

(2011) 07 GUJ CK 0052

In the Gujarat High Court

Case No : Letters Patent Appeal No. 289 of 2008 in Special Civil Application No. 6737 of 2007

Vijay Hathising Shah and Another

APPELLANT

Vs

Gitaben Parshottamdas Mukhi L.R. of Chanchalben P. Mukhi
and Others

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, Order 6 Rule 18, 115
Constitution of India, 1950 — Article 12, 226, 227, 228

Citation : (2011) 3 GLH 449

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J

Bench : Division Bench

Advocate : Shalin N. Mehtas - 2, for the Appellant; J.V. Mehta for Respondents : 1 - 2, 4, None for Respondents : 2, 5, 5.2.2, 5.3.1, : 5.3.2, 5.3.3, Notice Served By DS for Respondents : 2.2.1, 2.2.3, 2.2.4, 2.2.5, 2.2.6 and Mr. S.R. Vakil for Respondents : 3, 5.2.1, 5.2.3, 5.2.4, for the Respondent

Final Decision : Dismissed

Judgement

Mr. J.B. Pardiwala, J.—In this appeal, the appellants (newly impleaded defendants in the array of parties in Regular Civil Suit No. 6170 of 1990 pending in the Court of City Civil and Sessions Court, Ahmedabad) seek to challenge the judgment and order dated 08.01.2008 passed by the learned Single Judge in Special Civil Application No. 6737 of 2007 whereby learned Single Judge allowed the petition preferred by respondent No. 1 herein by allowing application Exh:420 preferred in Regular Civil Suit No. 6170 of 1990 in the Court of City Civil and Sessions Court, Ahmedabad and permitting respondent No. 1-original plaintiff to amend the plaint.

2. Facts relevant for the purpose of deciding this appeal can be summarized as under :--

2.1 Regular Civil Suit No. 6170 of. 1990 was instituted by Chanchalben

Parshottamdas Patel, mother of respondent No. 1 herein for partition of suit property of one Parshottamdas Khodidas Patel.

2.2 It appears that the Civil Judge granted ex-parte ad-interim injunction in terms of Para-4(a) of the Application Exh : 5 preferred by the plaintiff (respondent No. 1) in Regular Civil Suit No. 6170 of 1990. Respondent No. 3, 4, 5/1 to 5/4, arrayed as defendant No. 1, 2 and 4/1 to 4/4 respectively in the suit, sold one land bearing Survey No. 1038 of Village Vejalpur, Taluka: City, District: Ahmedabad. Respondent No. 1 herein came to know about the sale of the said land bearing Survey No. 1038 to the present appellants.

2.3 It appears that an application for contempt was moved by respondent No. 1-original plaintiff in Regular Civil Suit No. 6170 of 1990 with a prayer to hold respondent No. 3, 4, and 5/1 to 5/4 guilty of disobedience of the Court's order. Respondent No. 3, 4 and 5/1 to 5/4 in response to the application for contempt preferred by respondent No. 1 herein admitted about sale deed dated 06.04.1998 in favor of the present appellants.

2.4 It appears that respondent No. 1 herein preferred application Exh:247 in Regular Civil Suit No. 6170 of 1990 for summoning the appellants herein as witnesses. Record also reveals that the registered sale deed dated 06.04.1998 executed by respondent Nos. 3, 4 and 5/1 to 5/4 in favor of the present appellants was brought on the record of the suit by respondent No. 1-original plaintiff vide list of documents Exh: 266.

2.5 It appears that the appellants instituted Regular Civil Suit No. 696 of 2004 before the Senior Civil Judge, Ahmedabad (Rural) against respondent No. 1 praying for a declaration and a permanent injunction in respect of land bearing Survey No. 1038.

2.6 On 1st February, 2007, Application Exh:420 came to be filed by respondent No. 1 for amendment of the plaint after having learnt about the registered sale deed dated 06.04.1998 with a view to implead the present appellants in the suit and to seek cancellation of the sale deed dated 06.04.1998.

2.7 Record reveals that vide order below Exh:420, Civil Judge rejected the amendment application preferred by respondent No. 1-original plaintiff under Order-VI, Rule-17 of the Code of Civil Procedure, 1908. The said order came to be challenged by respondent No. 1 by filing Special Civil Application No. 6737 of 2007. Learned Single Judge allowed the petition and thereby allowed Application Exh:420 preferred by respondent No. 1 for amendment of plaint and permitting respondent No. 1 to carry out the necessary amendment.

3. It deserves to be noted that the appellants herein were not parties in the said petition preferred by respondent No. 1 aggrieved by the said order passed below Exh: 240. Therefore, an application for leave to appeal was preferred by the appellants herein which came to be allowed and that is how the appellants herein now seek to challenge the order passed by the learned Single Judge dated

08.01.2008 allowing respondent No. 1-original plaintiff to amend the plaint as per prayer made in Exh:420 preferred in Regular Civil Suit No. 6170 of 1990.

4. Having gone through the judgment and order passed by the learned Single Judge dated 08.01.2008 which has been challenged in the present appeal, we found that entire dispute between the parties is pending before the City Civil Court. The order which was a subject matter of challenge before the learned Single Judge was an order passed by the Civil Court under the provisions of Order-VI, Rule-17 of the Code of Civil Procedure, 1908 i.e. with regard to the amendment of pleadings. The application for necessary amendment, as preferred by the original plaintiff, was rejected and the same was challenged before the learned Single Judge who, after considering the nature of dispute, thought fit to allow the Application Exh:420 and permitted respondent No. 1 to amend the plaint. That is how the petition came to be allowed.

5. Having noticed this at the very outset, we brought to the notice of the learned Counsel appearing for the appellants that the present appeal under Clause-]5 of the Letters Patent would not be maintainable as we have found though the learned Single Judge allowed the petition labeled as under Articles 226 & 227 of the Constitution still taking into consideration the nature of the order passed, it can be said that the same was in exercise of supervisory jurisdiction under Article 227 of the Constitution.

6. However, learned Counsel for the appellants has submitted that the main petition before the learned Single Judge being Special Civil Application No. 6737 of 2007 was under Articles 226 and 227 of the Constitution and further he also submitted that in the prayer clause, an appropriate writ, order or direction was prayed for quashing and setting aside the order passed by the Civil Judge below Exh:420. Counsel would submit that the learned Single Judge allowed the petition by quashing and setting aside the order passed by the Civil Judge below Exh:420 and therefore, it can be said that the learned Single Judge issued a writ of certiorari in exercise of powers under Article 226 of the Constitution.

7. Learned Counsel has submitted, relying on the Full Bench decision of the Bombay High Court in the case of" Advani Oerlikon Ltd. Vs. Machindra Govind Makasare and Others, , that even if a petition is filed before the Single Judge invoking Article 227 of the Constitution and a decision is rendered in favor of the petitioner, it is open to the respondents to demonstrate before Appellate Court that the nature of the controversy, the averments contained in the petition, the reliefs sought and the principal character of the order of the Single Judge would support the maintainability of the appeal on the ground that the facts justify the invocation of both the Articles 226 and 227 of the Constitution.

8. The issue as regards the maintainability of Letters Patent Appeal under Clause-15 against orders passed by the learned Single Judge in the cases of present nature where there are property disputes between two sets of parties and civil suits are pending before the Civil Court and during the pendency of" the

civil suit when some orders of the present nature are passed was a subject matter of consideration before us in the case of *Gustadji D. Buhariwala v. Nevil B. Buhariwala* reported in 2011(2) GLH 147. In paras-56 and 57 of the said judgment, we have summarized our findings as regards proposition of law which is reproduced herein below :-

56. The sum and substance of our discussion and findings recorded in the Judgment can be now summarized as under :--

(1) When the Parliament has thought fit to restrict powers under Sec. 115 of the Code with a definite object, then, under such circumstances an order which is not revisable under Sec. 115 of the Code cannot be challenged by way of filing writ petition under Article-226 of the Constitution invoking the extraordinary jurisdiction of the High Courts and that too an interlocutory order passed by Civil Courts in a regular suit proceeding.

(2) When remedy for filing the Revision under Sec. 115 of the CPC has been expressly barred then in such case the petition under Article 227 of the Constitution would lie and not a writ petition under Article 226 of the Constitution of India. If a petition under Article-227 of the Constitution would lie and if the same has been dismissed, then, no appeal under Clause-15 of the Letters Patent would be maintainable. A petition under Article-227 is not a writ petition. No Writ can be issued under Article-227.

(3) Where the statute bans exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article-227 of the Constitution of India since power of superintendence was not made to circumvent statutory law. Jurisdiction under Article-227 cannot be exercised as a cloak of appeal in disguise.

(4) There cannot be any distinction with regard to a proceeding under Article-226/227 and Sec. 115 of the C.P.C. when it relates to a proceeding arising out of an order of the Civil Courts passed in suit proceeding.

(5) Where law provides the provision of Appeal and the same is decided by the judicial Authority or where there is a scope for judicial scrutiny by the subordinate at the top. the petition challenging such order would be covered under Article-227 of the Constitution.

(6) Where a petition is filed, both under Articles-226 and 227 of the Constitution, it will have to be considered whether the point raised in the petition arose for adjudication for the first time before the High Court. If the challenge in the petition is with respect to the point already adjudicated upon by the subordinate Court, then, it will have to be held that the supervisory jurisdiction of the High Court was invoked and not the original.

(7) The cause title, averments and the prayers in the petition can be taken into account while deciding whether the petition is one under Article-226 and 227 of the Constitution. This has to be determined on the facts of each case having

regard to -

- i) nature and the jurisdiction invoked;
- ii) the averments contained in the petition;
- iii) the reliefs sought; and

iv) most importantly, the true nature of the principal order passed by the learned Single Judge. The true nature of the order passed by the learned Single Judge has to be determined on the basis of true character of the relief granted. By merely labeling the petition under Article-226 and by praying for Writ of Certiorari it cannot be said that the facts justify the party to invoke the extraordinary jurisdiction of the High Court under Article-226 of the Constitution of India.

(8) As held by the Supreme Court in the case of Radhey Shyam and Another Vs. Chhabi Nath and Others, , orders and proceeding of the Judicial Courts subordinate to the High Court are not amenable to the writ jurisdiction of the High Court under Article-226 of the Constitution, more particularly, when the orders are passed in Suit proceeding in a contest between two private parties.

(9) Writ Petition is a remedy in public law which may be filed by any person but the main respondent should be either Government, Governmental agency or a State or instrumentalities of the State within the meaning of Article-12. Private individuals cannot be equated with State or instrumentality of the State. All the respondents in a writ petition cannot be private parties. High Court can issue Writ to any person, but the person against whom writ will be issued must have some statutory or public duty to perform.

(10) In a petition for relief under Article-226 of the Constitution, the Court/Tribunal whose order is impugned in the petition must be made a party to the petition so that the writ sought from the Court can go against the Court/Tribunals, but if the petition is for relief under Article-227 of the Constitution, it is well settled that the Courts/Tribunals whose order impugned in a petition, need not be a party in the writ petition. By entertaining the petition under Article-227 of the Constitution, the High Court exercise its power of superintendence, which is analogous to the revisional jurisdiction.

57. Having considered the entire issue threadbare and also having considered the position of law, we hold that the appeal is not maintainable under Clause 15 of the Letters Patent and on the ground of maintainability the appeal fails and deserves to be dismissed. The appeal is accordingly dismissed with no order as to costs.

9. The only issue which fell for our consideration in the present appeal, as raised by the learned Counsel for the appellants, is as to what would be the effect if the petition is allowed by the learned Single Judge quashing and setting aside the order passed by the Civil Court and permitting respondent No. 1 herein to amend

the plaint. As it can be said that since the petition was allowed and the relief as prayed for by respondent No. 1 came to be granted, the same was in exercise of powers under Article 226 of the Constitution, so as to make the present appeal maintainable. As it can be said that since learned Single Judge quashed and set aside the order below Exh:420 passed by the Civil Judge and permitted respondent No. 1-original plaintiff to amend the plaint amounts to issuing a writ of certiorari under Article 226 of the Constitution so as to make the present appeal maintainable.

10. In the case of Gustadji (supra), we have made it very clear that before the amendment to Section 115 of the Code of Civil Procedure, 1908, interlocutory orders or interim orders passed by Civil Courts arising from suit proceedings were challenged by filing Civil Revision Applications u/s 115 of the Code. However, now, in view of the fact that Revision Applications u/s 115 of the Code are not maintainable against order of that nature before the learned Single Judge, a petition under Article 227 of the Constitution would be maintainable and not a writ petition under Article 226 of the Constitution. We would also like to quote Para-38 of the judgment in the case of Gustadji (supra) which reads as under :-

38. Now, it is evident from the record that before the learned Single Judge the challenge was to a judicial decision rendered by the Court in a suit proceedings at a interlocutory stage. A judicial decision is one which is rendered by a Court or an Authority which has no interest in the subject matter of the decision and which is rendered after hearing both the parties. When such a decision is impugned before the High Court, what the High Court does is to revise it. While doing so, the High Court may confirm it. modify or quash it. This is exactly what has been done by the learned Single Judge. Learned Single Judge, in exercise of his supervisory jurisdiction under Article 227 of the Constitution, did not deem fit to interfere with the order passed by the appellate Court and accordingly confirmed the same. If the decision rendered by a civil Court is a judicial decision by which the lies or contest between the parties is decided, the High Court, in exercise of its power under Article 226 does nothing more than to revise that decision. It may quash it or it may confirm it. But, essentially, the jurisdiction which the High Court exercises is that of revising of judicial decision impugned before it. Therefore, irrespective of whether such a judicial decision is impugned under Article 227 or 226 of the Constitution, appeal against the decision of the learned Single Judge from such a decision would not be maintainable under Clause 15 of the Letters Patent.

11. Learned Counsel appearing for the appellants submitted that in view of the decision of the Supreme Court in case of Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , a decision of the learned Single Judge in a petition filed under Articles 226 of 227, claiming a relief of quashing orders of the Tribunal or Court is appealable under Clause-15. He would submit that such relief can be granted by issuing a writ of certiorari and in the present case while

allowing the petition, learned Single Judge has issued a writ of certiorari quashing and setting aside the order passed by the Civil Judge which was impugned.

12. We could have rejected this contention outright in view of our judgment delivered in the case of Gustadji (supra), however, there are some distinguishing features in the present case compared to facts of Gustadji's case. In the case of Gustadji (supra), the order passed by the Civil Court was confirmed by the District Court and the same came to be confirmed by the High Court by rejecting the petition. In the present case, the order passed by the Civil Court was challenged before the Single Judge and the Single Judge allowed the petition quashing and setting aside the order passed by the Civil Court. Since much emphasis has been placed on the judgment of the Supreme Court in Umaji's case, we have gone through the reported decision. In Umaji's case, the Supreme

Para 99

We are afraid, the Full Bench has misunderstood this scope and effect of the powers conferred by these Articles. These two Articles stand on an entirely different footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226 the High Courts have power to issue directions, orders and writs to any person or Authority including any Government. Under Article 227 every High Court has the power of superintendence over all Court and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same is the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warrant or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, Authorities and the State. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate Courts and Tribunals act within the limits of their Authority and according to law...,

Para 100

Under Article 226 an order, direction or writ is to issue to a person, Authority or the State. In a proceeding under that Article the person Authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate Court or Tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate Court or Tribunal has acted within its Authority and according to law.

A series of decisions of this Court has firmly established that a proceeding under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding.

Para 101

Clause-15 of the Letters Patent of the Bombay High Court gives in such a case a right of intra-Court appeal and, therefore, the decision of a single Judge of that High Court given in a petition under Article 226 would be appealable to a Division Bench of that High Court.

Para 102

It is equally well-settled in law that a proceeding under Article 227 is not an original proceeding.

Para 103

The result is that an intra-Court appeal does not lie against the judgment of a single Judge of the Bombay High Court given in a petition under Art. 228 by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of that High Court.

Para 106

Rule 18 provides that where such petitions are filed against orders of the Tribunals or Authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of Courts specified in that Rule, they shall be heard and finally disposed of by a single Judge. The question is whether an appeal would lie from the decision of the single Judge in such a case. In our opinion, where the facts justify a party in filing an application either under Article 226 and 227 of the Constitution and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter in the final order the Court gives ancillary directions which may pertain to Article 227. This ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226.

13. Clause-15 of the Letters Patent provides for an appeal from the judgment of the Court of the original jurisdiction to the High Court in its appellate jurisdiction. Powers of the High Court under Articles 226 and 227 of the Constitution of India are distinct, separate and operate in different fields, even if in some cases, result to be achieved is the same. Proceedings under Article 226 are original in nature. However, the High Court under Article 227 exercises the powers of superintendence over the subordinate Courts and the Tribunals.

14. The powers contemplated by the Constitution makers under Articles 226 and 227 appear to be different. The former is described as the power to issue certain writs, orders or directions. The latter is described as the power of superintendence. There are two separate articles in the Constitution next door to each other dealing with these powers. The power under Article 226 is only

judicial. The power under Article 227 is both judicial and administrative. The power under Article 226 is exercised on the application of a party and for the enforcement of a legal right.

15. The power under Article 227 can be exercised suo motu by the Court as the custodian of all the justice within the limits of its territorial jurisdiction and for the vindication of its position as such.

16. The power under Article 227 is a power that can be exercised only over Courts and Tribunals. On the other hand, the power under Article 226 is a power that can be exercised not only over Courts and Tribunals but also over other bodies like the Government.

17. Prior to the Constitution, the power to issue writs could not be considered to be a branch of the power of superintendence because the power of superintendence possessed by the High Courts did not carry with it the power to issue writs. Even under the Constitution, the power of superintendence is treated as a power divorced from the power to issue writs. This is borne out by the fact that the Supreme Court possesses the power to issue writs, yet it does not possess the power of superintendence.

18. It is thus explicit according to us that there cannot be interchangeability between the jurisdiction of the High Court under Articles 226 and 227 even if occasionally the ultimate result to be achieved may be same or similar in nature. One cannot be substantiated for other.

19. Proceedings under Article 226 are original in nature. Aggrieved party can canvass grievance relating to infringement of the civil right. In these proceedings wrong doer may be a person or an Authority is a necessary party, since has a right to support, justify or defend the act complained of.

In the case of *Gustadji* (supra) in Para-54, the Division Bench has observed as under :-

54. What can be deduced as explained by the Supreme Court in *Shalini's* case (supra) that a writ petition is a remedy in public law which maybe filed by a person, but the main respondent should be the Government, Governmental agency or a State or instrumentality of the State within the meaning of Article 12 of the Constitution. Private individuals cannot be equated with the State or instrumentalities of the State. All the respondents in a writ petition cannot be private parties. But private parties acting in collusion with the State can be respondents in the writ petition. It is a settled principle of law that in a petition for relief under Article 226 of the Constitution, the Court/Tribunal whose order is impugned in the petition must be made a party to the petition so that the writ sought from the Court can go against the Court/Tribunal, but if the petition is for relief under Article 227 of the Constitution, it is well settled that the Court/Tribunal whose order impugned in a petition need not be a party in the writ petition, the reason being by entertaining the petition under Article 227 of the

Constitution the High Court exercises its power of superintendence, which is analogous to the revisional jurisdiction.

20. In contra distinction, proceedings under Article 227 are supervisory and superintending in nature. The High Court thereunder exercises the jurisdiction to ascertain and confirm whether the Court or Tribunal has discharged its function within its jurisdiction and according to law. Such Court or Tribunal when they have adjudicated a dispute relating to the contractual right between the parties are not necessary party in a proceeding under Article 227. They have no obligation to defend their orders impugned in the proceedings wherein the aggrieved party claims a relief to quash the same. Such Courts or Tribunals cannot claim to be aggrieved due to quashing of their orders or can legitimate make complaint for nonjoinder in a proceeding under Article 227.

21. When such a decision of the learned Single Judge would be amenable to a challenge under Clause 15 was a question before the Supreme Court in Umaji's case. The Supreme Court answered the same in para 106 of the report. The Supreme Court has laid down that the appeal, lies under Clause 15 on fulfilling, according to us the following conditions :-

- (a) The facts involved must warrant filing of petition under Articles 226 and 227;
- (b) The party accordingly filing the petition under both the articles and
- (c) Substantial portion of the impugned judgment of the learned Single Judge must be in exercise of the power under Article 226.

22. Right of appeal cannot, therefore, be availed merely by filing petition under Articles 226 and 227 unless other conditions are fulfilled. Even otherwise, filing petition under Article 226 or both under Articles 226 and 227 cannot be a free choice left solely to the pleasure of a party. The option in this regard is duly controlled, regulated and guided by the facts involved, and grievance arising there from. When on facts involved, the grievance can suitably and adequately be redressed under Article 227, the party acts wholly without justification in filing or styling petition under Articles 226 and 227. Further claiming a writ of certiorari in a prayer clause to quash the impugned order of Tribunal or Court by itself does not change the character or nature of the proceedings. The proceedings which are in substance and nature of a superintending jurisdiction, by reason of a claim of a writ of certiorari does not become of an original jurisdiction under Article 226. Nature of jurisdiction of character of proceedings cannot be foisted by adopting such modalities.

23. We have to bear in mind as observed by the Supreme Court, these two Articles stand on entirely different footing and operate in different field. They cannot as such mutually be exchanged by twisting, even if the result to be achieved or relief claimed may be analogous. Right of appeal under Clause 15 cannot, therefore, be said to have been vested, merely by styling petition under Article 226 or both under Articles 226 and 227 and/or by articulating the prayer

clause with a claim of a writ of certiorari. The same can be invoked only on fulfilling the conditions laid down by the Supreme Court as discussed above.

24. A petition justified on facts filed both under Articles 226 and 227 can in fairness and justice be treated one under Article 226, so as not to abrogate the right of a party to appeal. However, it does not mean in our opinion according to the ratio of the Supreme Court, on facts, if the grievance can be or has been entertained exclusively or principally by exercising jurisdiction under Article 227, such exercise is to be presumed one under Article 226 so as to clothe the party with a right of appeal. As laid down, the two Articles operate in different field and with a different purpose, even in a given case result to be achieved may be identical. On facts when the dispute or grievance can be adjudicated, mainly under Article 227, then it would not be either justice or fair to treat the proceedings under Article 226 so as to enable a party to avail a remedy of appeal under Clause 15.

25. We on the question of maintainability of appeal under Clause 15 are guided by the dictum laid down by the Supreme Court in Umaji's case. We cannot afford to be generous in making the right available to the parties. Claiming relief under and amenability of the Authority whose decision is impugned to the jurisdiction under Article 226 do not settle the nature of proceedings. It solely depends as per the acidic test laid down by the Supreme Court, firstly on the facts involved and secondly, nature of jurisdiction could be exercised by the Single Judge. Scope of Clause 15 cannot be permitted to dwindle according to the mechanics adopted by the parties. Right to appeal under Clause 15 is to be settled as guided by the Supreme Court according to the nature of grievance arising from the facts involved in the case.

26. The petition before the learned Single Judge was no doubt filed under Articles 226 and 227 claiming a relief to issue an appropriate writ, order or direction and quash and set aside the impugned order of the Civil Court. However, articulating, styling or designing the petition does not vest or divest in the parties a right of appeal under Clause-15. We may now consider one another important facet of the matter.

27. The learned Counsel submits that by allowing the petition, learned Single Judge issued a writ of certiorari quashing and setting aside the order passed by the Civil Judge below Exh:420. He would submit that when the petition is allowed by quashing and setting aside the impugned order, it can be construed that the Single Judge issued a writ under Article 226 of the Constitution.

28. To examine this contention, we would like to reproduce the operative part of the order passed by the learned Single Judge so as to ascertain as to whether actually a writ has been issued or learned Single Judge merely revised the order and thought fit to quash the same. The relevant portion is reproduced herein below :--

"As a cumulative effect of the aforesaid facts, reasons and judicial

pronouncements, this petition is allowed. The order dated 23rd February, 2007 below amendment application at exh.420 in Civil Suit No. 6170 of 1990 passed by the learned Judge. City Civil Court, Ahmedabad, is hereby quashed and set aside. The application cxh.420 given by the petitioner (original plaintiff) in Civil Suit No. 6170 of 1990 is hereby allowed. Rule made absolute accordingly with no orders as to costs.

29. On plain reading of the operative part of the order, it is evident that no writ has been issued by the learned Single Judge. The learned Single Judge after considering the order passed by the Civil Judge has merely revised the same and quashed the order. The question is what is a writ and when a writ can be said to have been issued ?

30. A Plain Dictionary meaning of the word "writ" is as under :-

a form of written command to act or not act in some way

As per Law Lexicon "writ" is explained as under :--

in general is the king's precept, in writing under seal, issuing out of some Court, to the sheriff, or other person, and commanding something to be done touching a suit or action, or giving commission to have it done (terms de la ley : 1 Inst. 73) also a writ is said to be a formal letter of king's sealed with a seal, directed to some judge, officer, or minister, etc., at the suit or plaint of a subject, requiring to have a thing done, for cause briefly expressed, which is to be discussed in the proper Court, according to law (Tomlins Law Dic.) a written command, precept, or formal order issued by a Court, directing or enjoining the person or persons to whom it is addressed to do or refrain from doing some act specified therein.

As per the Black's Law Dictionary, the term "writ" has been explained as under:-

a Court's written order, in the name of a state or other competent legal Authority, commanding the addressee to do or refrain from doing some specified act.

31. Having considered the meaning of the term or word "writ", it is evident that writ is something in the nature of a command to do or refrain from doing anything. It is in the nature of some directions. In the present case, having regard to the nature of order passed by the learned Single Judge, it cannot be said that any writ has been issued as there is no direction or any command to do or not to do anything. All that the learned Single Judge did was to revise the order in exercise of its supervisory jurisdiction under Article 227 of the Constitution and quash the same.

32. We are of the view that proceedings before the learned Single Judge were apparently and also in substance superintending and not original in character. Such writ petition in the facts involved, grounds raised and the reliefs claimed were exclusively triable under Article 227. In our opinion, there is no element or

ingredient either on facts or law which affords any justification to invoke Article 226.

33. In view of the above, we hold that this appeal is not maintainable under Clause-15 of the Letters Patent and the same is hereby dismissed with no order as to costs. Notice is discharged. Interim relief if any stands vacated.