

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 8666 of 2024**

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GUJARAT MITRA PVT. LTD. &amp; ORS.

Versus

SHIVAM PANKAJBHAI PALA &amp; ORS.

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Appearance:  
MR KK TRIVEDI(934) for the Petitioner(s) No. 1,2,3  
for the Respondent(s) No. 1,2,3,4

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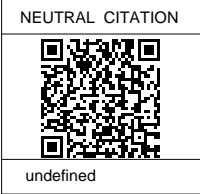
CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 14/06/2024****ORAL ORDER**

1. By way of present petition under Article 227 of the Constitution of India, the petitioner has prayed for following reliefs in para 7 :-

*"(A) Your Lordships may be pleased to admit this petition;*

*(B) Your Lordships may be pleased to pass an appropriate writ of mandamus or a writ in nature of mandamus or any other writ, order, or direction thereby quashing and setting aside the impugned order dated 08.05.2024 [Annexure-"D"] below Exh.240 in S.C.S. No.4 of 2022 passed by the Learned Principal Senior Civil Judge, Vyara at Vyara;*

*(C) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to grant ex-parte mandatory order / interim / ad- interim / ex-parte interim relief and further be pleased to stay further operation, implementation and execution of the impugned order dated 08.05.2024 (Annexure-"D" hereto) below Exh.240 in S.C.S. No.4 of 2022 passed by the Learned Principal Senior Civil Judge, Vyara at Vyara in the interest of justice;*



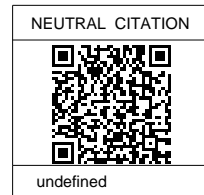
*(D) Your Lordship be pleased to pass any such other and / or further order/s thought just and proper, in the interest of justice."*

2. Facts of the case are as under :-

2.1. The present respondents - original plaintiffs have filed a Special Civil Suit No.4 of 2022 in the Hon'ble Court of the Learned Principal Senior Civil Judge, Vyara at Vyara 15.04.2022 seeking decree of compensation of Rs.15.00 Crores with interest thereon at the rate of 9.00% per annum from the present petitioners original defendants for publishing allegedly defamatory news in respect of the land, on which the Game Zone and Shopping Complex was under development and authorities had issued notices to the original plaintiffs for the breach of different It is alleged by the original plaintiffs that the news reports published by the original defendants- present petitioners were defamatory and they disreputed the original plaintiffs in the Society.

2.2. The original plaintiff no.3 submitted Examination-in- Chief dated 06.12.2023 below Exh.237 as per Order- XVIII Rule: 4 of the Code of Civil Procedure, 1908. The statements made in the Examination-in-Chief indicate that it has been deposed for all the plaintiffs. The Cross-Examination of the plaintiff was done on 17.01.2024 and 31.01.2024. It is specifically stated by plaintiff no.3 that he has come to depose on behalf of all the plaintiffs.

2.3. Witness of the plaintiffs, namely, Rajeshbhai G Bhikhubhai Gamit filed Examination-in-Chief dated 14.02.204 below



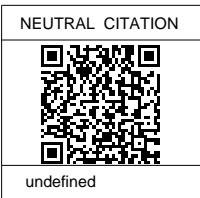
Exh.239 and he was cross-examined on 06.03.2024.

2.4. Plaintiff no.1 filed an application dated 03.04.2024 below Exh.240 stating that he wants to produce evidence before the Hon'ble Trial Court and sought file Examination-in-Chief. permission to The defendants filed a reply dated 19.04.2024 below Exh.241 to the said application below Exh.240 filed by plaintiff no.1.

2.5. After hearing both the parties, the Hon'ble Trial Court passed the impugned order dated 08.05.2024 below Exh.240 allowing the application dated 03.04.2024 below Exh.240 filed by the plaintiff no.1. Hence, present petition.

3. Heard learned advocate for the petitioner.

4. Learned advocate Mr.Trivedi for the petitioner would submit that plaintiff no.3 has been examined himself and then some other witnesses are examined and then plaintiff no.1 intend to examine himself and therefore, preferred application Exh.240 before the learned Trial Court and it was allowed by learned Trial Court. It is submitted that learned Trial Court has overlooked the provisions of Order 18 Rule 3(A) of CPC. He would submit that plaintiff no.1 has not reserved his right after examining other witnesses. It is submitted that learned Trial Court has committed error in allowing application Exh.240. It is submitted that the reasons assigned by learned Trial Court are absolute vague and non compliance of provision of Order 18 Rule 3(A) of CPC and therefore, he submitted to allow this petition.



5. At the outset, let refer the nature of scope of the supervisory jurisdiction under Article 227 of the Constitution of India, which is enlightened in case of *Garment Crafts Vs. Prakash Chand Goel* reported in (2022) 4 SCC 181, wherein the Hon'ble Apex Court in para 15 and 16, held as under:-

*“15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal [Celina Coelho Pereira (Ms) and Others v. Ulhas Mahabaleshwar Kholkar and Others, (2010) 1 SCC 217]. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.*

*16. Explaining the scope of jurisdiction under Article 227, this Court in Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97 has observed:-*

*“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a*



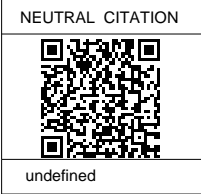
*number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”*

6. In support of his submission, learned advocate for the petitioner has relief on following judgments :-

(a) Judgment of Madras High Court in the case of Ayyasami Gounder v/s. T.S.Palanisami Gounder reported in (60) 1989(2) LW.

(b) Judgment of High Court of Uttarakhand in the case of Km. Sangeeta Khanna v/s. Ram Bharat delivered in Civil Revision No.30 of 2022.

7. The submission of learned advocate for the petitioner is completely misconceived. Plaintiff no.1 and 3 though have been



jointly prosecuted the suit for similar cause of action, they are different persons and both of them are plaintiffs and in view of that submission does not survive, even other considering the nature of suit whereby the plaintiffs have sought compensation from defendants for defamatory of articles published in the newspaper. The plaintiffs have may prosecuted the defendants jointly but everyone has own and individual cause of action for defamation. It is argued that application Exh.240 is moved to fill up the lacuna. I am afraid to accept this contention. Before the learned Trial Court, suit is at the stage of producing plaintiff's evidence and yet defendants have not entered into witness box nor any evidence is examined. So there is no question of filling up lacuna. Right of the plaintiff is still open.

8. The judgments relied on by learned advocate for the petitioner does not render any assistance in facts of the case.

9. In view of above the petition stands dismissed at admission stage.

SATISH

**(J. C. DOSHI,J)**