

(1995) 04 GUJ CK 0017
In the Gujarat High Court

Case No : Civil Revision Application No. 501 of 1990

Shah Shaileshkumar Vinodkumar and Another	APPELLANT
Vs	
Ashokkumar Vajeraaj	RESPONDENT

Date of Decision : 10-04-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 37 Rule 4, 115

Citation : AIR 1996 Guj 102

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : G.C. Modi and A.C. Padia, for the Appellant; K.V. Shelat, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, J.—The opponent filed Summary Suit Mo. 4587 of 1988 against the applicants in the City "Civil Court at Ahmedabad for recovery of an amount of Rs. 53,908.77 with running interest at the rate of 18% per annum. The trial Court passed a decree on 28-7-1989 against the applicants. The opponent-plaintiff is a partnership firm carrying on business of cloth and the applicants are also dealing in business of cloth. Applicant No. 2 is the partnership firm registered under the Indian Partnership Act and applicant No. 1 is a partner thereof. Between the parties, there was business , relationship. The opponent-firm filed the suit for non-payment of dues arising out and during the course of the business transactions. The suit was decreed ex parte.

2. The applicants filed an application for restoration and setting aside the ex parte decree inter alia contending that there are triable issues between the parties in the said suit. The application was filed under order 37, Rule 4 of the Code of Civil Procedure, 1908 ("Code" for short) for setting aside the ex parte; decree passed on 28-7-1989 on account of non-fulfilment of the conditional order passed by the Court at the time of hearing of summons for judgment.

3. The Auxiliary Chamber Judge of the City Civil Court (Court No. 9) reached the conclusion that the decree under challenge is not an ex parte decree in view of the decision of the Hon'ble. Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, . The trial Court also relied on other decisions and held that the application for setting aside the ex parte decree under Order 37, Rule 4 of the Code is not maintainable as there was a fullfledged decree amounting to judgment. In the opinion of the trial Court, it could be challenged by way of appeal. In short, the trial Court held that the application for restoration or setting aside the ex parte decree under Order 37, Rule, 4 of the Code is not maintainable and dismissed the application on 8-3-1990. Hence, this revision application u/s 115 of the Code.

4. After having examined the facts and circumstances and the impugned order passed below Ex. 1 in Summary Suit No. 4587 of 1988, this Court is satisfied that the impugned order is justified. The trial Court has assigned acceptable reasons for reaching the conclusion which is under challenge.

5. Again, the jurisdictional sweep of this Court in a revision u/s 115 of the Code is very much circumscribed. This Court in a revision u/s 115 could interfere only if it is successfully shown that-

- (1) the Subordinate Court has exercised a jurisdiction not vested in it by law, or
- (2) has failed to exercise a jurisdiction so vested, or
- (3) has acted in exercise of its jurisdiction illegally or with material irregularity.

None of the aforesaid requisite elements is found from the facts of the present case requiring interference of this Court. The impugned order passed by the trial Court is neither manifestly perverse nor errorieous. Therefore, this Court cannot substitute its finding for one reached by the trial Court oh examination of the facts and circumstances of the case.

6. In the result, this revision application u/s 115 of the Code is meritless and is required to be dismissed. Accordingly, it is dismissed. Rule is discharged. Interim relief shall stand vacated. There shall be no order as to costs.