

(2025) 09 GUJ CK 1059

In the Gujarat High Court

Case No : R/Special Civil Application No. 5138 Of 2014

Delta Rubber And Plastic Products & Anr

APPELLANT

Vs

Ahmedabad Mercantile Co Op Bank Ltd. & Anr

RESPONDENT

Date of Decision : 24-09-2025

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Section 2(2), 144, Order 21, Rule 22, Order 21, Rule 22(1), Order 21, Rule 22(2), Order 21 Rule 23

Gujarat Co-Operative Societies Act, 1961 — Section 2(17), 3, 3(2), 3(3), 4(2), 74, 87, 93, 96, 100, 101, 102, 110, 155

Citation : (2025) 09 GUJ CK 1059

Hon'ble Judges : Maulik J.Shelat, J

Bench : Single Bench

Advocate : Uday R Bhatt, Dr.Abhisht K Thaker, Hamesh C Naidu

Final Decision : Dismissed

Judgement

Maulik J.Shelat, J

1. At the outset, learned Advocate Mr. Bhatt would request this Court to allow the petitioners to delete respondent No. 2, inadvertently joined in the proceeding. Learned Advocate Mr. Hamesh C. Naidu for respondent No. 2 has no objection for such request of the petitioners.

2. Permission as sought for is granted. Respondent No. 2 herein stands deleted from the array of parties in the matter.

3. Rule returnable forthwith. Learned Advocate Mr. Ishan Rajdev waives service of notice of admission for respondent No. 1. With the consent of parties, matter is taken up for hearing.

4. Heard learned Advocate Mr. Uday R. Bhatt for the petitioners and learned Advocate Mr. Ishan Rajdev for respondent No. 1.

5. The present writ application is filed under Article 227 of the Constitution of

India, seeking the following reliefs:

"(a) Admit this petition and issue an appropriate writ, order or direction in nature of appropriate writ and call for the records and proceedings of the execution proceedings being Darkhast no 296 of 2002 from the executing forum being the Ahmedabad City Civil Court and quash and set aside the order below exhibit no 44 dated 10-5-2013 and further allow the same and further hold and declare that the orders passed by the executing forum and the award / decree passed by the appellate forum in appeal being Appeal No.426/99 decided on 30.10.2000 by the Gujarat State Co-operative Tribunal, Ahmedabad are without any jurisdiction and are nullity etc by calling for the records and proceedings and quash and set aside the same and also call for the records and proceedings of Lavad Suit No.2188/95 dismissed on 1.7.1999 from the board of nominees Ahmedabad and holds that all fundamental rights of the petitioners are violated.

(b) Pending admission, hearing and final disposal of this petition, the Hon'ble Court be pleased to stay the darkhast proceedings being Darkhast no 296 of 2002 pending before the executing forum being the Ahmedabad City Civil Court.

(c) Ad-interim relief in terms of prayer (B) be granted.

(d) Pass any other and further order or orders as may be deemed fit, just and necessary by this Hon'ble Court in the facts and circumstances of the case.

(e) Costs of this petition be awarded."

6. The short question falls for consideration of this Court as to whether any jurisdictional error was committed by the Executing Court while passing the impugned order dated 10th May 2013, when it rejected the impugned application filed by the petitioner herein below Exhibit 44 in Execution Application No. 296 of 2002?

7. As far as possible, the parties will be referred to as per their original position before the Trial Court.

8. THE SHORT FACTS OF THE CASE APPEAR TO BE THAT:

8.1. The petitioner herein was defaulter of a bank loan given by respondent No. 1 for which Lavad Suit No. 2188 of 1995 came to be filed for recovery of Rs.7,58,133.60/ against him before the Board of Nominee Court, Ahmedabad. It appears that the said suit came to be dismissed, against which an appeal was filed before the Gujarat State Co-operative Tribunal. After hearing the parties, the Tribunal has allowed Appeal No. 426 of 1999 on 30th October 2000, thereby decreed the suit in favor of respondent No. 1.

8.2. Pursuant to the aforesaid judgment and decree passed by the Tribunal, respondent No. 1 had filed Execution Petition No. 296 of 2002 against the petitioner herein, who happens to be the judgment debtor of the decree. It seems that in execution proceeding, at initial stage, reply came to be filed below Exhibit 27 and certain documents were submitted below Exhibit 28 by the

petitioner herein.

8.3. Thereafter, about 11 years have passed, on 14th March 2013, impugned application below Exhibit 44 in the execution proceeding filed thereby petitioner to raise objections that the decree passed by the Appellate Court i.e. the Co-operative Tribunal, has no jurisdiction and as such it is nullity, thereby not executable. Further, it is prayed in the very application that whatever amount deposited/collected from the applicant- judgment debtor be refunded by respondent No. 1-Bank to petitioner.

8.4. After hearing the parties, the Trial Court vide its impugned order dated 10th May 2013, rejected all such objections raised by the applicant/petitioner herein and accordingly, issued Jangam warrant against the applicant. Hence, the present application.

9. SUBMISSION OF THE PETITIONERS:

9.1. Learned Advocate Mr. Bhatt would submit that respondent No. 1 being a multistate cooperative bank registered as per the provisions of the Multi-State Cooperative Societies Act, 1984 (hereinafter referred to as "Act 1984") and as per the notification dated 16th September 1985, issued by the authority concern, thereby, the Board of Nominee Court has a jurisdiction to decide the suit between the parties but as such, the Co-operative Tribunal, before whom the appeal came to be filed by respondent No. 1, has no jurisdiction, having not covered under the said notification.

9.2. Learned Advocate Mr. Bhatt would submit that in the absence of any jurisdiction so vested with the Co-operative Tribunal, any judgment and decree passed by such Tribunal is nullity. It is submitted that when the decree passed by any court/tribunal is ex facie without jurisdiction, it amounts to nullity and thereby, not executable in law.

9.3. Learned Advocate Mr. Bhatt would further submit that the Executing Court has not appreciated all the objections so raised before it and according to learned Advocate Mr. Bhatt, the order impugned is a non-speaking one and requires to be quashed and set aside.

9.4. Learned Advocate Mr. Bhatt would further submit that when decree is nullity, such issue can be raised at any point of time, irrespective of any stage of execution proceeding. It is respectfully submitted that even though such contentions as regards, tribunal not having jurisdiction, not raised either before the Tribunal or at the first instance before the Executing Court, it can be agitated at any stage of the execution proceeding and the same requires to be decided by the Court in accordance with law.

9.5. Learned Advocate Mr. Bhatt would further submit that considering the provisions of the Act 1984, and the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as "Act 1961"), Tribunal has no jurisdiction to decide the lis between the parties.

9.6. Having so submitted, learned Advocate Mr. Bhatt would request this Court that entire execution proceeding itself is not maintainable, inasmuch as the decree passed by the Tribunal is without jurisdiction. So, as per Section 144 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), whatever amount recovered during execution on strength of decree from the petitioner by respondent No. 1 requires to be returned back to the petitioner.

9.7. To buttress his argument, learned Advocate Mr. Bhatt relied upon the following two decisions:

(i) Kiran Singh V/s. Chaman Paswan reported in AIR 1954 SC 340;

(ii) The Agricultural Produce Marketing Committee, Bangalore V/s. The State of Karnataka and Ors. reported in 2022 (7) SCC 796.

9.8. So, making the above submissions, learned Advocate Mr. Bhatt would request this Court to allow this writ application.

10. SUBMISSION OF THE RESPONDENT NO.1 - DECREE HOLDER:

10.1. Per contra, learned Advocate Mr. Rajdev appearing for respondent No.1 would submit that during the pendency of the present writ application, Execution Petition No. 296 of 2002 in question is disposed of being dismissed for default, thereby, nothing survives in the matter. It is submitted that the execution application itself is no longer survived before the Trial Court, any interlocutory order passed by the Executing Court in such execution should not be disturbed by this Court.

10.2. Learned Advocate Mr. Rajdev would further submit that there is no substance in the argument of learned Advocate Mr. Bhatt inasmuch as the Trial Court, while passing the impugned order, had considered all the objections so raised by the petitioner and the reasons which are assigned by the Trial Court while rejecting the impugned application are just and proper. It is submitted that when the impugned order is neither erroneous nor perverse and not passed contrary to the provisions of law, this Court should not interfere with such impugned order while exercising its power under Article 227 of the Constitution of India.

10.3. Learned Advocate Mr. Rajdev would submit that the issue germane in the matter is squarely covered by decision of this Court in the case of Govindbhai Muljibhai Patel Versus Jt Registrar, And Registrars Board Of Nominees, Ahmedabad reported in 2000 (2) GLH 411. It is submitted that petitioner being defaulter of bank loan should not allow to raise such frivolous pleas, just to frustrate the decree at any cost.

10.4. Learned Advocate Mr. Rajdev would further submit that at the given point of time, no issue regarding jurisdiction was raised by the petitioner either before the Tribunal or at initial stage in the execution proceeding. It is submitted that after about long 11 years from the execution proceeding, impugned application

came to be filed, just to avoid the dues under the decree, which is not permissible in law. It is submitted that when the stage to file objections got over as per Order 21, Rule 23 of CPC and having so filed reply at the first instance in the execution proceeding, at a belated stage, such objection cannot and should not be entertained by the Court.

10.5. To buttress his arguments, learned Advocate Mr. Rajdev would rely upon the following decisions:

(i) Govindbhai Muljibhai Patel V/s. Jt Registrar, And Registrars Board Of Nominees, Ahmedabad reported in 2000 (2) GLH 411;

(ii) Ganchi Laxmichan Ambaram V/s. Tulsidas Madhavdas reported in 1962 GLR 103 more particularly Para-10;

(iii) Barkat Ali and another Vs. Badrinarain (Dead) by Lrs. Reported in (2008) 4 SCC 615, more particularly Para-9 to 13.

10.6. Making the above submissions, learned Advocate Mr. Rajdev would request this Court to dismiss the present writ application.

11. No other and further submissions are made.

12. The facts which are observed hereinabove are not in dispute. As such, there is no substance in the present writ application, inasmuch as the issue germane in the matter would be squarely covered by the decision of the Coordinate Bench of this Court in the case of Govindbhai Muljibhai Patel (supra).

13. It experienced that time and again, on different forms and contexts, defaulter of bank would raise different types of objections to frustrate the money decree passed by court/tribunal. One of such attempt done by the present petitioners, raising an issue of jurisdiction at such belated stage in the execution proceeding, that too, unnoticing the fact that such issue was already resolved by this Court.

14. It is not in dispute that money decree was passed by the Tribunal in the appeal filed by respondent No. 1, having failed before the Board of Nominee in the suit of recovery filed against the petitioner. It is unfathomable that if the Board of Nominee constituted under the Act 1961, has jurisdiction to decide the lis between the parties, having not disputed by petitioners, then how the Tribunal, which is also constituted as per Section 102 of the Act 1961, would not have jurisdiction to decide the lis between the parties. There is no valid legally sustainable arguments canvassed by learned advocate Mr. Bhatt thereby, this Court can even think to accept his plea. So, called argument that its not observed in notification of 1985 that Tribunal has also jurisdiction to decide the appeal, thus, it has no jurisdiction, is thoroughly misconceived arguments, not sustained in law inasmuch as when primary jurisdiction conferred upon Board of Nominee, constituted under the Act, 1961 to try the suit filed by multi-state co-operative society, then naturally as per provision of the Act, 1961, any appeal

remedy provided under the very Act against any order/award passed by Board of Nominee, has a jurisdiction to decide lis between the parties while hearing the appeal on merit .

15. It is well settled that appeal is a continuation of suit. The remedy of appeal is already provided under Section 102 of the Act 1961. The relevant provisions of the Act 1961, touches the issue germane in the matter requires to be referred, at least for better understanding of provisions of law by learned advocate Mr. Bhatt, which reads as under:

"101. Decision of 'Registrar or his nominee or board of nominees-

[(1)] When a dispute is referred to the Registrar for decision, he or his nominee or board of nominees may, after giving a reasonable opportunity to the parties to the dispute to be heard, make an award on the dispute, on the expenses incurred by the parties to the dispute in connection with the proceedings, and the fees and expenses payable to the Registrar or his nominee or, as the case may be, board of nominees. Such an award shall not be invalid merely on the ground that it was made after the expiry of the period fixed by the Registrar, for deciding the dispute and shall, subject to appeal or review or revision, be binding on the parties to the dispute.

[(2)] The Registrar, his nominee or, as the case may be, the board of nominees, may before hearing the parties, require any party or parties to such dispute to deposit such sum as may, in his or its opinion, be considered reasonable to meet the expenses including the payment of fees, that may be payable to the Registrar, his nominee or, as the case may be, the board of nominees, in pursuance of the award to be made under sub-section (1).

(3) The Registrar may, having regard to the nature of the cause of action or subject-matter of dispute, the nature of relief that may be claimed in a dispute and such other matters, specify by a general or special order, the scale of fees and expenses that may be made payable to him or his nominees or, as the case may be, the board of nominees, by or under an award made under sub-section (1).]

102. Appeal against decision of Registrar or his nominee or board of nominees. Any party aggrieved by any decision of the Registrar or his nominee or board of nominees under Section 101 or in an order passed under Section 100 may, within two months from the date of the decision or order appeal to the Tribunal.

103. Money how recovered.- Every order passed by the Registrar or a person authorised by him under Section 93, or by the Registrar, his nominee or board of nominees under Section 100 or 101, every order passed in appeal under Section 102, every order passed by a Liquidator under Section 110, every order passed by the State Government in appeal against orders passed under Section 110 and every order passed in revision under Section 155, shall if not carried out,-

(a) on a certificate signed by the Registrar or a Liquidator, be deemed to be a

decree of a Civil Court, as defined in clause (2) of Section 2 of the Code of Civil Procedure, 1908 and shall, be executed in the same manner as a decree of such Court, or

(b) be executed according to the provisions of the Land Revenue Code and the rules thereunder for the time being in force for the recovery of arrears of land revenue:

Provided that, any application for the recovery in such manner of any such sum shall be made to the Collector, and shall be accompanied by a certificate signed by the Registrar, or by any Assistant Registrar to whom the said power has been delegated by the Registrar. Such application shall be made within twelve years from the date fixed in the order and if no such date is fixed, from the date of the order."

(emphasis supplied)

16. It is not in dispute as held by this Court in the case of Govindbhai Muljibhai Patel (supra), that in the case of a Multi-state Cooperative Society also, the Registrar of Cooperative Society, appointed under Section 3 of the Gujarat Cooperative Societies Act, 1961 has the jurisdiction to decide the suit filed at the instance of such Multi-state Cooperative Society. The relevant observations made in Govindbhai Muljibhai Patel (supra) reads as under:

"[7] So far as the question of jurisdiction is concerned, on facts there is no dispute that the respondent-bank is having its Registered and Head Office at Mumbai, but Sec. 2(19) of the Gujarat Act defines that "society" means a co-operative society registered, or deemed to be registered under this Act, but it is also made clear by Sec. 160 (2) that the societies which were registered under the Bombay Co-operative Societies Act shall also be treated as having been registered under the Gujarat Co-operative Societies Act.

It is the specific case of the respondent-Bank and is not disputed by or on behalf of the petitioners that the respondent-Bank was registered as a co-operative society under the Bombay Co-operative Societies Act, 1925, and is therefore, also deemed to continue as a co-operative society under the Gujarat Act.

In this view of the matter, there cannot be any serious challenge to the jurisdiction of the Board of Nominees in Gujarat State, and in the facts of this case, to the jurisdiction of particularly the Board of Nominees at Ahmedabad to entertain and try the suit in respect of the transactions which took place at Ahmedabad as the money was advanced by the Ahmedabad branch of the respondent-Bank to the petitioners who are carrying their respective businesses at Ahmedabad. In this view of the matter, the controversy ought to have come to an end.

[8] However, Mr. B. S. Patel, learned Counsel for the petitioners has reiterated that because the respondent-Bank is a Multi-State Society only the Central Registrar under the Multi-State Act has the jurisdiction to try and decide the suits

in question.

[9] It is not possible to accept the aforesaid contention because the notification dated 16-9-1985 clearly provides that the powers of the Central Registrar under the Multi-State Act shall be exercisable by the Registrar of Co-operative Societies appointed under Sec. 3 of the Gujarat Co-operative Societies Act, 1961 and that the said jurisdiction is extended to the State of Gujarat. It is necessary to note at this stage, that Sec. 3 of the Gujarat Act provides for appointment of Registrar of Co-operative Societies for the State and Sec. 3(2) provides for appointment of Additional Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars. Sub-sec. (3) of Sec. 3 further empowers the State Government by general or special order, to confer on a person or persons appointed under sub-sec. (2) all or any of the powers of the Registrar. Section 2(17) of the Gujarat Act provides that "Registrar" means a person appointed to be the Registrar of Co-operative Societies under this Act and also includes an Additional or Joint Registrar. There is nothing in the provisions of the Multi-State Act or in the provisions of the State Act which would prohibit the exercise of the powers under Sec. 74 of the Multi-State Act read with the aforesaid notification dated 16-9-1985 by the Nominees of the Registrar appointed under the State Act. The prohibition contained in Sec. 4(2) of the Multi-State Act read with notification against delegation of powers under Sec. 87 of the Multi-State Act to an officer of the State Government below the rank of Registrar of Co-operative Societies cannot and does not whittle down the power of the Registrar to refer the disputes under Sec. 96 of the State Act to the Board of Nominees."

(emphasis supplied)

17. Thus, in view of the aforesaid provisions of law and so also the decision of this Court in the case of Govindbhai Muljibhai Patel (supra), there is no substance in the argument so canvassed by learned Advocate Mr. Bhatt that the Tribunal has no jurisdiction to decide the lis between the parties.

18. According to my view, such submission is unnoticing the aforesaid provisions of law and unmindful of the judgment passed by this Court in the case of Govindbhai Muljibhai Patel (supra).

19. It seems that the attempt made by the petitioner just to delay the execution proceeding and trying to frustrate the decree passed the by the Tribunal. According to my view, such attempt on the part of petitioner-judgement debtors must requires to be nip in the bud.

20. Learned advocate Mr. Bhatt raised another issue that despite not raising such issue of decree in question is nullity either before Tribunal or at first instance before Executing Court, still it can be raised at any stage. The two decisions which were cited by learned Advocate Mr. Bhatt in support of his above submission would only indicate that if the decree passed by the Court is without jurisdiction, it amounts to nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of

execution and even in collateral proceeding. There is no cavil on such principle laid down by the Hon'ble Apex Court in the decision of Kiran Singh (supra).

21. At the same time, such contention was though available to the petitioner herein, having not raised at appropriate stage of Execution proceeding, would amount to giving up such contentions/objections, as the stage to raise such contention is already over. At this stage, this Court also would like to observe that as per Order 21, Rule 23 of CPC, when notice served upon the petitioner in the execution proceeding, it is required to file all objections against the execution proceeding. It appears that at the time of filing the reply Exhibit 27, the contention so raised by way of the impugned application was not raised. In view of following two cited decisions, such contention would not be available to the petitioners to be raised.

21.1. In the case of Ganchi Laxmichan Ambaram (supra) passed by the Division Bench of this Court (Coram: Hon'ble Mr. Justice P.N. Bhagwati), his lordship then was, wherein held thus:

"10. Having regard to these decisions of the Privy Council and the Supreme Court I must refuse to follow the decision of the High Court of Bombay in Nittasaheb Hirama v. Gurunath Hanmant (supra) even though that is a decision of a Division Bench of the Bombay High Court. I therefore take the view that if the necessary conditions are satisfied the principle of constructive res judicata applies to execution proceedings in all cases without any discretion in the Court whether or not to apply the same having regard to the facts and circumstances of a particular case. This being the position it is clear that the executing Court having made the order on the notice under Order XXI Rule 22 directing issue of warrant for attachment it was not open to the applicant to raise at a subsequent stage of the proceedings any contention against the execution of the decree. All the contentions which the applicant wanted to raise by filing his written statement related to the execution of the decree and were contentions which might and ought to have been urged by him in answer to the notice under Order XXI Rule 22. These contentions were barred by constructive res judicata as a result of the order made by the executing Court on the notice under Order XXI Rule 22 and the executing Court was therefore right in rejecting the application of the applicant to raise these contentions in answer to the execution of the decree."

(emphasis supplied)

21.2. It would be proper to refer pertinent observation of the Honorable Supreme Court in the case of Barkat Ali (supra), wherein held thus:

"9. Order 21 Rule 22 CPC culminates in end of one stage before attachment of the property can take place in furtherance of execution of decree. The proceedings under Order 21 Rule 23 can only be taken if the executing court either finds that after issuing notice under Order 21 Rule 21 (sic Rule 22) the judgment-debtor has not raised any objection or if such objection has been raised, the same has been decided by the executing court. Sub-rule (1) as well

as sub-rule (2) under Order 21 Rule 22, operate simultaneously in the same field. Sub-rule (1) operates when no objection is filed. Then the court proceeds and clears the way for going to the next stage of the proceedings, namely, attachment of the property and if the court finds objections on record then it decides the objections in the first instance and thereafter clears the way for taking up the matter for attachment of the property if the objections have been overruled.

10. Whether the order is made under sub-rule (1) or sub-rule (2), it has the effect of determining the preliminary stage before the attachment process is set in motion. In this background, the order of the court to proceed with attachment on finding that no objection has been raised also operates as an order deciding the preliminary stage of the execution proceedings and operates as if the judgment-debtor has no objection to file. If thereafter, the judgment-debtor wants to raise an objection in the same proceedings in the absence of any modification of order passed under Order 21 Rule 22 sub-rule (1) or (2), he has to take recourse to get rid of the order by way of appeal.

12. In this background, where a judgment-debtor has an opportunity to raise an objection which he could have raised but failed to take and allowed the preliminary stage to come to an end for taking up the matter to the next stage for attachment of property and sale of the property under Order 21 Rule 23 which fell within the above principle, the judgment-debtor thereafter cannot raise such objections subsequently and revert back to earlier stage of proceedings unless the order resulting in termination of preliminary stage which amounts to a decree is appealed against and order is set aside or modified.

13. The principles of res judicata not only apply in respect of separate proceedings but the general principles also apply at the subsequent stage of the same proceedings also and the same court is precluded to go into that question again which has been decided or deemed to have been decided by it at an early stage."

(emphasis supplied)

22. According to my view, when at proper stage of Execution proceeding, such contention as regards the decree being nullity, being passed by a Tribunal having no jurisdiction, if not raised, then at a belated stage that too at the stage of attachment of the property of the judgment debtor, it could not have been raised and it should not allow to be raised.

23. Thus, none of submissions so raised by learned advocate Mr. Bhatt are sustainable in law, only requires rejection, which I do so.

24. Having so observed hereinabove that there is no merit in the objections raised by the petitioner and it could not have been allowed to raise the stage at which it raised, in view of above, I am in complete agreement with the view taken by the Executing Court while rejecting the impugned application. This

Court would not like to interfere with the well-reasoned order passed by the Executing Court while rejecting the impugned application so filed by the petitioner.

CONCLUSION

25. In view of aforesaid reasons, this Court could hereby held that there is no jurisdictional error committed by Executing Court while rejecting impugned application Exhibit 44 filed by petitioner in Execution Application No. 296 of 2000. In view of the aforesaid observations, discussions and reasons, the present writ application is bereft of merit, requires to be rejected.

26. This Court could have imposed heavy costs upon the petitioner for having consumed the time of the Executing Court and so also of this Court for filing such frivolous litigations just to delay the execution proceeding, which to certain extent succeeded as reported to this Court that execution is dismissed for non-prosecution. But in past, in one of its order recorded that the petitioner is 90 years old, this Court restrained itself from imposing costs to an old man.

27. In view of forgoing conclusion, the present writ application is hereby rejected. Consequently, the impugned order dated 10th May 2013 passed by City Civil and Sessions Court, Court No.13 below Exhibit 44 in Execution Petition - Regular No.296 of 2002 is hereby confirmed.

28. Rule is discharged, albeit, no order as to costs.