Rahul Kumar Agarwal reported in (2013) 9 SCC 374, the Apex Court, in para 6 and 7 has observed as under :â??

7. The same question was considered by another Bench in Shalini Shyam Shetty and another vs. Rajendra Shankar Patil (2010) 8 SCC 329, and it was held:

(a) A petition under Article 226 of the Constitution isâ?? different from aâ?? petition under Article 227. The mode ofâ?? exerciseâ?? ofâ?? powerâ?? by

theâ?? Highâ?? Court under these two articles is also different.â?? â?? â?? â??

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is

substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders

of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appealâ?? over the orders of the courtâ?? orâ?? tribunalâ??

subordinateâ?? to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise

of this power by the High Court.â?? â??

(d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this

regard the High Court must be guided by the principles laid down by the Constitution Bench of this Courtâ?? in Waryam Singh and the principlesâ??

inâ?? â?? Waryamâ?? â?? Singhâ?? â?? have been repeatedly followed by subsequent Constitution Benches and various otherâ?? decisionsâ?? of this Court.

(e) According to the ratio in Waryam Singh, followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can

interfere in order only to keep the tribunals and courts subordinate to it, ""within the bounds of their authority"".

(f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), a High Court can interfere in exercise of its power of superintendence

when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure

of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than

the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure

of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India and therefore abridgment by a constitutional

amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code

(Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered

that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to

keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of

justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to

ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence

in the functioning of the tribunals and courts subordinate to the High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed

for promotion of public confidence in the administration of justice in the larger public interest" whereas Article 226 is meant for protection of

individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline

pointed out above.

(o) An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality."d

7. In view of aforesaid proposition of law on exercise of extraordinary jurisdiction, when there is a categorical material which necessitates the Court to

adjudicate the suit at length, this Court is of the considered opinion that this petition may not be allowed to be considered, especially when the suit of

2002 is on the way to be concluded. The conjoint reading of the observations made in the present impugned order and in the context of circumstance

that the charge sheet has been filed including against the petitioners in criminal case, this Court would not like to intercept the process of adjudication

by allowing the petitioners to be deleted from the main proceedings, in which they were originally found to be the defendants. The circumstances are

such, it would not permit this Court to exercise extraordinary jurisdiction under Article 227 of the Constitution of India.

8. In the wake of the aforesaid situation and in the circumstances which are prevailing on record, when the trial court appears to have exercised the

jurisdiction keeping in view the well propounded proposition of law, this Court is not inclined to exercise the extraordinary jurisdiction. Resultantly, the

petition, being devoid of merit, stands dismissed with no order as to costs.