

(1998) 06 GUJ CK 0011
In the Gujarat High Court
Case No : Civil Application No. 11123 of 1997

Gunvantlal Ramanalal

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 24-06-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 26, 96

Citation : AIR 1998 Guj 270

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Kamal M. Mehta, for the Appellant; J.T. Trivedi, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—Heard the learned counsel for the parties. By this civil application, the applicant-appellant original defendant prayed for quashing and setting aside of the proceedings of the civil suit No. 3309/84 decided on 9-1-1996. So far as this prayer is concerned, it cannot be granted as this prayer can only be granted in case ultimately the defendant succeeds in the appeal.

2. Second prayer has been made by the applicant-appellant original defendant for the stay of the execution of the decree dated 9-1-1996 passed in the civil suit No. 3309/84 by the Civil Court.

3. The Central Bank of India, filed civil suit No. 3309/84 against the defendant applicant for recovery of amount of Rs. 73984-99ps. On the ground that the defendant to be the holder in due course of three hundies drawn by M/s. Bhalkhia Mills Co. Ltd. i.e. Drawer on the defendant i.e. Acceptor. This suit has been decreed by the trial Court So it is a money decree which has been passed in favour of the defendant.

4. One of the contentions raised by the learned counsel for the applicant-appellant original defendant is that the plaintiff-respondent filed previously a suit against the Mills i.e. drawer of the suit hundies and that suit has been decreed in

its favour and as such the suit itself was not maintainable otherwise it will amount to taking of the money from two persons. However, the learned counsel for the applicant-defendant-appellant has accepted that decree has been passed in the suit against the drawer of the hundies but so far the amount has not been recovered. Learned counsel for the respondent admits that the execution proceedings are pending but the amount has not been recovered so far. In view of this fact that the amount has not been recovered, it is difficult to accept that it amounts to taking of the money from two persons in respect of same hundi. The matter would have been different where the amount of the hundi would have been recovered from the drawer but that is not the case here. The appeal has been admitted but merely on admission of the appeal, the execution of decree is not automatically stayed. Similarly, merely because the appeal has been admitted it is not law that the execution of the same has to be stayed. At the most, on admission of the appeals, it can be contended that this Court has prima facie found that this case needs some consideration but in the matter of granting of stay of a decree passed in a contested suit, in addition to that the appellant has a prima facie case in his favour it has to be considered further whether non-grant of stay will cause any irreparable injury in favour of the appellant which cannot be compensated in terms of money and secondly, that the balance of convenience also favours of the grant of stay. It is also a rule of prudence that ordinarily the execution of money decree may not be stayed. The decree has been passed on the suit of the respondent which is a nationalised bank and it is a public money which has to be made available for the people for installation of industry or to start trade, business, profession etc. It is the obligation on the part of the person who take the benefit of the money of the people to return the same and in case that amount is not returned then bank has to file suit for recovery thereof. Money comes in the hands of the bank and it rotates the same and it is utilised for the benefit of other persons. In case the execution of the decree passed for the amount of bundles on suit filed by the bank is stayed then it will have serious repercussions and other persons will not get the benefit of money for the purpose of their own profession, business etc. That will affect in manifold ways to the nation also. The industrialisation as well as trading will not be there and further it will encourage the other persons to withhold the money of the bank. Moreover, in case of money decree, I fail to see how any irreparable injury will be caused to the judgment-debtor which cannot be compensated in terms of money where the execution of the same has not been stayed. In case ultimately, the appellant succeeds in appeal then the amount which has been received by the respondent-bank here in execution of decree has to be restored back to the appellant with the same rate of interest as is awarded in the decree. So also it is not a case also where the balance of convenience justifies for grant of stay in favour of the defendant-appellant. Learned counsel for the appellant submitted that the defendant-appellant is facing great financial crisis and in fact it is not in a position to pay the amount. These are the statements made normally before this Court but it has no bearing on the matter as once decree has been passed in a suit contested by the defendant-appellant ordinary rule

should have been that it is permitted to be executed and the decree holder should be allowed to take the fruits thereof more so where it is a decree passed in a suit filed by nationalised bank in respect of hundies. I do not find any ground much less a strong ground in favour of defendant-appellant to stay the execution of a money decree passed in the present case in favour of the Bank.

5. In the result, this civil application fails and the same is dismissed.