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**(2003) 07 GUJ CK 0005**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 12594 of 2002 and Civil Application No. 1607 of 2003

Sunni Muslim Samaj

APPELLANT

Vs

Pandya Manishanker Dhanjibhai and Others

RESPONDENT

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**Date of Decision :** 07-07-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226(3)

**Citation :** (2004) 1 GLR 540

**Hon'ble Judges :** D.A. Mehta, J

**Bench :** Single Bench

**Advocate :** Kaji, for Yatin Soni, for the Appellant; Mayank Buch, for Singhi and Co. for Respondent Nos. 1 to 42 and Siraj Gori, A.G.P. for Respondent No. 43, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.A. Mehta, J.—This is an application moved by the newly joined respondent No. 11 in Spl.C.A. No. 12594 of 2002. This application under Article 226(3) of the Constitution of India seeks vacation of ad-interim relief granted on 30-12-2002 in terms of Para 21(C) of the memorandum, of petition.

2. The applicants moved two Civil Applications on 24-2-2003. Civil Application No. 1606 of 2003 was filed at the behest of the applicant-Trust praying that the applicant be joined as respondent No. 11 in the main petition. The said application viz., Civil Application No. 1606 of 2003 came to be granted by this Court on 30-4-2003 and the applicants were permitted to be joined as necessary parties as respondent No. 11 in the main petition.

3. On the same day viz., 30-4-2003, this Court (Coram : Jayant Patel. J.), passed the following order in the present application :

"Since the applicants are impleaded as party pursuant, to the order passed today in C.A. No. 1606 of 2003 in Spl.C.A No. 12594 of 2002 this application under

Article 226(3) shall be treated as from today onwards.

2. However, Mr. Kazi for the applicants states that the hearing of this application under Article 226(3) be taken after vacation. Hence, put up on 30-6-2003".

4. Thereafter, when the matter came up on 30-6-2003, on behalf of the applicant a request was made for time and the following order was made by this Court (Coram : D.A. Mehta, J.) :

"It is stated by Mr. Premsing for Mr. Yatin Soni for the applicant that Mr. Kaji, learned Advocate appearing as Counsel is having some personal difficulty, and hence, the Civil Application under Article 226(3) of the Constitution may kindly be adjourned. In light of the fact that the applicant himself is seeking time, the interim relief granted earlier in the main petition to continue. To come up on 7-7-2003."

5. Today, Mr. Kaji, learned Advocate appearing on behalf of the applicant states that in light of the provisions of Article 226(3) of the Constitution of India the interim relief granted vide order dated 30-12-2002 stands vacated automatically and only formal order is required to be passed by this Court. Reliance is placed on the Full Bench decision of this Court in the case of District Development Officer Vs. Maniben Virabhai, .

6. As against this, Mr. Mayank Buch, learned Advocate appearing for M/s. Singhi & Co., on behalf of the original petitioners submits that the applicant has no locus to file the present application in view of the fact that the original order dated 30-12-2002 in the main petition does not operate against the present applicant. Secondly, it is contended that on merits also the present applicant's submission that as Waqf Board has not been joined as a necessary party the interim relief granted in the main petition stands automatically vacated also should not be accepted.

7. Having heard the parties at length, it is apparent that this application does not deserve to be accepted for the following reasons :

8. There can be no dispute as regards the legal proposition propounded in the aforesaid Full Bench decision of this Court. However, what is necessary to be noted and which is peculiar to the facts of the present case is that when the aforesaid order came to be made the present applicant was not even a party in the main petition, and hence, there is no question of an ex pane interim order operating against the said applicant. The interim relief granted vide aforesaid order dated 30-12-2002 reads as under :

"Heard the learned Senior Advocate Mr. Mihir Thakor appearing for Singhi & Co. Issue Notice to the respondents returnable on 27th January, 2003.

In the meantime, ad-interim relief in terms of Para 21(C) till next date. It is clarified that this relief is granted with respect to the property in actual possession of the petitioners only and it does not extend to any other part of the

property.

All the petitioners shall file undertaking to the effect that they will hand over vacant possession of the property, in their possession, within a week from the date of disposal of the petition or interim relief, if they do not succeed therein, subject to further order of the Court in this behalf. The undertaking shall be submitted by 10th January, 2003."

9. This relief came to be granted qua respondents, as were parties then namely respondent Nos. 1, 2 and 3. However, apart from that, it is apparent that the applicant could be said to be aggrieved (if at all) only from the date when it was joined as respondent No. 11 in the main petition vide order dated 30-4-2003 passed in Civil Application No. 1606 of 2003. Thereafter, it is the conduct of the applicant which will have a bearing. As already stated hereinbefore, on 30-4-2003, Mr. Kaji sought time and it has been specifically recorded by this Court that the request was that the hearing of this application under Article 226(3) be taken up after vacation and it was by consent that the matter was posted for hearing on 30-6-2003. Thereafter, once again on 30-6-2003 due to personal difficulty of Mr. Kaji the application could not be proceeded with and the matter was adjourned to 7-7-2003 i.e. today. Today, both the parties have been heard. Therefore, since 30-4-2003 interim relief has been continued/extended by consent of newly added respondents.

10. In light of the aforesaid facts and circumstances of the case, it is not possible to accept the submission on behalf of the applicant that the period of two weeks specified in Article 226(3) of the Constitution should be reckoned regardless of the conduct of the parties. Once, the applicant itself seeks time and does not proceed with the hearing of the application, it cannot be permitted to turn round and be heard to say that now as two weeks have expired only a formal order has to be passed. If this interpretation put by the applicant on the Article is accepted, it would not be necessary to even hear the parties, because all that a particular applicant would be required to do is to file an application, and thereafter, not to proceed with and have the same heard, despite the same being posted for hearing before the Court, and after a period of two weeks expires, turn round and state that the application requires to be allowed. This cannot be the legislative intention and cannot be countenanced.

11. An application filed under Article 226(3) seeking to have an ex-parte interim order vacated has to be backed by valid reasons, both as mentioned in the application and those that may be advanced at the stage of hearing. In the present case, admittedly, on behalf of the applicants no submissions on merits have been made. If the approach adopted by the applicant is accepted, all that an unscrupulous litigant would be required to do is to file an application and by manipulation ensure that the application is not heard by the Court within the prescribed period. This cannot be permitted.

12. Alternatively, even if the earlier order of interim relief stood vacated, today

after hearing the parties, it is ordered to continue/granted afresh on the same terms as stated in order dated 30-12-2002, as on merits no case is made out.

13. In the circumstances, this application stands rejected.