

(2024) 02 GUJ CK 0027

Gujarat High Court

Case No: R/Special Civil Application No. 1911 Of 2024

Jonathan Hiralal Levy

APPELLANT

Vs

Hiralal Kasanabhai Khristi

RESPONDENT

Date of Decision: Feb. 7, 2024

Acts Referred:

- Constitution Of India, 1950 - Article 227
- Code Of Civil Procedure, 1908 - Section 35A

Hon'ble Judges: Sandeep N. Bhatt, J

Bench: Single Bench

Advocate: Shivam Dixit

Judgement

Sandeep N. Bhatt, J

1. The present petition is filed by the petitioner under Article 227 of the Constitution of India challenging the impugned order passed by the learned Principal Senior Civil Judge, Nadiad in Regular Civil Suit No.349 of 2007 below application Exh.162 dated 27.10.2023.

2. Heard learned Party-in-Person at length.

3. The learned Party-in-Person has submitted that the learned trial Court has committed error of law by not allowing the application Exh.162. He has further submitted that the learned trial Court has not properly appreciated the documents produced on record and submissions made by the petitioner. He has submitted that the learned trial Court ought to have considered the ratio of binding decisions applicable to the facts of the present case. He has submitted that the learned trial Court has materially erred in exercising the jurisdiction not vested in it by law and has acted illegally and arbitrarily and passed the impugned order. He has submitted that this petition may be allowed.

4.1 I have heard learned Party-in-Person at length. I have considered the documents annexed with the petition. I have perused the impugned order and the application on which the impugned order is passed. Though he has made irrelevant submissions on the other issues which are not relevant for consideration of the matter before this Court, instead of making submissions by pointing out the illegality or irregularity

committed by the learned trial Court or by pointing out any infirmity in the findings of the learned trial Court.

4.2 Therefore, on perusing the application Exh.162, which is annexed with the petition as well as the order impugned passed on that application, memo of petition and other documents annexed with this petition, it transpires that such application is filed at Exh.162 by the petitioner before the learned trial Court inter alia praying to call the Manager, Bank of Baroda, the Clerk of the Nadiad School Board and the Nadiad Municipality with the necessary record of Priskila Mansing Christian - mother of the petitioner. Such application is rejected by the learned trial Court vide impugned order dated 27.10.2023.

4.3 While rejecting the application Exh.162, the learned trial Court has observed that earlier, the petitioner has filed similar application Exh.98 which was rejected vide order dated 13.11.2019, against which, the petitioner has filed a petition being Special Civil Application No.22743 of 2019, which is rejected by this Court.

Thereafter, the petitioner has again filed an application Exh.133 with the similar prayer, which was also rejected vide order dated 21.02.2022 and the petitioner has not approached the higher forum against the said order and therefore, it has attained the finality.

The petitioner has also filed identical application Exh.140 which is also rejected vide order dated 18.08.2022.

Further, the petitioner has again filed an application Exh.162/163 with the similar prayer, which is also rejected by the learned trial Court vide impugned order.

Thus, the petitioner is filing similar applications repeatedly before the learned trial Court.

4.4 In view of above, this Court finds that the learned trial Court has rightly come to the conclusion that once such application is repeatedly rejected by the learned trial Court on its own merit, there is no reason for the petitioner / plaintiff to file such application repeatedly, it amount to abuse of process of law by the petitioner. Therefore, the learned trial Court has not committed any error in rejecting the application Exh.162/163 by imposing token cost of Rs.1,000/- by resorting to the provisions of Section 35A of the Code of Civil Procedure, 1908. I found no illegality, perversity or infirmity in the findings and reasoning given by the learned trial Court, more particularly, while exercising the powers under Article 227 of the Constitution of India, keeping in mind the parameters for exercising the powers in view of the decision of the Hon'ble Apex Court in the case of M/s. Garment Craft versus Prakash Chand Goel reported in (2022) 4 SCC 181. I am of the opinion that no case is made out by the petitioner to interfere in the impugned order passed by the learned trial Court.

5. Under the circumstances, the present petition is required to be dismissed and is dismissed accordingly, with cost of Rs.5,000/-, to be deposited by the petitioner before the Registry of this Court, within a period of one week from today. Failing which, it is open for the Registry to recover the same as per the provisions of the Gujarat High Court Rules.