

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13238 of 2025**

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MAHESHKUMAR BHAGWANBHAI DESAI

Versus

ALOK MAYANKBHAI PATEL & ORS.

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Appearance:

MR BHARAT T RAO(697) for the Petitioner(s) No. 1

MR. JAIMIN R DAVE(7022) for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 26/09/2025****ORAL ORDER**

1. **Rule** returnable forthwith. Learned advocate Mr. Jaimin R. Dave waives service of notice of rule on behalf of respondents No.1 & 2. The presence of other respondents is not required for adjudication of this writ application.

2. Heard learned advocate Mr. B.T. Rao for the petitioner and learned advocate Mr. Jaimin Dave for the contesting respondents No.1 & 2.

3. The present writ application is filed under Article 227 of the Constitution of India seek following relief.

“(A) To admit and allow this petition.

“(B) To issue a writ of mandamus or a writ in the nature of certiorari or any other appropriate writ, order or order dated direction, quashing

and setting aside 8.9.2025 passed by earned Judge, City Civil Court, Court No.23, Ahmedabad dated 8.9.2025 (Annexure-N) below Ex.91 & 141 in Civil Suit No.833/2021 for the reasons stated in the Memo of Petition and in the interest of justice.

(C) Pending admission, hearing and final disposal of the above Special Civil Application, to stay the execution, implementation and operation of the earned Judge, City Civil Court, Court No.23, Ahmedabad dated 8.9.2025 (Annexure-N) below Ex.91 & 141 in Civil Suit No.833/2021 for the reasons stated in the Memo of Petition and in the interest of justice.

(D) To grant ad-interim relief in terms of Para-8@ hereinabove.

(E) The Hon'ble Court may kindly be pleased to grant any other appropriate relief as the nature circumstances of the case may require.

(F) To award the cost of this petition."

4. It is requires to be noted here that this Court vide its order dated 19.09.2025 passed the following order.

"1. Heard learned advocate Mr. B.T. Rao for the petitioner and learned advocate Mr. Jaimin Dave appearing on behalf of respondents No.1 & 2 on advance copy of the petition. He seeks permission to file his Vakalatnama on their behalf. Registry to accept the same and place it on record.

2. Learned advocate Mr. Rao under the instruction of his client, whose brother is present before this Court states that without prejudice to the rights and contentions of the petitioner, to resolve the controversy germane from the order impugned in the present writ application, petitioner undertakes to hand over the possession of the suit property in question to the respondents No. 1 & 2 herein on or before 23rd September, 2025. The necessary paper work, procedural formalities and declaration to that effect will be placed before this Court as well as before the trial Court concerned, if so required, on the next date of hearing.

2.1 So, learned advocate Mr. Rao would request this Court that now, the petitioner undertakes to obey the impugned order passed by the trial Court below Exh. 91 in Civil Suit No. 833 of 2021 confirmed upto the Hon'ble Supreme Court, order impugned in the present writ application passed by the trial Court on 08.09.2025 below Exh. 91 & 141 of Civil Suit No. 833 of 2021 is suspended till the next date of hearing.

3. Per contra, learned advocate Mr. Dave, under the instruction of his clients states that if the petitioner undertakes to deliver the possession of the suit property in question, al-beit, without prejudice to the rights and contentions of both the sides, this Court may pass appropriate order in the matter.

4. Having heard learned advocates for the respective parties, prima-facie, it appears that for any reasons, the petitioner having not obeyed the order passed by the trial Court dated 09.11.2023 below Exh. 91 confirmed upto the Hon'ble Supreme Court, resulted into passing of the impugned order as aforesaid.

5. Now, when the petitioner voluntarily comes forward and undertakes to hand over the possession of the suit property, al-beit without prejudice to the rights and contentions of the parties of the suit, in favour of respondents No. 1 & 2 herein on or before 23rd September, 2025, the request made by the learned advocate Mr. Rao requires to be accepted.

6. Thus, in view of the aforesaid, the impugned order dated 08.09.2025 passed by the City Civil Court, Court No. 23, Ahemdabad City below Exh. 91 and 141 in Civil Suit No. 833 of 2021 is hereby suspended till 25.09.2025 only.

7. List this matter on 25.09.2025 on top of the board for further progress/ compliance of undertaking so recorded hereinabove.

Direct service today is permitted."

5. Pursuance to the aforesaid order passed by this Court, it was reported to this Court on 25.09.2025 by the learned advocate Mr. B.T. Rao that the petitioner herein vide its

pursis dated 20.09.2025 submitted before the trial Court concerned declared it that he has handed over the possession of the suit property in favour of the respondent No.1-2. Nonetheless, he declared that as there is a seal of Ahmedabad Municipal Corporation (AMC) applied and at present, the suit property is closed, thus, not physically able to handover to respondent No. 1/2.

6. Learned advocate Mr. Rao, under the instruction of his client, who is present before this Court states that the petitioner has no objection if the Ahmedabad Municipal Corporation (AMC) open the seal of suit premises on request being made by respondent No1. & 2 herein or by any order which may be passed by any Authority/ Court. He would further states that in such circumstances, the petitioner will not raise any dispute/grievance/ objection of handing over the actual and physical possession of suit property in favour of respondent No.1 & 2 by reopen such seal applied by the AMC.

7. Per contra, learned advocate Mr. Dave would submit that as the order dated 08.09.2025 passed below Exh. 141 in Civil Suit No. 833 of 2021, the trial Court has already recorded and ordered that in a case where Ahmedabad Municipal Corporation (AMC) reopen the seal, possession of

the suit property requires to be handed over to respondent No. 1 and 2 herein.

8. In view of the aforesaid facts and circumstances of the case and when the petitioner finally accept that he is required to hand over the possession of the suit property to the respondents No.1 & 2. Nonetheless, his previous act/conduct would suggest defiance of the order passed by the trial Court and so also of this Court. Now, the petitioner ultimately agreed and complied with the directions issued by the trial Court/ this Court, at this stage, no further action requires to be taken against the petitioner in the interest of justice.

9. In light of the aforesaid peculiar facts and circumstances of the case and without much dwell into the issue anymore, the impugned order dated 08.09.2025 passed by the City Civil Court, No. 23, Ahmedabad City, below Exh. 91 and 141 in the Civil Suit No. 833 of 2021 is hereby quashed and set aside. At the same time, it is hereby observed and make it clear to the petitioner that he shall have to abide by what is pleaded before this Court in future. Further, he will not create any hindrance in any manner, in a case where seal applied by the Corporation gets removed from the suit premises, especially will not disturb the

possession of respondents No.1 & 2 till any final adjudication by the trial Court in the suit.

10. Further, it is also made clear that the trial Court shall have to decide the lis between the parties in pending suit proceeding in accordance with law without being influenced by any of the observations made in this matter and or other incidental orders passed either by the trial Court or this Court.

11. With the aforesaid observation, discussions and reasons, the present writ application is hereby allowed to the aforesaid extent. Rule is made absolute accordingly.

12. In case of any difficulty, it is open for the respective parties to approach this Court.

(MAULIK J.SHELAT,J)

SALIM/

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MOHAMMAD SALIM(HC01108), STENO GR II, at High Court of Gujarat on 29/09/2025 18:21:50