
(1962) 03 GUJ CK 0004
In the Gujarat High Court

Pujari Ravigar Kubergar and Others

APPELLANT

Vs

Shukla Pranshanker Keshanker

RESPONDENT

Date of Decision : 23-03-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 5

Citation : (1963) 4 GLR 428

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—In this matter a single Judge of the Gujarat High Court passed an interim stay of the execution of a decree for possession, but the matter was ultimately disposed of by the Registrar, who passed an order discharging the rule and the interim stay with costs. Under Rule 3 in Chapter II of the Bombay High Court Appellate Side Rules, 1960, the Registrar may dispose of applications for orders under order XLI, Rules 5, 6 and 10 of the CPC or other interim reliefs. Sub-rule (ii) of the same rule provides that no matter which can be disposed of by the Registrar under Rule 3(i) shall, without the permission of the Court, be placed before the Court. It is, therefore, clear from these provisions that applications for orders under Order XLI, Rules 5,6 and 10 of the CPC can be placed either before the Court or before the Registrar, and they should not be placed before the Court without the permission of the Court. If they are not placed before the Court, they are disposed of by the Registrar. But, once they are placed before the Court, it is only the Court which can dispose of such applications.

2. In this case, it appears that the application was placed before the Court. It is not clear whether before it was placed before the Court, the Court had given permission to place it before the Court, but it is a fact that the Court passed an interim stay on that application. That is an indication of the fact that the Court must have given permission to place the application before the Court. Once an application referred to in Rule 3 is placed before the Court, the Registrar cannot dispose of it. The Court passed an order in the following terms "Rule. Interim

stay of the execution of the decree for possession;" it means that cause must be shown before the Court which issued the rule. As the Court issued the rule, the cause in answer to the rule must be shown before the Court and not before the Registrar.

3. The order passed by the learned Registrar is. therefore, set aside, and the matter Will be decided by the Court.