

(1982) 12 GUJ CK 0022
In the Gujarat High Court

Khristi Rajivbhai Fulabhal

APPELLANT

Vs

Khristi Zaverbhai Mithabhai

RESPONDENT

Date of Decision : 10-12-1982

Acts Referred:

Citation : (1983) 1 GLR 530

Hon'ble Judges : A.S. Qureshi, J

Bench : Single Bench

Judgement

A.S. Qureshi, J.—In this revision application, the petitioner challenges the judgment and order dated 13th September 1982 passed by the

learned Civil Judge (V.D.), Dakor, in Summary Case No. 79 of 1980 whereby the learned Judge had granted leave to defend on condition that

the defendant deposits the entire amount of Rs. 8,000/- claimed in the suit.

2. Mr. J.M. Patel, the learned Counsel for the petitioner, has submitted that the order directing the defendant to deposit the entire amount claimed

in the suit is unreasonable and it amounts to almost decreeing the suit. There is hardly any ground for Mr. Divetia, the learned Counsel for the

opponent, to defend the impugned order. It is quite clear that the Court grants even conditional leave to defend when it finds that there is some

plausible ground available to the defendant which he can put in to resist the claim of the plaintiff. When the Court comes to the conclusion that there

is some plausible defence, then, it would not be fair or just for the Court to impose a condition which would be tantamount to decreeing the whole

suit. The conditional leave to defend should impose a condition which should be not only reasonable but also it should take into account the

possibility that the suit may ultimately fail and may be dismissed. The trial Court

cannot take it for granted that the suit is bound to be decreed. At

the stage of granting conditional leave in a summary suit, the trial Court should bear in mind all the possibilities. Hence, in this case, the impugned

order is set aside and it is directed that the defendant be granted leave to defend on condition that he deposits Rs. 4,000/- which would be equal

to half the amount claimed in the suit.

3. In the result, the rule is made absolute with no order as to costs.