

(2011) 12 GUJ CK 0029

In the Gujarat High Court

Case No : Special Civil Application No. 18510 of 2011

Nitin Construction Ltd

APPELLANT

Vs

Kheralu Nagrik Sahakari Bank Ltd and 1

RESPONDENT

Date of Decision : 29-12-2011

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 12 GUJ CK 0029

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Shirish Joshi for Petitioner 1, for the Appellant; Ravindra Shah for Respondent 1 and Mr. Prakash K Jani, Government Pleader with Mr. Rakesh R Patel, AGP for Respondents 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice R.M. Chhaya

1. RULE. Mr. Ravindra Shah, learned advocate waives service of rule for respondent No. 1 and Mr. Rakesh R. Patel, learned AGP waives service of rule for respondent No. 2.

2. The petitioner-original petitioner in Revision Application No. 160 of 2009 which was filed before respondent No. 2 Tribunal has prayed for the following reliefs:

(A) the Hon''ble Court may be pleased to quash and set aside the order passed by the learned Board of Nominees Court dated 13.7.2009 produced at Annexure D which is confirmed by the learned Gujarat State Cooperative Tribunal by the order dated 8.12.2011 rejecting Revision Application No. 160/09 at Annexure I;

(B) Pending hearing and final disposal of the present petition, the Hon''ble Court may be pleased to stay the operation, implementation and execution of the order dated 13.7.2009 at Annexure D passed by the learned Board of Nominees Court and the order dated 8.12.2011 passed by the learned Gujarat State Cooperative

Tribunal in Revision Application No. 160/09 at Annexure I, and the stay granted earlier vide order dated 20th April 2011 may be continued;

(C) Pending hearing and final disposal of the present petition, appropriate directions may be issued to respondent No. 2 to produce the board dated 23.11.11 and the record and proceedings of Revision No. 160/09, Appeal No. 403 and 402/06 along with its rojkam;

(D) Ex-parte ad interim relief in terms of para (B) & (C) hereinabove may please be granted;

(E) Such other and further relief/s as may be deemed just and proper in the facts of the case may be granted.

3. This Court vide order dated 23.12.2011 had passed the following order:

Mr. Ravindra Shah, learned advocate has filed a caveat on behalf of respondent No. 1 and it is reported that due to unavoidable circumstances, he is not available. Considering the facts and circumstances, the order passed by the Gujarat Cooperative Tribunal on an application filed by the petitioner below purs his staying the order passed in revision for 15 days i.e. till 23.12.2011 is extended upto 29.12.2011.

At the request of Mr. Shirish Joshi, learned advocate for the petitioner, the matter is adjourned to 28.12.2011. Direct service is permitted.

4. The facts narrated in the petition recites about certain facts which are unfortunate events that have taken place before the Gujarat State Cooperative Tribunal in the proceedings being Revision Application No. 160 of 2009 and two cognate appeals being Appeal Nos. 402 and 403 of 2006. All these three litigations are between the same parties. Because of the circumstances as narrated above, Mr. Prakash K. Jani, learned Government Pleader was requested to appear for respondent No. 2 Tribunal. Suffice it to say that even though there was previous order passed by the Chairman as well as Member of the Tribunal to hear and dispose of Revision Application No. 160 of 2009 and Appeal Nos. 402 and 403 of 2006, the Tribunal vide order impugned, considering the written arguments submitted by the advocate for the petitioner and upon hearing only the learned advocate for the Bank, has passed the impugned order.

5. Mr. Prakash K. Jani, learned Government Pleader has produced the original proceedings before this Court today. The proceedings are in two parts. One relates to Revision Application No. 160 of 2009 and the other relates to the appeals. It transpires from the record and as pointed out by the learned Government Pleader that by an application dated 16.3.2010 being Exh.23 in the said Revision Application, an application was filed by the present petitioner with a prayer before the Tribunal that all the three proceedings may be heard together. Upon service of copy of the said application Exh.23, the learned advocate for the Bank had made endorsement on the original application and has raised objections to the request made by the advocate for the petitioner. The Tribunal,

as per the record, fixed the said application for hearing and by order dated 20.4.2010 (Exh.26), the Chairman as well as the Member allowed the said application Exh.23 and ordered that all the three proceedings i.e. Revision Application No. 160 of 2009, Appeal No. 402 of 2006 and Appeal No. 403 of 2006 be heard together. It also further transpires from the record that the stay was granted and thus, by order dated 20.4.2010, all the three proceedings were to be heard and disposed of together. It further transpires that on 26.9.2011 by an application Exh.38, the learned advocate for the petitioner through a proxy advocate Mr. Raval submitted written arguments in Revision Application No. 160 of 2009 being Exh.39. The record of the Revision Application further shows that the matter was kept for orders on 7.10.2011. The Rojkam of the proceedings further indicates that on 23.11.2011, the written arguments submitted by the learned advocate for the petitioner is taken on record. Further on 8.12.2011, it is indicated that the impugned order Exh.40 came to be passed upon considering the written arguments Exh.39 submitted by the learned advocate for the petitioner and upon hearing the learned advocate for the Bank. On that very day, an application for staying said order was filed by the learned advocate for the petitioner at Exh.41. Similarly, on perusing the record of Appeal Nos. 402 and 403 of 2006, the Rojkam indicates that the same were kept for hearing on 3.1.2012. The learned advocate who appeared before the Tribunal has also filed an affidavit before this Court in this petition and has stated these facts. Cumulatively, considering all these facts, it clearly transpires that the Tribunal discarded the earlier order passed by the Chairman and Member below Exh.23 and as such, without giving an opportunity of being heard to the learned advocate for the petitioner merely by considering the written submissions, passed the order at Exh.40. It cannot be gain said that all the three matters which were in a way consolidated by the earlier order was not known to the Tribunal while disposing of Revision Application No. 160 of 2009 as the application below Exh.23 was filed and the order Exh.26 dated 20.4.2010 was passed in this very proceeding. This speaks in volumes. However, in order to see that the interest of all the parties is not jeopardized, this Court restrains itself from making any further comments in regards to the manner in which the Tribunal has disposed of the aforesaid Revision Application in total disregard to its own earlier order. It is not necessary for this Court to remind the Tribunal of its power enshrined under the provisions of Gujarat Cooperative Societies Act, 1961. The manner in which the Tribunal has dealt with Revision Application No. 160 of 2009 is highly deprecated.

6. As per the voice raised at the bar during the hearing of this petition, it has been pointed out by the learned advocates that they face several difficulties of a similar nature in other proceedings also. This Court is conscious enough to the fact that this petition is filed under Article 227 of the Constitution of India and therefore, has a very limited jurisdiction to deal with the order impugned in the present petition. Mr. Prakash K. Jani, learned Government Pleader appearing with Mr. Rakesh R. Patel, learned AGP has assured this Court that he would personally

look into the matter in order to see that in future the dignity and the faith both are kept intact. Mr. Shirish Joshi, learned advocate for the petitioner and Mr. Ravindra Shah, learned advocate for respondent No. 1 Bank appearing on caveat endorse the view expressed by this Court.

7. This Court could have dealt with the petition on its own merits. However, interest of justice would be served if the order impugned in this petition is quashed and set aside without going into the merits of the order impugned and is remanded back for its fresh hearing together with Appeal Nos. 402 and 403 of 2006. It is further noticed that the Tribunal has also disposed of Appeal No. 403 of 2006 without taking into consideration the order at Exh.26 dated 20.4.2010 which is subject matter of a separate petition being Special Civil Application No. 18750 of 2011 wherein this Court has passed the following order today:

NOTICE for final disposal returnable on 12.01.2012. Mr. Rakesh R. Patel, learned AGP waives service of notice for respondent No. 2 as connected matter between the same parties is also listed today. At the request of the Court, Mr. Ravindra Shah, learned advocate appearing for respondent No. 1 Bank accepts advance copy of the petition. Ad-interim relief in terms of Para 12(B) till then. Direct service is permitted.

8. In the above circumstances, without going into the merits of the order impugned as such the order dated 8.12.2011 passed in Revision Application No. 160 of 2009 deserves to be quashed and set aside. Mr. Ravindra Shah has no objection if the order impugned is quashed and set aside and is remanded back to the Tribunal for its fresh hearing on its own merits within the stipulated time limit in order to see that the interest of the Bank is not affected further.

9. Resultantly, the petition is allowed. The order dated 8.12.2011 passed in Revision Application No. 160 of 2009 is quashed and set aside and the Revision Application No. 160 of 2009 is remanded back for its fresh hearing on merits. Accordingly, Revision Application No. 160 of 2009 stands restored to the file of the Tribunal and the Tribunal is directed to hear and dispose of the same along with Appeal No. 402 of 2006 subject to further orders that may be passed in Special Civil Application No. 18750 of 2011 which is pending before this Court as expeditiously as possible by giving utmost priority to the said matters as per the order passed below Exh.26 dated 20.4.2010 latest by 29.02.2012.

10. It is made clear that it would be open for both the parties to raise all contentions available on merits and this petition is allowed only on the limited ground that the Tribunal decided Revision Application No. 160 of 2009 ex-parte in total disregard to its own earlier order, as aforesaid, without being influenced by the fact that the present petition is entertained and the earlier order dated 8.12.2011 is quashed and set aside.

11. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Parties to bear their own costs.