

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).1457/2007

(From the judgement and order dated 26/09/2006 in OJA No. 43/2006
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

SHARAD BANSILAL VAKIL

Petitioner(s)

VERSUS

M/S. JAI MAHAKALYA INFRA STR.P.LTD.&ORS.

Respondent(s)

(With appln(s) for bringing on record addl. facts)

WITH SLP(C) NO. 4068 of 2007

(With appln. for seeking permission to bring addl. facts and office report)

Date: 12/03/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Petitioner(s)

Mr. D.A.Dave, Sr. Adv.

For Respondent(s)

Mr. Soli J. Sorabjee, Sr. Adv.

Mr. P.H. Parekh, Adv.

Mr. Sameer Parekh, Adv.

Mr. E.R. Kumar, adv.

Ms. Rukmani Bobde, Adv.

M/S P.H. Parekh & Co.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The Appeals are disposed of.

[SUMAN WADHWA]

[MADHU SAXENA]

COURT MASTER

COURT MASTER

Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. of 2007

(Arising out of SLP (C) No. 1457 of 2007)

Sharad Bansilal Vakil ... Appellant

versus

M/s Jai Mahakalya Infrastructure Pvt. Ltd. & Ors. ... Respondents

with

C.A.No. of 2007 (Arising out of SLP (C)No.4068 of 2007)

O R D E R

Leave granted.

Shri S. B. Vakil, a senior advocate, practicing in the Gujarat High

Court is the appellant before us. He seeks expungement of the

remarks made by a single Judge of the Gujarat High Court (Justice

R.S. Garg) in para 3 and the last sentence of para 10, quoted

hereunder from the order passed by the learned Judge on 22.2.2006

in Company Application No. 46 of 2006.

"3. So far as the question of issuing notice to Mr. S.B. Vakil is concerned, it is not in dispute or at least for me, it is not in dispute that his mobile phone started ringing in the Court and

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he started walking out; I called him and when I asked him as to why his mobile phone was ringing in the Court and was kept on silent mode, without showing any remorse or expressing any regrets, he had stated that he was to take medicine at 12:30 pm, therefore, he had set an alarm for 12:30 pm. When this Court asked him that why there was no remorse or regrets, and, in such an event, why the Court should not issue a Notice. By his conduct, he exhibited as if he was ready and willing to accept the Notice. The Court accordingly issued the Notice.

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10. ...In the case of Mr. S.B. Vakil, a word of regret would have been sufficient, but, instead of expressing his regrets, he retaliated in the manner and must have expressed his resentment before the Bar, and thereafter, such a resolution was passed. It is for the Members of the Bar to look into their conduct before finding fault with the Judge."

An unfortunate episode in the court of the learned Judge has led to the following controversy. When the learned Judge was hearing Company Application No. 239/05, Shri Vakil's mobile phone started ringing in the court. The learned Judge saw Shri Vakil walking out of the court keeping his mobile phone in his hand. When the court noticed Shri Vakil leaving the court, he was called. According to the learned Judge, instead of expressing any regrets, Shri Vakil stated that he had kept his mobile phone on vibration mode but unfortunately, the alarm went off. Shri Vakil is a heart patient. On the relevant date he was under medication. He had to take medicine at the appointed time. According to the learned Judge, Shri Vakil did not express his regret and on the contrary when the court told him that it was likely to issue notice to show-cause why contempt actions should not be taken, Shri Vakil retorted by saying that it was the choice of the court. Thereupon, the learned Judge vide order dated 17.2.2006 directed issuance of show-cause notice to Shri Vakil as to why he should not be punished under the Contempt of Courts Act, 1971 for ignoring the directions of the court to the effect that mobile phone should not be brought in the courts.

Suffice it to state that the above show-cause notice was registered as M.C.A. No. 27 of 2006. That show-cause notice stood ultimately

quashed by a detailed judgment delivered by the Division Bench of

the Gujarat High Court dated 12.7.2006. According to the Division Bench, Shri Vakil had expressed his regrets. According to the

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Division Bench, Shri Vakil had genuinely apologized. In the circumstances, the above show-cause notice was discharged and the contempt proceedings initiated against Shri Vakil were dropped.

When M.C.A. 27 of 2006 (suo motu) was pending hearing for final disposal before the Division Bench, another Company Application No. 46/2006 came for hearing before the learned Judge. This was an

application in the case of Jai Mahakalay Infrastructure Pvt. Ltd. v. ICICI Bank and Ors. in which the above quoted remarks

have been made by the learned Judge whose expungement is sought by these civil appeals. At this stage, to be fair to the learned

Judge, it may be mentioned that on account of the above incident the

lawyers convened a meeting and passed a Resolution to boycott the

court of the learned Judge for two days. It is that boycott which led

the learned Judge to make the above observations. Ringing of

mobile phones in courts when proceedings are going on has a nuisance value. There cannot be two opinions on this aspect.

However, in the present case, it is not in dispute that Shri Vakil is a

heart patient. He was under medication. Shri Vakil is a senior member of the Gujarat Bar. He had set the mobile on vibration mode.

He had to take medicine at the appointed time. Through oversight, he failed to switch off the alarm. According to the judgment of the Division Bench setting aside the show-cause notice, Shri Vakil had expressed his regrets at the relevant time.

In the circumstances, we are of the view that the above remarks made by the learned Judge in paragraphs 3 and 10, quoted above, were unwarranted in the sense that Shri Vakil's conduct was not contumacious. The facts indicated hereinabove show that this particular case has arisen on account of communication-gap.

We would like to record our appreciation for the valuable assistance given by Mr. Dushyant Dave as amicus curiae.

Accordingly the civil appeals are disposed of.

.....J.

(S. H. Kapadia)

.....J.

(P.K. Balasubramanyan)

New Delhi;

March 12, 2007