

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1577 OF 2020
(Arising out of SLP (C) No.28476 of 2019)

MEHUL ACHARYA

Appellant(s)

VERSUS

JAYESH KANTILAL SHAH

Respondent(s)

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal takes exception to the judgment and order dated 13.11.2019 passed by the High Court of Gujarat at Ahmedabad in LPA No. 1669 of 2019 which had upheld the order passed by the learned Single Judge of the High Court dated 26.08.2019 in Special Civil Application No. 11262 of 2019.

The respondent had filed Writ petition before the High Court for de-sealing of ultra-sonography machine which was sealed under a Panchnama dated 14.05.2019 by the appropriate authority. The learned Single Judge proceeded on the assumption that the Magistrate had not

taken cognizance of the complaint filed by the appropriate authority and on that basis proceeded to grant relief to the respondent. The Division Bench although noticed the fact that the concerned Magistrate had already taken cognizance of the complaint filed by the appropriate authority on 16.05.2019 yet dismissed the Letters Patent Appeal preferred by the appropriate authority.

It is not in dispute that the concerned unit belonging to respondent was sealed by the appropriate authority on 14.05.2019, under a Panchnama. Later on, a complaint was filed by the appropriate authority before the Additional Chief Metropolitan Magistrate, Ahmedabad of which, cognizance was taken on 16.05.2019 and summons were issued to the respondent on 22.05.2019.

The respondent, instead of approaching the concerned Magistrate for de-sealing of the unit in question being the property of crime, was advised to file a Writ Petition before the High Court on 26.06.2019. This court in Civil Appeal No. 8269 of 2009 titled as "Appropriate Authority Vs. H.G. Thakkar Hari X-Ray & Col. Doppler Sonography & Ors." decided on 09.12.2009 in a similar situation had disapproved the order of the High Court in

granting relief to the petitioner therein, as it could be sought only from the concerned Magistrate dealing with the complaint being property of crime.

Following the said decision, we must allow this appeal and set aside the impugned judgment and order of the Single Judge and the Division Bench of the High Court.

However, we may note the argument of the respondent that the sealing of the unit in question was improper or excessive exercise of power by the appropriate authority. Indeed, this submission is countered by the counsel for the appellant. However, that issue, in our view, is a matter to be pursued by the respondent before the concerned court, including to persuade the Magistrate to accede to his request for de-sealing of the unit in question during the pendency of the criminal case. The same will have to be decided on its own merits in accordance with law uninfluenced by the observation in the impugned judgments or this order.

In the same manner, it will be open to the respondent to question the order taking cognizance passed by the Magistrate by way of other appropriate remedy as may be permissible in law, which issue need not detain

us in disposing of the present appeal.

As aforementioned, the respondent is free to pursue such other remedy as may be permissible in law, which be decided on its own merits and in accordance with law.

We dispose of this appeal in the above terms.

Needless to observe that in light of this judgment, the Contempt Petition filed by the respondent before the High Court bearing No. Misc. Civil Application No. 981 of 2019 be regarded as deemed to have been disposed of.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
February 13, 2020

ITEM NO.9

COURT NO.7

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 28476/2019

MEHUL ACHARYA

Appellant(s)

VERSUS

JAYESH KANTILAL SHAH

Respondent(s)

(FOR ADMISSION and I.R. and IA No.184991/2019-EXEMPTION FROM FILING O.T. and IA No.184990/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

IA No. 184991/2019 - EXEMPTION FROM FILING O.T.

IA No. 184990/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 13-02-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR

HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Sanjay Parikh, Sr. Adv.
Ms. Rashmi Nandakumar, AOR
Ms. Ayushma Awasthi, Adv.
Ms. Sanjana Srikumar, Adv.
Mr. Ritwik Parikh, Adv.
Mr. Priyanshu Maheshwari, Adv.
Mr. N.J. Shah, Adv.

For Respondent(s)

Ms. Manisha T. Karia, AOR
Mr. Shashank Mangal, Adv.
Ms. Sukhda Kalra, Adv.
Ms. Aarti Goyal, Adv.
Mr. Adarsh Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]

