

ITEM NO.18

COURT NO.14

SECTION III-B

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). 3365/2020

[Arising out of impugned judgment and order dated 09-10-2019 in R/SPLCA No. 1429/2019 passed by the High Court of Gujarat at Ahmedabad]

VIPULKUMAR RAMESHCHAND JAIN

Petitioner(s)

VERSUS

GUJARAT STATE ELECTRICITY CORPORATION LTD. & ANR. Respondent(s)

IA No. 63969/2022 - APPLICATION FOR PERMISSION, IA No. 20855/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES

Date : 05-08-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.V. VISWANATHAN

HON'BLE MR. JUSTICE ARUN PALLI

For Petitioner(s) Mr. Rajiv Dutta, Sr. Adv.
Mr. Davendra Prasad Agarwal, Adv.
Mr. Kumar Dushyant Singh, AOR
Mr. Siddharth Dutta, Adv.
Mr. Pratyush Singh, Adv.

For Respondent(s) Mr. Preetesh Kapur, Sr. Adv.
Ms. Hemantika Wahi, AOR
Ms. Jesal Wahi, Adv.

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

1. Heard Mr. Rajiv Dutta, learned Senior Counsel for the petitioner and Mr. Preetesh Kapur, learned Senior Counsel appearing for contesting respondent no.1. The respondent no.2 though served, has chosen not to appear.

2. The present petition calls in question the correctness of the judgment/order dated 09-10-2019 in Special Civil Application No. 1429/2019 passed by the High Court of Gujarat

at Ahmedabad. By the said judgment/order, the High Court allowed the said Special Civil Application and set aside the order of the Commercial Court at Vadodara, Gujarat (for short, 'Trial Court'). The Trial Court by its order of 20.12.2018 allowed C.M.A.No.50/2018 preferred by the petitioner herein under Order IX Rule 13 of the Code of Civil Procedure, 1908 (for short, 'CPC') and set aside the *ex-parte* judgment and decree passed by the said Court on 08.05.2017. The *ex-parte* decree was in favour of the respondent no.1 in Commercial Civil Suit No.111/2016 (Old Suit No.Special Civil Suit No.457/2011) in the following terms:-

"XXXXX

The Suit of the plaintiff bearing Commercial Civil Suit No. 111/2016 is decreed partly.

The plaintiff do recover a sum of Rs.5,73,89,999/- (Rupees Five Crores Seventy-three Lacs Eighty-nine Thousand Nine hundred Ninety-nine only) from the defendant No.1 along with interest thereon at the rate of 12% p.a from the date of institution of suit till decree and at the rate of 9% p.a from the date of decree till realization of the amount.

The defendant No. 1 shall pay the cost of this litigation to the plaintiff.

Decree to be drawn accordingly."

3. The petitioner who was *ex-parte*, had succeeded in the application under Order IX Rule 13 of the CPC. The *ex-parte* judgment and decree was set aside and suit was ordered to be restored for further proceedings in accordance with law. This is the judgment of the Trial Court, which the High Court has

reversed. Several reasons have been adduced by the High Court, which are not required to be set out considering the nature of the order that we propose to make today.

4. The petitioner aggrieved by the order of the High Court, has filed the present Special Leave Petition. This Court on 20.02.2020 while issuing notice, stayed the execution of the *ex-parte* decree.

5. When this matter came up for hearing on 21.07.2026, we made the following order:-

"1. After hearing Mr. Rajiv Dutta, learned Senior Counsel for the petitioner and Mr. Preetesh Kapur, learned Senior Counsel for respondent no.1, we put it to the respondent(s) as to whether they would be agreeable to have the ex-parte decree set aside and the matter remitted for adjudication on merits on condition that the petitioner be subjected to some cost and such other terms.

2. Learned Senior Counsel for the respondent wants to take instructions in this aspect.

3. List the matter on 05th August, 2026."

6. Today, Mr. Preetesh Kapur, learned Senior Counsel, on instruction from respondent no.1 has reported to us that the respondent no.1 will have no objection, if the *ex-parte* decree is set aside and the suit is restored to its file, however, Mr. Preetesh Kapur, learned Senior Counsel submits that the consent to the aforesaid is made subject to the following:-

"1.That a direction be made by this Court to conclude the suit within a period of six months from today considering the fact that the suit is of the year 2011;

2 That the petitioner being a proprietor of the firm in the name of M/s. Vipulkumar Jain & Sons, the petitioner -Vipulkumar Rameshchand Jain, be directed to give an affidavit of his assets with an undertaking that the same will not be disposed of during the pendency of the suit, and

3. That the petitioner -Vipulkumar Rameshchand Jain, be directed to deposit some reasonable percentage of the suit amount."

7. Mr. Rajiv Dutta, learned Senior Counsel for the petitioner in response submits that while the petitioner has no objection to condition nos.1 & 2, learned Senior Counsel submits that insofar as condition no.3 is concerned, the petitioner has already been deposited an amount of approximately Rs.22,00,000/- towards the Earnest Money Deposit (EMD) and further Rs.1,50,000/- as cost for condonation of delay in filing the application under Order IX Rule 13 of CPC. So in all, while Rs.22,00,000/- is lying with the respondent no.1, the amount of Rs.1,50,000/- lying with the Court concerned.

8. Under these circumstances, Mr. Rajiv Dutta, learned Senior Counsel for the petitioner submits that condition no.3 may not be insisted upon.

9. When we put it to Mr.Preetesh Kapur, learned Senior Counsel, learned Senior counsel submitted that considering the deposits made, as long as condition nos.1 & 2 are provided for, the respondent no.1 has no objection in having the *ex-parte* decree to be set aside and the suit restored to its

file.

10. Considering the proceedings that have transpired before us, we pass the following order by consent of the parties:

a) The impugned order of the High Court will stand set aside and order of the Trial Court dated 20.12.2018 will stand restored. The consequence will be that the *ex-parte* judgment and decree dated 08.05.2017 shall stand set aside and Commercial Civil Suit No.111/2016 (Old Suit No. Special Civil Suit No.457/2011) will stand restored to the file of the Commercial Court at Vadodara, Gujarat;

b) The Commercial Court at Vadodara shall conclude the said suit on or before 31st January, 2027. The said Court will be free to set out to chose schedule for hearing.

11. Parties undertake before us that no adjournment except for exceptional grounds will be prayed for and that utmost cooperation will extended for the expeditious conclusion of the said suit.

12. We record the undertaking of the petitioner that an affidavit shall disclose all the movable/immovable assets of *Vipulkumar Rameshchand Jain*, shall be filed before the Trial Court concerned with an undertaking that the assets movable/immovable as disclosed, will not be disposed of during the pendency of the suit.

13. Let a copy of the undertaking in original form, be filed before this Court also. Any breach of the said undertaking will result in serious consequences for the petitioner.

14. The affidavit of undertaking before the Trial Court and

this Court shall be filed by the petitioner within a period of three weeks from today.

15. All questions of law that arises in the matter are left open.

16. The Special Leave Petition is disposed of in the above terms.

17. Pending application(s), if any, shall also stand disposed of.

(NIRMALA NEGI)
ASTT. REGISTRAR-cum-PS

(MANOJ KUMAR)
COURT MASTER (NSH)