

**(1999) 12 GUJ CK 0048**

**In the Gujarat High Court**

**Case No :** Civil Revision Application No. 229 of 1999

Sulemani Cooperative Bank Ltd.

APPELLANT

Vs

Agro Traders

RESPONDENT

**Date of Decision :** 17-12-1999

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 66, 115(c)

**Citation :** (1999) 12 GUJ CK 0048

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

**Bench :** Single Bench

**Advocate :** M.T.M. Hakim, for the Appellant;

**Final Decision :** Allowed

## Judgement

S.K. Keshote, J.—Heard learned counsel for the petitioner.

2. The facts of the case are that the petitioner-bank filed Lavad Suit No.248/94 against the respondents for recovery of sum of Rs.2,09,751.40 towards the loan advanced to them. The suit was allowed on 11/8/97 by the court of Board of Nominees. The bank preferred Execution of the said award/judgment of the Board of Nominees before the Court of learned Civil Judge (S.D.), Baroda vide Special Darkhast No.39/1988. The property of the respondents, which was mortgaged by them to the bank as a security for the repayment of the loan amount were attached. The petitioner filed application at Ex.16 on 8/10/98 in the Executing Court praying therein for the auction of the property under the orders of the court. This application was not replied by the respondents. Meanwhile a sum of Rs.10,000/- was deposited by respondents with the bank towards the decretal amount and a pursis to this effect has also been passed in the Executing Court. The application at Exh.16 of the petitioner was came to be rejected by the Execution Court under the impugned order, which reads as under :

"No reply is filed in response to this notice. However, pursis is passed by Judi-debtor to the effect that Rs.10,000/- is deposited in the Bank and is accepted by

the bank and hence no order for fixing date of auction can be fixed and hence application stands rejected".

3. Hence this Civil Revision Application.

4. The learned Executing Court has committed material irregularity in exercise of its jurisdiction. This order clearly falls under clause (c) of Sub-section of Section 115 of the Code of Civil Procedure. Even if out of the decretal amount of Rs.2 lakhs and odd, Rs.10,000/- was paid by the judgment debtor, I fail to see how this application of the decree-holder-petitioner-bank at Exh.16 under Order 21 Rule 66 of the CPC could have been rejected. In case, this order of the Executing Court allowed to stand, it will certainly occasion a failure of justice and cause injury to the petitioner. This application is allowed and the order dated 9/12/98 below Exh.16 is quashed and set aside and the learned Executing Court is directed to proceed with the Execution of the decree expeditiously and take all care to see that the property of the respondents-judgment debtors is put to auction expeditiously so the decretal amount of the bank is recovered. Rule is made absolute. As nobody put appearance on behalf of the respondents, no order as to costs.