

Gujarat High Court

Union vs Kesariben on 1 August, 2011

Author: V. M. G.B.Shah,

Gujarat High Court Case Information System

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LPA/1041/2011 4/ 4 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS

PATENT APPEAL No. 1041 of 2011

In

SPECIAL

CIVIL APPLICATION No. 7941 of 2011

With

CIVIL

APPLICATION No. 7692 of 2011

In

LETTERS PATENT APPEAL No. 1041 of 2011

For

Approval and Signature:

HONOURABLE

MR.JUSTICE V. M. SAHAI

HONOURABLE

MR.JUSTICE G.B.SHAH

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Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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UNION
OF INDIA THROUGH GENERAL MANAGER & 3 - Appellant(s)

Versus

KESARIBEN
MANSUKHBHAI WD/O TROLLEY MAN - Respondent(s)

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Appearance :
MRS
VASAVDATTA BHATT for the Appellants.
Mr.D.P.Vora, for the
Respondent.

=====

CORAM

:

HONOURABLE

MR.JUSTICE V. M. SAHAI

and

HONOURABLE

MR.JUSTICE G.B.SHAH

Date
: 01/08/2011

ORAL

JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

1. We have heard Ms.Vasavdatta Bhatt, learned counsel appearing for the appellants and Mr.Y.V.Shah, learned counsel appearing for the respondent. Today, only Civil Application has been listed. Learned counsel for the parties stated that Civil Application as well as Letters Patent Appeal both should be decided together today itself. With the consent of the learned counsel for the parties, we have taken this Appeal for final disposal. Learned counsel for the appellants Ms. Vasavdatta Bhatt has urged that the learned Single Judge while adjourning the matter to 21st July, 2011, has directed the appellants to deposit the amount of provident fund, gratuity, leave encashment and family pension which is payable to the widow of Mansukhbhai, Ex-Trolleyman. She has urged that without assigning reasons, such an order cannot be passed, that too, by interim order without deciding the writ petition finally. We find force in the submission of the learned counsel for the appellants that by way of interim relief, final relief cannot be granted.

2. The Apex Court in State of U.P. & Others V/s. Ram Sukhi Devi, (2005) 9 SCC 733 wherein in paragraph 8, has clearly held that final relief cannot be granted by way of interim relief. Paragraph 8 of the aforesaid decision is extracted below :-

"To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the Government Order dated 26.10.1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the interim direction has been passed with stipulation that the applicable Government Order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case has been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. [See Assistant Collector of Central Excise, West Bengal v. Dunlop India Ltd. (1985 (1) SCC 260 at p. 265), State of Rajasthan v. M/s Swaika Properties (1985 (3) SCC 217 at p.224), State of U.P. and Ors. v. Visheshwar (1995) Supp (3) SCC 590, Bharatbhushan Sonaji Kshirsagar (Dr.) v. Abdul Khalik Mohd. Musa and Ors. (1995 Supp (2) SCC 593), Shiv Shankar and Ors. v. Board of Directors, U.P.S.R.T.C. and Anr. (1995 Supp (2) SCC 726) and Commissioner/Secretary to Govt. Health and Medical Education Department Civil Sectt., Jammu v. Dr. Ashok Kumar Kohli (1995 Supp (4) SCC 214).] No

basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable preferably within six months from the date of receipt of this judgment."

3. In view of the aforesaid decision, we are of the considered opinion that the order of the learned Single Judge dated 30.6.2011 by which final relief has been granted by way of interim relief cannot be maintained.

4. In the result, this Appeal succeeds and is allowed. The order passed by the learned Single Judge dated 30.6.2011 in Special Civil Application No. 7941 of 2011 is set aside. The matter is remanded back to the learned Single Judge with a request to decide the matter afresh subject to His Lordship's convenience. In view of the order passed in Letters Patent Appeal, Civil Application does not survive. Rule is discharged in Civil Application. Interim relief, if any, stands vacated.

(V.M.SAHAI,J) (G.B.SHAH,J) ***vcdarji Top