

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 7445 OF 2008
(Arising out of SLP (Civil) No.16040 of 2007)

Mangaji Lalaji Thakor

Appellant(s)

Versus

Ajay Heeralal Patel & ors.

Respondent(s)

ORDER

Leave granted.

This appeal is directed against order dated June 15, 2006 passed by a Division Bench of High Court of Gujarat at Ahmadabad in Letters Patent Appeal No.80 of 2006. By the said order the High Court has dismissed the appeal preferred by the appellant on the short ground that since the order passed by the learned Single Judge was in exercise of power of superintendence under Article 227 of the Constitution, an intra court appeal under the Letters Patent was not maintainable.

Learned counsel for the appellant submits that since in the present case, the writ petition, in which the order impugned before the Appellate Bench had been preferred, both

under Articles 226 and 227, in the light of the ratio of the decisions rendered by this Court in Kishorilal Vs. Sales Officer, District Land Development Bank & Ors. (2006) 7 SCC 496, Civil Appeal No.6418 of 2008 decided on November 03, 2008 entitled M/s M.M.T.C. Ltd. vs. Commissioner of Commercial Taxes & Ors. and Mavji C. Lakum vs. Central Bank of India 2008 (7) SCALE 32, the order passed by the Division Bench is unsustainable and the matter needs to be remanded back to the High Court.

We find substance in the stand of learned counsel for the parties. It is well settled that for determining the question of maintainability of an appeal against the decision of a Single Judge, neither the mentioning in the cause title of both Articles 226 and 227 of the Constitution nor the granting of ancillary orders thereupon made by the Single Judge would be relevant. The expression “ancillary” means, in the context, incidental or consequential to the main part of the order. The determining factor is the real nature of the principal order passed by the Single Judge which is appealed against. (See: Sushilabai Laxminarayan Mudliyar & Ors. Vs. Nihalchand Waghajibhai Shaha & Ors. 1993 Supp (1) SCC 11).

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Thus, in each case, the Division Bench has to examine the substance of the judgment under appeal to ascertain whether the Single Judge has mainly or principally exercised his jurisdiction in the matter under Articles 226 and 227.

In the present case, it is manifest that while arriving at the aforementioned

conclusion, the High Court laid emphasis only on para 1 of the order passed by the learned Single Judge, which reads as under :

“In this petition under Article 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Gujarat Revenue Tribunal, Ahmedabad ('the Tribunal' for short) dated 27-10-2004 passed in Review Application No.TEN.C.A. 22 of 2003 in rejecting the application of the petitioner to review the order dated 01-02-2002 passed by the Tribunal in Revision Application No.TEN.B.A.396 of 2000 which came to be disposed of as withdrawn at the instance of the petitioner.”

According to the Division Bench, when the petition was under Article 227 and the learned Single Judge has exercised his power under Article 227 of the Constitution, appeal is not maintainable. In our opinion, the order of the Division Bench is not only factually incorrect inasmuch as the cause tile of the petition did mention both the said Articles, in the light of the settled principles, briefly

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noted above, the approach of the Division Bench on the issue was also erroneous.

Having perused the writ petition and the grounds taken therein; we are convinced that though the learned Single Judge had recorded that it was a petition under Article 227 of the Constitution, in fact the petition was under Article 226 and the order passed by the learned Single Judge was also in substance under the said Article. Therefore, the Division Bench was wrong in holding that the impugned order of the learned Single Judge being under Article 227, the appeal was not maintainable.

Accordingly, the appeal is allowed; the impugned order is set aside and the appeal is restored to the file of the Division Bench of the High Court for decision on merits.

In view of the fact that the matter is old, we request the High Court to decide the matter as expeditiously as possible.

There shall be no order as to costs.

.....J.
[D.K. JAIN]

.....J.
[R.M. LODHA]

NEW DELHI,
DECEMBER 19, 2008.