

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12134 of 2018**

=====

SMP INVESTMENT COMPANY

Versus

PRADIPBHAI C PATEL

=====

Appearance:

MR.ADITYA J PANDYA(6991) for the Petitioner(s) No. 1

ROHAN A SHAH(7497) for the Respondent(s) No. 1

MR.MITUL SHELAT, SENIOR COUNSEL WITH KAIONA
CHHATRAPATI AND RUSHABH H SHAH(7594) for the
Respondent(s) No. 1

=====

**CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

HONOURABLE MR.JUSTICE D.N.RAY

Date : 24/04/2026

ORAL JUDGMENT

**(PER : HONOURABLE THE CHIEF JUSTICE
MRS. JUSTICE SUNITA AGARWAL)**

1. This is a wholly misconceived petition filed by the plaintiff seeking to challenge the judgment and order dated 19.01.2018 passed by the 5th Additional Senior Civil Judge, Vadodara in rejection of the application at exhibit '49' for amendment of the plaint filed under Order VI Rule 17 CPC.

2. At the outset, we may note that the present petition has been filed before the learned Single Judge in the year 2018 and the petitioner has obtained interim order dated 09.08.2018 staying further proceedings of the Special Civil Suit No.336 of 2002. Though, this fact does not make any

difference, inasmuch as, the plaintiff got stay of the proceedings of its suit only, however, the fact remains that the matter has been prolonged for a long time for non-filing of the second copy of the petitioner, when the matter is placed before the Division Bench, as per the roaster, whereunder petitions under Article 227 of the Constitution of India against the order of the Commercial Courts are cognizable by the Division Bench.

3. Be that as it may, the order impugned categorically records that the amendments, sought by the petitioner, are in the nature of seeking deletion of the entire paragraph No. '2' of the plaint, which reads as under:-

“2. The Defendant is doing the business for construction and other business at Baroda. The Defendant was in need of financial assistance for their business and approached this Plaintiff and made a request for financial assistance and after having a request made by Defendant to the Plaintiff, the Plaintiff did consider the request of the Defendant and paid the following amount by cheques of Punjab National Bank, Baroda, in favour of Defendant:

a) Rs.17,25,000/- paid by cheque No.444682 of Punjab National Bank dt.30.05.1996.

b) Rs.2,55,000/- paid by cheque No.444684 of Punjab National Bank dt.03.06.1996.”

4. The Trial Court, after noticing the proposed amendments in the judgment impugned, has further recorded that the trial has commenced, issues are framed, witnesses have been called and they have filed their affidavits. Moreover, looking to the plaint and the facts narrated in paragraph No.2 of the plaint (extracted hereinabove) and the paragraph, wherein the cause of action for filing the suit has been mentioned, it is

evident that the plaintiff claims originally in the plaint that the amount, sought to be recovered from the defendant, was paid by two separate cheques and the cause of action arose on the date of payment, i.e. 30.06.1996 and further, on 10.05.1995 when the defendant had made part payment towards the loan by cheque in favour of the plaintiff.

5. It is further stated by the plaintiff itself that the cause of action also arose on 23.01.2002, when the plaintiff issued notice to the defendant and further, when the defendant has given a threat to dispose of their property.

6. It is noted by the Trial Court in the judgment impugned that reading of the application and the proposed amendment, though in the plaint, the plaintiff stated that the defendant was in need of financial assistance for his business and approached the plaintiff and made a request for financial assistance, but in the proposed amendment, the factum of financial assistance narrated is totally on a different aspect, where it was stated that the money was advanced to third party on behalf of the defendant and defendant had agreed to pay the amount to the plaintiff.

7. Taking note of the above, the Trial Court has observed that looking to the transactions, as disclosed in the plaint and the proposed amendment, both the transactions are alleged to have been taken totally in different nature and allowing the amendment would amount to changing the whole nature of the suit.

8. It was further noted that, even otherwise, even if it is assumed that the transaction, as stated in the proposed amendment, has taken place, the same was very much in the knowledge of the plaintiff from the beginning and there was no reason for the plaintiff to remain silent until the trial commenced.

9. It is, thus, recorded that the proposed amendments just to fill up the lacunae when the trial progressed, cannot be granted.

10. Assailing these findings of the Trial Court, the learned counsel for the petitioner vehemently pressed into service the averments made in the proposed paragraph Nos. '2' of the plaint as under:-

"2. It is most humbly submitted that when the plaintiff herein had originally filed the suit, the plaintiff herein had submitted before this Honourable Court, the factum of the financial assistance having been provided by the plaintiff to the defendant herein. It is submitted that that therefore the plaintiff herein at the time of the filing of the present suit has submitted broadly the case that the financial assistance was provided to the defendant and the defendant is not paying back the said amount to the plaintiff herein along with interest and therefore a decree against the defendant for the amount along with interest is prayed for. It is submitted that as regard the case of the plaintiff as has been already submitted before this Honourable Court, the following are the facts which shall put forth better facts and particulars before this Honourable Court for the purposes of deciding the present case and these facts are:

a. It is most humbly submitted that the defendant herein had sought financial assistance from the plaintiff herein and as a part of the financial assistance which was provided by the plaintiff to the defendant, the defendant

herein had requested the plaintiff to make the payment in favour of third persons i.e. Mr. C.M.Singhi and Mr. Vinod Hingorani for and on behalf of the defendant certain Mr.Vinod Hingorani was against the purchase of some shares of a company namely M/s Ghanshyam Steel Limited.

b. It is therefore submitted that the defendant herein had accordingly drawn a cheque no. 444682 dated 30.05.1996 of Rs. 17,25,000.00 of Punjab National Bank in the name of his bank from out of which the bank had issued the following demand drafts in favour of Mr. C.M.Singhi:

Sr. No.	Amount	Demand Draft No.	Bank
1	Rs.4,95,000.00	654086	Punjab National Bank
2	Rs.4,95,000.00	654087	Punjab National Bank
3	Rs.4,95,000.00	654088	Punjab National Bank
4	Rs.2,40,000.00	654089	Punjab National Bank

c. It is further submitted that the defendant herein had accordingly drawn a cheque no. 444684 dated 03.06.1996 of Rs. 2,55,000.00 of Punjab National Bank in the name of his bank from out of which the bank had issued the following demand drafts in favour of Mr. Mr. Vinod Hingorani:

Sr. No.	Amount	Demand Draft No.	Bank
1	Rs.2,55,000.00	654152	Punjab National Bank

d. It is submitted that against the aforesaid amounts having been paid by the plaintiff herein, by the plaintiff to the Mr. C.M.Singhi and Mr. Vinod Hingorani for and on behalf of the defendant and the defendant against the payments of the aforesaid amounts has received the shares of Ghanshyam Steel Limited from the aforesaid persons and therefore the plaintiff herein has paid the consideration for and on behalf of the defendant to Mr. C.M.Singhi and Mr. Vinod Hingorani.

e. It is submitted that the defendant herein was liable to return the said amount paid along with interest thereon to the plaintiff herein, however because the defendant herein failed to act as per the agreement, the plaintiff herein is required to bring the present suit.

11. The averments made in paragraph No. '3' of the proposed amendment are also relevant to be noted hereinunder:-

"3. It is submitted that the plaintiff herein at the time of filing of the present suit has as per the professional advice as received by the plaintiff has submitted that the plaintiff herein had provided the financial assistance to the defendant. It is submitted that however at this juncture while carrying out the further process in the present suit, the plaintiff herein most humbly perceives that the detailed material particulars and details as to how and in what manner the entire transaction between the plaintiff and the defendant was carried if are brought on record than only the comprehensive adjudication of the rights and liabilities of the plaintiff and the defendant can be caused. It amendment as is proposed to be carried out by the plaintiff is absolutely necessary and important as in the interest of justice, these are the facts which are required to be taken into consideration for granting the relief as has been already prayed for will be brought on record."

12. From the above stated proposed amendment and the original paragraph No. '2' of the plaint extracted hereinabove, it is evident that the plaintiff filed the proposed amendment on legal advice, in order to change the whole nature of the transaction at the stage of the suit when issues have been framed and the trial has progressed with the statement of the witnesses recorded on affidavits.

13. It may not be out of place to mention here that the proposed amendment was filed in the suit after a period of 14 years.

14. In view of the above, the decisions relied by the learned counsel for the petitioner in **Anita and Anr v. Anil and Anr. [2021 SCC OnLine 3250]** and **State Bank of Hyderabad v. Town Municipal Council [Civil Appeal No.5294 of 2006]** decided on **01.12.2006** would be of no help.

15. Mr.Mitul Shelat, the learned Senior Advocate assisted by Mr.Rushabh Shah, the learned counsel for the respondent / original defendant relying upon the decision of the Apex Court in **Garment Craft v. Prakash Chand Goel, [(2022) 4 SCC 181]**, would submit that even otherwise, within the limited scope of supervisory power under Article 227 of the Constitution of India, the High Court may not correct every error of fact or even a legal flaw, if final finding is justified or can be supported from the record. It is not open for the High Court to substitute its own decision on the facts and conclusion, for decision of an inferior court of tribunal. 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. [Reference:- **Paragraph No. '15'**]

16. Taking note of the above, we do not find it a fit case to invoke our extraordinary supervisory jurisdiction under Article 227 of the Constitution. The present petition is dismissed as misconceived. No order as to costs.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

SAHIL S. RANGER