IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 2133 of 2025

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IMRAN KUMELAHMED KHAN LEGAL HEIR OF LATE KUMELAHMED ABDULHAMID KHAN
Versus
STATE BANK OF INDIA & ANR.
==
Appearance:
MR NAYAN D PAREKH(5010) for the Petitioner(s) No. 1
GUPTA LAW ASSOCIATES(9818) for the Respondent(s) No. 1
PARITOSH R GUPTA with NANCY SONI (7583) for the Respondent(s) No. 1
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CORAM:**HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 06/03/2025

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

1. Heard learned counsel for the petitioner and perused the record.

2. The present petition invoking the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India has been filed challenging the order dated 27.11.2024 passed by the 4th Additional Senior Civil Judge, Surat, in rejecting the application exhibit ‘12’ filed under Order VII Rule 11 CPC for rejection of the plaint for recovery of debt against the borrower.

3. The petitioner herein has been impleaded as defendant

no.2 in the said suit in the capacity of legal heir of the original borrower being his son. The defendant no.2, namely the present petitioner herein has also been joined in the capacity of proprietor of M/s. S.K. Textiles and has filed his written statement vide exhibit 9. It is noted by the trial court that in the application under Order VII Rule 11 exhibit 12, the petitioner has not stated that he has nothing to do with the aforesaid proprietorship firm. It is further recorded that all documents vide exhibit 3 filed with the plaint apparently prove that the original borrower had obtained hypothecation in the capacity of proprietor of M/s. S.K. Textiles. Taking note of the above facts, the contentions made by the learned counsel for the applicant/petitioner herein that he cannot be made liable for the debt of his father as per Muslim law and that he was living separately and independently from his father since long, had been rejected.

4. It is sought to be argued by the learned counsel for the petitioner that as per Chapter XIV Synopsis 19 of the Muslim law, any debt left by a Muslim is not a heritable property. It was further argued that there is no privity of contract between the applicant/petitioner herein and the plaintiff Bank. The trial was required to dismiss the suit considering the grounds of bar under the Muslim law and there being no privity of contract.

5. However, the fact remains that the petitioner has been impleaded as defendant no.2, both in the capacity of the

legal heir of the borrower and being the proprietor of M/s. S.K. Textiles, the findings returned by the trial court that the original borrower had obtained hypothecation in the capacity of M/s. S.K. Textiles is required to be examined. Both the questions pertaining to the contention made by the learned counsel for the petitioner/defendant no.2 would require a detailed inquiry during the course of trial and this aspect of the matter is also taken care of by the trial court while observing that the defendant no.2, viz. the petitioner herein has liberty to take all defence available to him during trial. In any case, the suit cannot be dismissed by invoking the provisions of Order VII Rule 11 CPC as none of the grounds of Rule 11 are attracted in the facts and circumstances of the case. The issues raised by the petitioner seeking for rejection of the plaint, in our considered opinion, require framing of issues and adjudication by leading evidence.

6. In view of the above, no infirmity can be found in the order passed by the trial court. The present petition is dismissed accordingly.

(SUNITA AGARWAL, CJ)

(PRANAV TRIVEDI,J)

BIJOY B. PILLAI