

---

**(2013) 12 GUJ CK 0188**

**In the Gujarat High Court**

**Case No : Special Civil Application No. 17813 of 2013**

Devrajbhai Ramjibhai Dhoriya and Another

APPELLANT

Vs

Shamjibhai Mohanbhai Jada

RESPONDENT

---

**Date of Decision : 09-12-2013**

**Acts Referred:**

**Citation : (2013) 12 GUJ CK 0188**

**Hon'ble Judges : Abhilasha Kumari, J**

**Bench : Single Bench**

**Advocate : Kirtidev R. Dave, for the Petitioners No. 1 - 2, for the Appellant;  
Haresh H. Patel, Advocate for the Respondent(s) No. 1, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

Abhilasha Kumari, J.—This petition under Article-227 of the Constitution of India, has been preferred by the petitioners (original defendants), with a prayer to quash and set aside the impugned order dated 15.11.2013, passed by the learned Principal Civil Judge, Chotila ("the Trial Court", for short), below the application at Exhibit-6 filed by the respondent-plaintiff in Regular Civil Suit No. 138/2013, whereby the said application for appointment of a Court Commissioner has been allowed. Heard Mr. Kirtidev R. Dave, learned advocate for the petitioners and Mr. Haresh H. Patel, learned advocate for the respondent-Caveator) and perused the averments made in the petition, contents of the impugned order and other documents on record.

2. Mr. Kirtidev R. Dave, learned advocate for the petitioners submits that the respondent-plaintiff filed an application at Exhibit-6 for appointment of a Court Commissioner along with the suit. A copy thereof was not given to the petitioners. The said application was fixed for hearing by the Trial Court vide its order dated 30.10.2013. The learned advocate for the petitioners moved an application on 15.11.2013, praying for time to keep the petitioners (original defendants) present in the Court and to file a reply. The said application of the petitioners was granted by the Trial Court on 15.11.2013, by endorsing the word

"Manjur" (allowed) thereupon. Learned advocate for the petitioners further submits that after the said application was allowed, the petitioners and their advocate left the Court. However, to their surprise, they later came to know that on the very same day, that is, on 15.11.2013, the Trial Court had allowed the application at Exhibit-6 filed by the respondent, behind the backs of the petitioners and without granting them an opportunity of hearing.

3. It is further submitted that the impugned order has been passed in utter violation of the principles of natural justice, hence, it cannot be sustained. The Trial Court had fixed the matter for hearing on 30.10.2013 and the next date was 15.11.2013. On that day, the Trial Court allowed the application of the petitioners for time to file a reply, in spite of the strong objection endorsed by the respondent. Thereafter, the Trial Court has passed the impugned order, without hearing the petitioners. This amounts to reviewing its own earlier order unilaterally. That the petitioners were not even served with a copy of the application at Exhibit-6, therefore, they had sought time, which was granted. By passing the impugned order, the valuable right of the petitioners to file a reply and defend themselves, has been denied.

4. Mr. Haresh H. Patel, learned advocate for the respondent-Caveator submits that no wrong has been committed by the Trial Court in passing the impugned order, as the larger interest of the parties have been looked after. That the plaintiff filed the application below Exhibit-6 along with the suit. It is mentioned in the impugned order of the Trial Court that by allowing the application, no evidence would be created in favour of the respondent, therefore, the objections of the defendants are without any basis.

5. Having heard learned counsel for the respective parties, the issue that arises before this Court is whether, after granting time to the petitioners for filing a reply to the application, the Trial Court was right in proceeding to decide the same on the very same day, that is, 15.11.2013, without granting the petitioners an opportunity of hearing.

6. Considering the nature of the issue involved in the petition, learned counsel for the parties have given their consent that this Court may decide the petition finally.

7. Hence, issue Rule. Mr. Haresh H. Patel, learned advocate waives service of notice of Rule for the respondent-Caveator.

8. From a perusal of the impugned order dated 15.11.2013, it is apparent that the petitioners have not been heard, before passing the said order. It is clear from the order dated 15.11.2013 passed below the application filed by the petitioners for grant of time, that the said application has been allowed on the same day. When the Trial Court had already granted time to file a reply to the petitioners, there was no necessity of deciding the said application behind the backs of the petitioners, by passing the impugned order on the very same day. The manner in which the Trial Court has proceeded in the matter discloses a

serious violation of the principles of natural justice.

9. This Court cannot agree with the submission advanced by the learned advocate for the respondent that the impugned order has been passed in the larger interest of the parties. The petitioners have not been heard or permitted to file their objections. How an order passed in violation of the principles of natural justice can be in their interest, cannot be understood. The manner in which the Trial Court has passed the impugned order is not conducive to the administration of justice.

10. As the impugned order is unsustainable in law, and for reasons stated hereinabove, it deserves to be quashed and set aside.

11. Accordingly, the impugned order dated 15.11.2013 passed by the learned Principal Civil Judge, Chotila, below the application at Exhibit-6, is quashed and set aside. The matter is remanded to the Trial Court for fresh decision of the application at Exhibit-6, in accordance with law, after giving a proper opportunity to the parties to make their submissions and file their objections, if any. The Trial Court shall pass the order without being influenced by the fact that the petitioners have approached this Court, or by the view taken by it in the earlier order.

12. The petition is allowed, in the above terms. Rule is made absolute, accordingly. Direct service of this order is permitted.