IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18677 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No

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HDFC BANK LTD.
Versus
AGIBEN WD/O KHODABHAI D RATHOD & ORS.

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Appearance:
MR D.P. KINARIWALA assisted by MR NIKUNJ D BALAR(2763) for the Petitioner(s) No. 1
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Respondent(s) No. 4
HCLS COMMITTEE(4998) for the Respondent(s) No. 4.1,4.2,4.3,4.4,5,6,7
MR YOGIN A BHAMBHANI(6444) for the Respondent(s) No. 1,2,3,4.1,4.2,4.3,4.4,5,6,7,8

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 04/11/2026

JUDGMENT

1. Heard Mr. D.P. Kinariwala, learned advocate assisted by Mr. Nikunj Balar, learned advocate for the petitioner and Mr. Yogin Bhambhani, learned advocate for the respondents.

2. This petition is filed under Article 227 of the Constitution of India, seeking following reliefs:

"A. Your Lordships may be pleased to allow this petition;

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B. Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction for quashing and setting aside the order dated 26.07.2019 passed by the learned 20th Additional Senior Civil Judge, Vadodara in Special Civil Suit No.781 of 2001 passed below Exhibit-48;

C. Pending admission and final disposal of this petition, be pleased to stay the further proceedings of Special Civil Suit No.781 of 2001 pending before the Court of learned 20th Additional Senior Civil Judge, Vadodara;

D. Be pleased to grant any other relief/s as may deem fit proper, in the interest of justice."

SUBMISSIONS ON BEHALF OF PETITIONER:

3. At the outset, Mr. Kinariwala, learned advocate for the petitioner, would submit that the Trial Court has committed jurisdictional error by not entertaining the impugned application of the petitioner filed below Exhibit-48 under Section 8 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "***the Act, 1996***"), and it has erroneously rejected the impugned application.

3.1 Mr. Kinariwala, learned advocate, would state that respondents herein instituted the Regular Civil Suit No.781 of 2001 against the predecessor in title of the petitioner, namely, Centurion Bank Limited, who joined as party defendant in the suit. It is submitted that after the merger agreement executed between the Centurion Bank Limited with the petitioner-Bank,

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the respondents/plaintiffs preferred an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, (hereinafter referred to as "***CPC***"), whereby the petitioner-Bank herein, has been joined in the suit, and at the first instance, before filing any written statement by the petitioner, it filed the impugned application under Section 8 of the Act, 1996.

3.2 Mr. Kinariwala, learned advocate, would submit that the Trial Court has grossly erred in observing that the petitioner is not added as a defendant, but substituted in place of the original defendant due to the merger of the banks, and the petitioner-Bank had no right to file such an application inasmuch as the issues are already framed on 07.01.2014 and the matter is reached the stage of recording of the evidence of the defendant, i.e., the petitioner.

3.3 Mr. Kinariwala, learned advocate, would further submit that once the Trial Court issued summons pursuance to allowing the application of the plaintiffs filed under Order 6 Rule 17 of the CPC, such summons ought to have been considered to be issued as per Order 5 Rule 1 of the CPC, whereby the petitioner-Bank is required to be given an opportunity to submit its written statemen. It is further

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submitted that the petitioner-Bank was not joined as per Order 20 Rule 10 of CPC. It is further submitted that considering aforesaid aspect, instead of filing its independent written statement than what has been submitted on record by its predecessor bank, an impugned application filed under Section 8 of the Act, 1996 could not have been outrightly rejected when the original agreement to which the plaintiffs were party contained an arbitration clause.

3.4 According to Mr. Kinariwala, learned advocate, the Trial Court has committed serious error in law which requires to be corrected by this Court by entertaining the present writ application and the plaintiff is required to be sent for arbitration as the original agreement executed by the plaintiffs with the predecessor of the petitioner-Bank contained an arbitration clause.

4. Making the above submissions, Mr. Kinariwala, learned advocate for the petitioner, would request this Court to allow this petition.

SUBMISSIONS ON BEHALF OF RESPONDENTS:

5. *Per contra*, Mr. Bhambhani, learned advocate for the

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respondents-original plaintiffs, has vehemently opposed this petition contending *inter alia* that the petitioner-Bank has no right to submit an impugned application under Section 8 of the Act, 1996, at the stage where the suit has reached. It is submitted that the petitioner-Bank is joined in the suit proceedings in place of the original defendant, i.e., Centurion Bank, due to the merger agreement executed between the two banks. It is submitted that as such, there is no direct privity of contract between the plaintiffs and the petitioner-Bank, thus, no question would arise to refer the plaintiffs for the arbitration.

5.1 Mr. Bhambhani, learned advocate would further submit that the Trial Court has not committed any error, much less any gross error of law, while rejecting the impugned application of the petitioner-Bank; rather, the Trial Court has rightly observed in its impugned order that after framing of the issues and the evidence of the plaintiff was already over, at such stage, it would not be appropriate for the Court to refer the parties for the arbitration.

5.2 Mr. Bhambhani, learned advocate would further submit that merely because the petitioner-Bank has been joined in the

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suit proceedings pursuant to an application under Order 6 Rule 17 of the CPC would not entitle the petitioner-Bank to contend that it has an independent right as a defendant who received the summons as per Order 5 Rule 1 of the CPC. It is further submitted that the petitioner-Bank cannot have a better right to defend the suit than its predecessor bank which failed to invoke the arbitration clause by submitting an application under Section 8 of the Act, 1996 at the first instance before filing its written statement. Thus, its successor-in-interest, i.e., the petitioner-Bank, has no right to submit the impugned application.

6. Making the above submissions, Mr. Bhambhani, learned advocate for the respondents, would request this Court to dismiss this petition.

7. No other and further submissions have been advanced by the learned advocates for the respective parties.

ANALYSIS AND REASONS:

8. Having heard learned advocates for the respective parties, and upon perusal of the impugned order, *prima facie*, it appears that petitioner-Bank is joined in the suit proceeding

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due to merger agreement between the Centurion Bank of Punjab (the original defendant) with petitioner-Bank. It is not in dispute that Centurion Bank of Punjab with whom the respondents/plaintiff had an agreement, which contained arbitration clause. Yet, the original defendant did not invoke such arbitration clause when it (Centurion Bank of Punjab) entered its appearance in the suit proceeding as defendant; rather, it appears that said defendant-Bank filed its written statement, and the stage at which the impugned application filed by the petitioner-Bank, by that time the evidence of the plaintiff was already got over. Now, the suit is pending for recording the evidence of the defendant, i.e., the petitioner-Bank.

9. Thus, in view of the aforesaid facts and circumstances of the case, it can be observed that the impugned application filed by the petitioner-Bank below Exhibit-48 under Section 8 of Act, 1996 cannot be entertained and it is correctly not entertained by the Trial Court for the reason assigned in the impugned order, to which I am in complete agreement.

10. So far as the arguments advanced by Mr. Kinariwala, learned advocate for the petitioner-Bank, is concerned, such

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arguments cannot be accepted and entertained by this Court for the following reasons:

10.1 The petitioner-Bank has no direct privity of contract with the plaintiffs, and in absence of such direct contract, question of invocation of arbitration by the petitioner-Bank is out of place.

10.2 The petitioner-Bank is joined in the suit proceeding due to its merger agreement with the defendant - Centurion Bank of Punjab, and as such, it is nothing but a substitution of the original defendant-Bank by the petitioner-Bank.

10.3 It may be true that plaintiffs filed an application under Order 6 Rule 17 of CPC, instead of Order 22 Rule 10 of CPC, for the impleadment of the petitioner-Bank. Yet, the petitioner-Bank joined in the suit proceeding as the original defendant-Bank merged with the petitioner. In essence, substitution of the petitioner-Bank was due to assignment of the rights and liability of the defendant-Bank in its favour. It is well settled position of law that mention of a wrong provision in the application would not *ipso facto* a ground available to the party to say that the

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Court while exercising its power which otherwise available has not exercised it under particular provision. Indisputably, the joining of the petitioner-Bank in the suit was due to merger agreement with the defendant-Bank, which is no longer survived after such merger.

10.4 It is undisputed fact that the original defendant-Bank, though fully aware about the arbitration clause between the parties, i.e., plaintiff and defendant-bank, for reason best known to the petitioner's predecessor bank, it had not invoked an arbitration clause by filing an application under Section 8 of Act, 1996; rather, contested the suit by filing its written statement.

10.5 Once the petitioner's predecessor did not file the necessary application under Section 8 of Act, 1996 in time, and matter reached the stage of oral evidence of the petitioner (defendant), such type of application by the successor in interest of the defendant cannot be entertained.

11. According to me, the petitioner-Bank is only step into shoe of original defendant-Bank and cannot have a better right

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to defend the suit proceeding than available to its predecessor, i.e., Centurion Bank of Punjab – original defendant.

12. Thus, in view of the foregoing discussion and reasons, I do not find any merit in this petition. According to me, the Trial Court has not committed any egregious error of law while rejecting the impugned application filed by petitioner under Section 8 of Act, 1996, rather it is desirable that stage at which the suit has reached, it requires to be adjudicated by the Trial Court itself as expeditiously as possible.

13. At this stage, Mr. Kinariwala, learned advocate for the petitioner, would request this Court to allow the petitioner-Bank to file its additional written statement/amendment of written statement in case of necessity, as due to pendency of this petition until date, such right is not exercised by the petitioner-Bank.

13.1 Since this Court is not inclined to entertain this petition, Mr. Kinariwala, learned advocate for the petitioner, would also request this Court to extend the interim relief for some time as the petitioner-Bank is desirous to approach higher forum.

14. Having considered the aforesaid requests made on behalf

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of the learned advocate for the petitioner, so far as first request is concern, it seems reasonable and can be accepted. It is open for the petitioner-Bank to file an additional written statement/amendment in the original written statement filed by its predecessor bank in case of necessity. As and when such request will be made, after giving an opportunity to the plaintiff to oppose such request, the Trial Court shall take appropriate decision by taking pragmatic approach and while doing so, it shall keep in mind that all these years the matter is pending before this Court.

14.1 So far as the second request for continuation of interim relief is concerned, for the reasons supra and considering the fact that the suit is of the year 2000, instituted in the year 2001, the request is not entertained.

15. In view of the foregoing conclusion, the present writ petition is failed. Accordingly, it is **dismissed**. Rule is discharged. Interim relief stands vacated forthwith. No order as to costs.

(MAULIK J.SHELAT,J)

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