

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8348 of 2024

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M/S. AARVEE DENIM AND EXPORTS LIMITED

Versus

M/S. YARNCOMS INDIA PRIVATE LIMITED

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Appearance:

MALAV M MULANI(8844) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 24/05/2024

ORAL ORDER

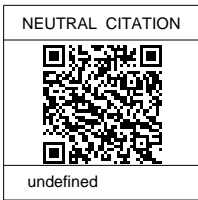
This petition is filed under Article 227 of the Constitution of India seeking for the following prayers:-

“A. This Hon'ble Court may be pleased to Admit the present petition;

B. This Hon'ble Court may be pleased to issue a writ of Certiorari or any other appropriate writ, order or direction by quashing and setting aside impugned Order dated 23.05.2024 passed below Exh.18 of the Commercial Civil Suit No. 275 of 2024 pending before learned Commercial Civil Judge at City Civil and Sessions Court at Ahmedabad (At ANNEXURE-A) in the interest of justice;

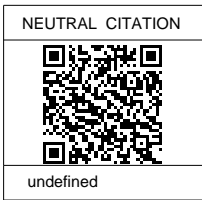
C. Pending Admission, Hearing and Final Disposal of the present petition, this Hon'ble Court may be pleased to stay implementation, execution and operation of the impugned Order dated 23.05.2024 passed below Exh.18 of the Commercial Civil Suit No. 275 of 2024 pending before learned Commercial Civil Judge at City Civil and Sessions Court at Ahmedabad (At ANNEXURE-A) in the interest of justice;

D. Pending Admission, Hearing and Final Disposal of the



present petition, this Hon'ble Court may be pleased to stay further proceedings Commercial Civil Suit No. 275 of 2024 pending before learned Commercial Civil Judge at City Civil and Sessions Court at Ahmedabad in the interest of justice;
E. This Hon'ble Court may be pleased to grant ad-interim relief in terms of para 9(C) and 9(D) in the interest of justice;
F. Certified Copy of the Order dated 23.05.2024 at Annexure-A may be dispensed with;
G. Any other and further reliefs as may be deemed fit in the interest of justice may kindly be granted;”

Learned advocate for the petitioner submitted that the Commercial Civil Suit No.275 of 2024 is filed by the present Respondent before the learned Commercial Court, Ahmedabad on 21st May, 2024. The returnable was fixed on 23rd May, 2024. On 23rd May, 2024, the learned advocate for the petitioner appeared before the learned Commercial Court and submitted undertaking to file appearance and Written Statement. The Pursis was filed which was only recorded by the learned Commercial Court. He further stated that hearing on Exh.5 was commenced. During the course of hearing, an Application Exh.18 came to be filed by the plaintiff seeking a prayer to have a Court Commissioner to visit the premises and inspect the status of the machineries lying in

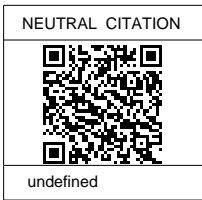


the premises of Petitioner – Defendant. The said Application was filed at 3.00 pm on 23rd May, 2024 and at 5.00 pm, the learned Commercial Court granted the Application Exh.18 and directed the Court Commissioner to submit the Inventory Report in respect of the machines along with the photographs of the machines before 24th May, 2024 at 15.30 pm.

It is submitted that no opportunity was given to the petitioner to file Written Statement.

It is further submitted that the petitioner may be permitted to file Written Statement within three days from today and thereafter, the Application Exh.5 may be heard and decided on merits.

I have considered the averments made in the Application and submissions canvassed by learned advocate for the Petitioner. An Application Exh.18 came to be filed by plaintiff for inspection of the premises of the Defendants wherein the machines as per agreement dated 11.5.2023 are kept.

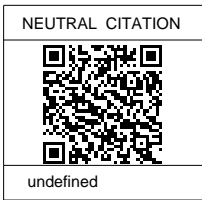


It can be seen from the papers that plaintiff has filed the Commercial Suit against the present petitioner for recovery of Rs.8,91,25,000/- along with the Application under Order – 39 Rule-1 and 2 C.P.C. praying for temporary injunction restraining defendants from transferring or alienating the machineries.

On perusal of the impugned order, the learned Trial Court has considered the nature of suit and prayers sought for in the Injunction Application. The learned Trial Court has appointed a Court Commissioner by exercising discretionary power which are vested with the Trial Court under Order – 26 Rule -9 of the C.P.C.

The petitioner herein could not point out any glaring illegality committed by the learned Trial Court except the grievance that the opportunity was not granted to petitioner while deciding the Application Exh.18.

The interest of justice can be met with by directing the learned Trial Court not to take into consideration the Commissioner's Report while deciding the Injunction Application.



It is open for the Petitioner – Defendant to file objections against the report of the Court Commissioner if so advised. However, the learned Commercial Court shall take into consideration the report of the Court Commissioner while deciding the main suit proceedings as and when the suit is finally heard and decided.

In view of the submissions made by learned advocate for the petitioner that the defendant – petitioner shall file the Written Statement within three days from today, the said request is accepted and petitioner – defendant is directed to file Written Statement within three days from today. As and when the Written Statement is filed, the same shall be taken on record by the learned Trial Court.

With these observations, this petition is dismissed. It is needless to say that the Court has not gone into the merits of the case. Direct service today is permitted.

MANISH MISHRA

(D. M. DESAI,J)