IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO. 336 of 2009
In
SPECIAL CIVIL APPLICATION NO. 8569 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH **Sd/-**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA **Sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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R L GANDHI....Appellant(s)
Versus
PUNJAB NATIONAL BANK & 4....Respondent(s)

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Appearance:
Shri R.J. Oza, Senior Advocate with MR BP GUPTA, ADVOCATE for the Appellant(s) No. 1
MR KM PARIKH, ADVOCATE for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 3 - 5
SINGHI & CO, ADVOCATE for the Respondent(s) No. 2

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 13/07/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] Feeling aggrieved and dissatisfied with the impugned order dated 25.11.2008 passed by the learned Single Judge in Special Civil Application No.8569/1998 by which the learned Single Judge has

dismissed the said Special Civil Application, the original petitioner has preferred the present Letters Patent Appeal under Clause 15 of the Letters Patent.

[2.0] Facts leading to the present Letters Patent Appeal in nut-shell are as under:

[2.1] That the appellant herein – original petitioner (hereinafter referred to as "petitioner") filed the aforesaid Special Civil Application No.8569/1998 before the learned Single Judge seeking following substantive prayers:

> "(A) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing SEBI to forthwith perform its duty by proceeding against the Respondent Bank under the provisions of SEBI Act, 1992 read with the relevant rules and instructions, for the admitted violation of section 73 of the Companies Act in retaining the trust monies, i.e. monies received in respect of a public issue for making good its own dues, instead of returning the same to the petitioner and other similarly situated investors in full with interest.
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> (B) Your Lordships may be pleased to issue a writ of Declaration or a writ in the nature of Declaration or any other appropriate writ, order or direction declaring the impugned action of the Respondent Bank in initially retaining the trust monies to the extent of Rs.1,20,00,000/- for the purpose of making good its own dues payable by Respondent No.3 company, instead of returning the same to the petitioner and other similarly situated investors, in full with interest and subsequently adopting a pick and choose approach by returning full monies along with interest in case of three similarly situated persons to the great disadvantage of the petitioner herein, as erroneous, illegal and violation of section 73 of the Companies Act as well as violation of Article 14, 19(1)(g), 265 and 300A of the Constitution of India;
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> (C) Your Lordships may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction forthwith directing the respondent Bank to pay to the petitioner his remainder subscription monies alongwith interest at the rate of 15% totaling to the tune of Rs.65,12,219/- (interest calculated till the date of institution of present petition) with running interest at the rate of 15% till payment of the said total amount."

[2.2] It was the case on behalf of the petitioner that he was the Director of a company called Renco Gears Limited – respondent No.3 herein. That the said Renco Gears Limited came out with a public-cum-right issue and offered public issue of 26,60,000 equity shares and right issue of 20,00,000 shares and offered the same to the public for subscription between 01.08.1995 and 05.08.1995. According to the petitioner he applied for 2 lakh equity shares for which he made payment of Rs.50 lakh by cheque. That the said public issue of Renco Gears Limited, however, ran into controversies on account of certain incorrect statements having been made by the Company in its prospectus. That the respondent No.1 Punjab National bank was the banker who collected the money towards public issue. The money collected towards public issue was deposited in the respondent No.1 Bank – Punjab National Bank. Ultimately, the public issue was dropped and respondent No.2 herein - Securities & Exchange Board of India (SEBI for short) instructed respondent No.3 – Renco Gears Ltd. to refund the money received towards subscription. That except Rs.1.50 Crore, Punjab National Bank returned the money received towards subscription.

[2.3] It was the case on behalf of the petitioner that respondent No.1 Punjab National Bank instead of returning the entire amount, filed suit before the City Civil Court, Ahmedabad being Civil Suit No.4966/1995 seeking permission to appropriate the balance amount of Rs.1.50 Crore towards dues of respondent No.3 – Renco Gears Limited payable to the Punjab National Bank. It appears that eventually, the aforesaid suit was compromised and respondent No.1 Punjab National Bank withdrew the suit and made certain payments to the petitioner and three other entities as per the MOU dated 11.04.1996. That the petitioner received a sum of Rs.6,36,987/- towards his claim of Rs.50 lakh with interest whereas

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other parties received payment ranging from Rs.27 lakh to Rs.54 lakh. It is not in dispute that while making the said payments, the MOU was signed by the officers of respondent No.1 Bank and all the four parties in whose favour different amounts were being released, including the petitioner herein.

[2.4] That thereafter the petitioner preferred the Special Civil Application before the learned Single Judge for the aforesaid reliefs contending *inter alia* that the respondent No.1 Punjab National Bank could not have withheld any amount and that respondent No.2 SEBI ought to have taken effective steps to ensure that the amount received by way of subscription was released in favour of respondent No.3 Company and in turn to the petitioner. It was also contended that the payment of Rs.6,36,987/- to the petitioner and much higher amount to the other similarly situated persons was also without any rationale and wholly unjust.

[2.5] The aforesaid petition was opposed by respondent No.1 Punjab National Bank as well as respondent No.2 SEBI by filing separate affidavits. It was contended on behalf of the respective respondents that in the suit filed by the Bank the issues were settled between the parties as per the MOU dated 11.04.1996 pursuant to which the suit was withdrawn and the MOU was signed. It was submitted that the petitioner being the signatory to the MOU thereafter it will not be open for the petitioner to challenge and/or get out of the MOU. It was further submitted that certain declarations were made in the MOU which also the petitioner had not objected to. It was also further submitted that the original defendant Nos.1 to 3 in the said civil suit had admitted that an amount of Rs.1.20 Crore paid by them for the allotment of shares was from the funds received from the company through the bank from the

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public issue of shares and infact said amounts did not belong to them and an amount of Rs.1.50 Crore was transferred from the public issue money received by the company known as Renco Gears Limited and the Renco Finance Limited has transferred the said funds to its Directors and others including the petitioner. It was further stated that the petitioner was the Director of Renco Finance Limited and out of the said amount of Renco Finance Limited, the petitioner had promoted Rs.1.20 Crore to be paid to K.Z. Investment which in turn paid the said amount to Shri Gautam A. Panchal and Atmaram A. Panchal, the promoters of Renco Gears Limited for subscribing to the Right issues. Therefore, it was submitted that thus such acts of commission and omission of Renco Gears Limited and Renco Finance Limited, of which the petitioner is a Director and Managing Director respectively, would estop the petitioner from claiming any relief against the bank. It was further stated that even the refund orders issued by Renco Gears Limited to its subscribers were signed by the petitioner. It was further stated that as per the MOU, the Bank paid the amounts to the parties out of the funds lying with the Bank received from the public issue and thus the Bank has refunded the full amount received by it from the public issue.

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[2.6] That thereafter by impugned order the learned Single Judge has dismissed the said Special Civil Application by obsering in paras 7 to 9 as under:

> "7. To my mind, the petitioner cannot claim the reliefs sought in the present petition. Primarily, the entire petition is aimed at recovery of an amount of Rs.50 lacs allegedly paid by the petitioner for subscription of public issue. Other reliefs in the guise of direction to SEBI can at best be viewed as an attempt to bring the petition within the scope of writ jurisdiction of this Court. In any case, SEBI has taken steps as found necessary and the issue must end there.
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> 8. With respect to the claim of the petitioner against respondent No.1 Bank, I find that the same cannot be entertained in any form in a writ petition, in the facts of the present case. As noted, respondent No.1 has made detailed allegations as regards source of money which have

> remained substantially uncontroverted. Even in the statements of other defendants in the suit filed by the Bank, the same averments come forth. In the MOU which the petitioner himself has signed also it is stated that the Chairman and Managing Director of the Company having clearly stated that the right issue money is in fact public issue money of the parties at Sr.No.2 to 5. It is also stated that the Chairman and Managing Director of the Company say that the subscription is made from the funds received by the Company from the Bank. The petitioner raised no objection to the said averments. It is also not disputed that the petitioner is a Director of Renco Gears Limited and the Managing Director of Renco Finance Limited. Thus, from what is stated on record, the petitioner invested in subscription of public issue of Renco Gears Limited of which he was a Director the funds received by Renco Finance Limited for its public issue of which the petitioner was a Managing Director. Further, as stated by respondent No.1 Bank and as recorded in the MOU, respondent No.1 Bank had returned the entire funds received to such public issue. In a writ petition, in such circumstances, for such highly debatable questions, no directions can be given to respondent No.1 Bank which would amount to asking the Bank to pay amount in excess of what the bank received towards the public issue of respondent No.3. In view of the facts which respondent No.1 bank has highlighted which the petitioner has not denied in the rejoinder, it would otherwise also not be proper to exercise writ jurisdiction.
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> 9. Learned counsel for the petitioner, however, submitted that under the MOU as well as the receipt that the petitioner passed to the bank it was clarified that he has not accepted the said amount as full and final settlement reserving his right to pursue his claim, if any. I have not based my order on the petitioner having accepted the payment towards final settlement. This factor, therefore, would make no change so far as the ultimate outcome is concerned."

[2.7] Feeling aggrieved and dissatisfied with the impugned order passed by the learned Single Judge, petitioner has preferred the present Letters Patent Appeal.

[3.0] Shri R.J. Oza, learned Senior Advocate has appeared with Shri B.B. Gupta, learned advocate for the appellant – original petitioner. Shri K.M. Parikh, learned advocate has appeared on behalf of respondent No.1 and Ms. Poonam Mathur, learned advocate for Singhi & Co. has appeared on behalf of respondent No.2.

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[3.1] Shri Oza, learned Senior advocate appearing on behalf of the petitioner has vehemently submitted that the learned Single Judge has materially erred in dismissing the petition. It is submitted that the learned Single Judge has not properly appreciated the fact that as such petitioner applied for the shares in view of the public issue and made the payment of Rs.50 lakh by cheque. It is submitted that therefore when the said public issue failed, the petitioner being the applicant who applied for the public shares was entitled to get back the amount of Rs.50 lakh + interest at the rate of 15%.

[3.2] It is further submitted by Shri Oza, learned Senior advocate appearing on behalf of the petitioner that as such all other subscribers have refunded the amount and the petitioner was refunded and/or given partial amount of Rs.6,36,987/- as against total payment of Rs.50 lakh, which was paid by cheque.

[3.3] It is, therefore, submitted that the learned Single Judge ought to have directed the respondents more particularly respondent No.1 Bank to refund the total payment of Rs.50 lakh + interest at the rate of 15%.

Making above submissions it is requested to allow the present Special Civil Application.

[4.0] Present Letters Patent Appeal is opposed by learned advocates appearing for respondents more particularly respondent No.1 – Punjab National Bank. It is submitted that after making the payment of entire subscription amount, the Bank retained the amount of Rs.1.20 Crore being the dues of the respondent No.3 company, due and payable to the Bank. It is submitted that therefore the respondent No.1 Bank filed the suit before the learned City Civil Court to appropriate the aforesaid amount of Rs.1.20 Crore towards its dues. However, thereafter in the

said suit, the dispute was settled and the aforesaid suit came to be withdrawn pursuant to the MOU dated 11.04.1996 which was signed by the petitioner himself and it was agreed to make the payment to the respective four entities as mentioned in the MOU. It is submitted that at that time the petitioner agreed to accept the amount of Rs.6,36,987/- and agreed that out of the aforesaid amount of Rs.1.20 Crore, the said amount be paid to the respective entities as mentioned in the MOU. It is submitted that thereafter not a single amount is available with the Punjab National Bank with respect to the amount received towards subscription. It is submitted that therefore considering the aforesaid facts and circumstances when the learned Single Judge has dismissed the petition, no error has been committed by the learned Single Judge.

Making above submissions, it is requested to dismiss the present Letters Patent Appeal.

[5.0] We have heard the learned advocates appearing for respective parties at length.

At the outset it is required to be noted that main relief sought in the Special Civil Application can be said to be for recovery of Rs.50 lakhs which according to the petitioner was deposited towards public issue subscription. However, it is required to be noted that as the public issue failed, the respondent No.1 Bank refunded the entire amount of subscription to the respective applicants (except Rs.1.20 Crore). It appears that at the relevant time there was the dispute between the respondent No.1 Bank and respondent No.3 Company with respect to its dues and therefore, the respondent No.1 Bank retained the amount of Rs.1.20 Crore and tried to appropriate the same towards its dues. The Bank filed the Civil Suit No.4966/1995 before the learned City Civil Court, at Ahmedabad for an appropriate relief permitting the Bank to appropriate the said amount of Rs.1.20 Crore towards its dues. A Notice

of Motion was taken out from interim relief of injunction restraining the promoter / Directors from withdrawing the application money in respect of their applications in the Right issue by the company and the Directors named therein. That in the said suit Smruti S. Shah, Aas Pass Investment Pvt. Ltd. and K.Z. Leasing & Finance were the defendant Nos.1 to 3. At this stage it is required to be noted that so far as the petitioner is concerned, admittedly, he was the Director in both the companies. That the aforesaid three entities as well as the petitioner signed one MOU dated 11.04.1996 and it was agreed that the aforesaid amount of Rs.1.20 Crore be paid to the respective entities / parties as under:

Sr. No.	Name of the Party	Amount payable
1.	Smrutiben Shreyansbhai Shah	32,46,575/-
2.	Aaspas Investment Pvt. Ltd.	54,10,959/-
3.	K.Z. Leasing & Finance Co. Ltd.	27,05,479/-
4.	Dr. R.L. Gandhi	6,36,987/-
		1,20,00,000/-

Accordingly, the aforesaid amount of Rs.1.20 Crore was disbursed / paid to the respective parties to the said MOU and as above. It is required to be noted and it is not in dispute that the said MOU dated 11.04.1996 was also signed by the petitioner herein. Therefore, as such the said MOU is binding to the petitioner. It is also not in dispute that on the basis of the aforesaid MOU the Bank on making the payment as above withdrew the suit. Thus, thereafter no further amount was available with the respondent No.1 Punjab National Bank with respect to the subscription amount. Considering the aforesaid MOU and on payment of the aforesaid amount to the respective parties to the MOU and thereafter as no further amount was available with the Punjab National Bank towards subscription amount, when the learned Single

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Judge has dismissed the petition making observations in paras 7 to 9 reproduced hereinabove, it cannot be said that the learned Single Judge has committed any error.

[5.1] At this stage it is required to be noted that even according to the statement of bank account produced by him in the additional affidavit dated 18.06.2014, the amount of Rs.50 lakh which was paid by him by cheque was of the Asiatic Infrastructure Limited and not from the bank account of the petitioner.

[5.2] Considering the aforesaid facts and circumstances of the case, we see no reason to interfere with the impugned order passed by the learned Single Judge dismissing the petition. We are in complete agreement with the view taken by the learned Single Judge while dismissing the petition.

[6.0] In view of the above and for the reasons stated above, present Letters Patent Appeal fails and the same deserves to be dismissed and is, accordingly, dismissed. No costs.

Sd/-
(M.R. SHAH, J.)

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(A. S. SUPEHIA, J.)

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