



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 222 of 1999

With
CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2026
 In R/FIRST APPEAL NO. 222 of 1999

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Approved for Reporting	Yes	No
		No

HIMA MARINE TRADERS & ORS.

Versus

STATE TRADING CORP.OF INDIA LIMITED & ANR.

Appearance:

DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES

for the Appellant(s) No. 2,3

MR MEHUL SHAH, SR. ADVOCATE WITH MR EKANT G AHUJA(5323) for

the Appellant(s) No. 2.1,2.2,2.3,3.1,3.2,3.3

NOTICE UNSERVED for the Appellant(s) No. 1

MR ASHISH H SHAH(2142) for the Defendant(s) No. 1

SERVED BY PUBLICATION IN NEWS for the Defendant(s) No. 2

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 24/06/2026

JUDGMENT

1. Heard learned Senior Advocate Mr. Mehul Shah assisted learned advocate Mr. Ekant Ahuja for the appellants – original defendant nos.2,3 and 4 and learned advocate Mr. Ashish Shah for original plaintiff. None remain present for respondent no.2 herein - original defendant no.1. Written submission tendered by learned Senior Advocate Mr.Shah is taken on record.

2. This appeal under Section 96 of the Code of Civil Procedure



1908 (for short '**CPC**'), is preferred by appellants - original defendant number 2, 3, 4, challenging the judgment and decree dated 10.08.1998 passed by the Judge, Court No.24, Ahmedabad, by which plaintiff's suit was decreed and he was held entitled to recover a sum of Rs.7.5 lakhs from the defendants jointly and severally along with running interest at the rate of 18 % from 03.09.1984 till realization of the amount, with additional order that as far as amount of Rs.5 lakhs is concerned, the interest shall be charged from 22.10.1984 till realization, and for remaining amount of Rs.2 lakhs it shall be charged from 03.09.1984.

3. M/s. Hema Marine Traders, a partnership firm, was original defendant No.2, and Mr. M.N. Joshi and Mr. K.P. Thomas were defendant Nos.3 and 4 being a partner of the partnership firm.

4. The appeal is filed by Ms/. Hema Marine Traders and its two partners. During the pendency of the appeal, both the partners, namely Mr. M.N. Joshi and Mr. K.P. Thomas, expired. Consequently, M/s. Hema Marine Traders the partnership firm was dissolved, in view of the provisions of the Partnership Act. For the purpose of carrying this appeal, the Class - 1 heirs of Mr. M.N. Joshi and Mr. K.P. Thomas preferred Civil Application No.1 of 2023 and 2 of 2023 to bring themselves on record. Both these civil applications were allowed, and accordingly, Class 1 heir of Mr. M.N. Joshi and Mr. K.P. Thomas who expired during the pendency of the appeal, are brought on record. It is in these circumstances, parties are referred to as per their status before the trial Court.



5. Facts of the case are as under :-

5.1. That loan to the tune of Rs.7.50 lakhs was extend by respondent No.1- State Trading Corporation to Ms/ Multi Marine on the basis of receipt issued by Appellant – Hema Marine Traders (owner of warehouse). That in the receipt it was shown that Hima Marine Traders were in possession of 1199 cartons of frozen shrimps which was owned by Ms/. Multi Marine Product. It is alleged by original plaintiff that Hima Marine Traders disposed / sold the goods described in the receipt against which State Trading Corporation had extended loan to the tune of Rs.7.50 lakhs to Multi Marine Products. Therefore, State Trading Corporation filed Civil suit against Hima Marine Traders and Multi Marine. Learned City Civil Court after permitting the parties to lead evidence and after hearing the parties was pleased to decree the suit of the plaintiff and it was held that plaintiff is entitled to recover a sum of Rs.7.5 lakhs from the defendants jointly and severally along with running interest at the rate of 18 % from 03.09.1984 till realization of the amount, with additional order that as far as amount of Rs.5 lakhs is concerned, the interest shall be charged from 22.10.1984 till realization, and for remaining amount of Rs.2 lakhs it shall be charged from 03.09.1984. Hence, present appellants – original defendant nos.2,3 and 4 have filed present appeal.

6. Learned senior Advocate Mr. Shah for the appellants takes this Court to the facts of the case, proceedings taken place before learned Trial Court and would submit that the role of M/s. Hema Marine Traders is limited to storing the 1199 cartons of frozen shrimps owned by the original defendant No.1 - Multi



Marine Products Limited. He would further submit that Ms/. Hema Marine Traders was carrying a business of warehouse and was keeping several goods of various persons. It is submitted that 1199 cartons of the shrimps which were kept in the warehouse belonged to M/s. Multi Marine Product, who has hypothecated the said shrimps to the State Trading Corporation and obtained the loan in tune of Rs.5 lakhs and Rs.2.5 lakhs against the said hypothecation. He would further submit that essentially it is a dispute between the State Trading Corporation and Multi Marine Products and M/s.Hema Marine Traders, being the owner of the warehouse had been involved in dispute on the ground that he, had kept the 1199 cartons of the shrimps on the rental basis. It is submitted that Hema Marine Traders though executed an agreement with the State Trading Corporation not to sell out the 1199 cartons of the shrimps, had at no point of time breached the said agreement. However, during the pendency of the proceedings, the circumstances arise whereby under the order of learned Principal Senior Civil Court, Vadodara in Special Civil Suit NO. 401 of 1986 filed by the Bank of India, Hema Mairine Traders was constrained to release the possession of 1199 cartons of shrimp, as this shrimp were also hypothecated before the Bank of India, and the Competent Court passed order to auction the said 1199 cartons of shrimp. Consequently, learned Principal Senior Civil Court, Vadodara appointed a receiver to conduct the auction and to take the possession thereof. He would further submit that accordingly, M/s. Hema Marine Traders has preferred an application Exh.69 before the proceedings in the learned City Civil Court to amend the written statement filed at Exhibit 17 under Order 6 Rule 13 of the CPC to bring this subsequent event on record. This



application was allowed and amendment was also allowed.

6.1. He would further submit that in the aforesaid circumstances, passing of the order to recover the loan amount also from M/s. Hema Marine Traders is bad in law. There is no privity of contract exists between the State Trading Corporation and Hema Marine Trader, or there is any relationship of loaner or loanee exist between the parties. It is submitted that the Hema Marine Traders does not owe any liability to the State Trading Corporation for paying the outstanding amount of loan of Rs.7.5 lakhs disbursed to Multi Marine Product.

6.2. In addition to the aforesaid submission, while referring to the written submission, learned Senior Advocate Mr. Shah referred to the judgment of the Hon'ble Apex Court in case of **S.PMisra v/s. Mohd. Laquddin Khan [(2019) 10 SCC 329]**, para 18 to contend that the partnership firm M/s. Hema Marine Traders is already dissolved on death of its two partners. Presently, appeal is carried by the Class 1 heirs of the two partners. He would further submit that there is no privity of contract between the present appellants and the State Trading Corporation, and in absence thereof, even if the decree survives against the Ms/.Hema Marine Traders, State Trading Corporation legitimately cannot maintain any execution of the decree against the appellants.

6.3. Mainly on the aforesaid submission, he would submit to allow this appeal.

7. Learned advocate Mr. Ashish Shah appearing for the State



Trading Corporation made two fold submissions. Firstly, he would submit that admittedly, agreement was executed between Ms/ Hema Marine Traders and State Trading Corporation not to sell the 1199 cartons of the shrimps which were hypothecated to the State Trading Corporation, and in defiance thereof, M/s. Hema Marine Traders has parted with the possession of 1199 cartons of the shrimps without informing it to the State Trading Corporation. Secondly, he would submit that whether the order below Exhibit 69 has been given effect or not is not clear from the record, and in absence of any amendment carried in the written statement, one cannot rely upon the facts that under the order of Competent Court 1199 cartons of the shrimps were sold to auction purchaser. Thirdly, it is submitted that the appellant did not enter into the witness box, nor even has cross-examined the plaintiff or witness, and did not discharge the burden lied upon it to prove that it has parted with the possession of the shrimps under the order of the competent Court.

7.1. In the aforesaid circumstances, he would submit that the learned Trial court has rightly passed the decree in favor of the plaintiff.

8. Following issues were framed by the learned City Civil Court at Exhibit 36 in a suit for recovery of loan amount.

“1) Whether the plaintiff Company proves that on 3rd September, 1994 the defendant No.1 was given advance to the extent of b.5.00 (five) lakhs on accepting that the Marine Products in frozen condition would be delivered to the approved cold storage and the goods were to be hypothecated to the plaintiff and to be held in the cold-storage of the defendants Nos.2 to 4 ?



(2) Whether the plaintiff Company proves that Hima-Marine Traders, the defendant No.2 has accepted to store the goods of M/s. Multi Marine Products Private Limited which are hypothecated to the plaintiff subject to the terms and conditions contained in the letter, dated 31-8-1984 ?

(3) Whether the plaintiff proves that the defendant No.1 was given a further advance of sum of B. 2,50,000/- on 22-10-84 against the security of 798 Master cartons of frozen shrimpa ?

(4) Whether the plaintiff proves that the defendants Nos. 2 to 4 have issued a Receipt vide its letter, dated 22-10-84 in respect of 798 Master cartons of headless shrimps received by them for storage on plaintiff's account ?

(5) Whether the plaintiff Company proves that the defendant No.1 had failed to give verification of the stock in its cold storage ?

(6) Whether the plaintiff proves that the defendant Nos, 2 to 4 had effected export of the goods stored by the defendant No.1 and hypothecated to the plaintiff without knowledge and consent of the plaintiff.

(7) Whether the plaintiff proves that under the terms of the agreement the defendants Nos. 2 to 4 had no lien over the stock stored and were not entitled to charge and part with the stock to any other party or deal with it otherwise ?

(8) Whether the plaintiff proves that the defendants Nos.2 to 4 effected two shipments, 1.e. one to Malayasia and second to West Germany?

(9) whether the plaintiff proves that by virtue of letter, dated 5-5-1995 the defendant No.1 is bound to pay the amount of 5.7.50 lakhs with interest irrespective of the earlier agreement regarding the pledge of goods ?

(10) Whether the suit is barred by limitation ?

(11) Whether the defendants Nos. 2 to 4 prove that the goods



were stored at the instance of defendant No.1 on rental basis and that there is no privity of contract between them and the plaintiff ?

(12) Whether the defendants Nos. 2 to 4 prove that the defendant No.2 purchased 349 cartons of frozen shrimps Headless Brown from the defendant No.1 and also purchased 153 cartons of frozen shrimps Headless Drown from the defendant No.1 and necessary certificate has been issued by Export-Inspection Agency on lith Oct. and 30th Oct.1984?

(13) whether the defendants Nos. 2 to 4 prove that the suit goods were hypothecated with plaintiff were stored in their cold storage subsequent to the aforesaid purchase by them ?

(14) Whether the defendants Nos.2 to 4 prove that two shipments transmitted to Malayasia and to West Germany were not in respect of the goods that were hypothecated with the plaintiff ?

(15) Whether City Civil Court, Ahmedabad has no jurisdiction to entertain and to hear this suit?

(16) Whether the plaintiff is entitled to interest ? If yes, at what rate ?

(17) What is found due to the plaintiff and from whom ?

(18) What order and decree ?”

9. It is a true fact that plaintiff entered into the witness box. None of the defendant entered into the witness box. Plaintiff's evidence has not been challenged by the defendant. In these circumstances, the learned City Civil Court answered issue number 1 to 9 in “affirmative”, issue number 10, 11 and 12 in “negative” and passed the order of interest at the rate of 18 percent, and directed defendants to pay amount of loan jointly and severally.



10. Having heard learned advocates for the parties, solitary question arise that in absence of privity of contract, whether appellant can be held to pay outstanding loan amount of M/s. Multi Marine and secondly, whether appellant has parted away 1199 cartons of shrimps in defiance of contract with State Trading Corporation ?

11. As far as the appeal of the present appellant is concerned, it deserves consideration on two reasons. Firstly, that M/s. Hema Marine Traders is not the borrower of the loan. On rental basis, Ms/ Hema Marine Traders kept the 1199 cartons of the shrimp belongs to and owned by the Multi Marine Products. This shrimps were hypothecated with the State Trading Corporation to obtain the loan of Rs.7.5 lakhs on different intervals by the Multi Marine Product. M/s. Hema Marine Traders, being a Warehousing trader, agreed not to part away with the possession of the 1199 shrimps of cartons. Though plaintiff alleged that M/s.Hema Marine Traders has exported the 1199 cartons of shrimp which has been denied in the written statement by the defendant / appellant, there is no specific evidence led by the State Trading Corporation to prove that 1199 cartons of shrimps were exported in defiance or breach of the agreement. On subsequent development, it appears that learned Senior Civil Court, Vadodara in Special Civil Suit No.401 of 1986 filed by the Bank of India passed an order to auction the 1199 cartons of the shrimp which was hypothecated by the Multi Marine Product in addition to hypothication with State Trading Corporation, and obtained the loan there from. Application Exh.69 was preferred to amend the written statement under Order 6 Rule 13 of the CPC along with other necessary documents. Learned City Civil



Judge pleased to allow Exh.69. It is surprising that the very same learned Judge who has allowed the amendment application taking cognizance of subsequent development, amended in the written statement, did not notice the said order while passing the impugned judgment. Thus what could be imply that the 1199 cartons of shrimps lying with Hema Marine Traders was auctioned by the Court appointed receiver to realize the decretal amount of Special Civil Suit No.401 of 1986. Such action taken by the court-appointed receiver to take away the possession of 1199 cartons of shrimp does not amount to breach of any agreement executed by M/s.Hema Marine Traders. Lastly what could be noticeable that the partners of the M/s.Hema Marine Traders are expired, and in view of Section 42 of the Partnership Act, on death of the partners, the partnership is dissolved. For the purpose of carrying the proceedings of this appeal, the Class 1 heirs of both the partners are brought on record. There is no privity of contract exists between the heirs of the partner of M/s.Hema Marine Traders and the State Trading Corporation.

12. In the case of S.P.Mishra (supra), Hon'ble Apex Court in para 18 held as under : -

"18. At this stage, it is to be noticed that once the partnership comes to an end, by virtue of death of one of the partners, there will not be any partnership existing in which legal representatives of late Smt. Hashmatunnisa Begum could be taken in. The judgment and decree obtained by late Sri Jai Narayan Misra against late Smt. Hashmatunnisa Begum, in pursuance of partnership deed dated 14.04.1982, cannot bind the legal representatives of late Smt. Hashmatunnisa Begum, as such, decree is not executable against them. The legal representatives of late Smt. Hashmatunnisa Begum are not the partners of the original partnership deed dated 14.04.1982. When such legal



representative are not parties to the contract, such contract cannot confer rights or impose obligations arising under it on any third party, except parties to it. No one but the parties to the contract can be entitled under it or born by it. Such principle is known as 'Privity of Contract'. When the partnership stands dissolved by operation of law under [Section 42\(c\)](#) of the Indian Partnership Act, 1932, the question of execution in pursuance of the decree does not arise. There cannot be any contract unilaterally without acceptance and agreement by the legal heirs of the deceased partner. If there are any clauses in the agreement, entered into between the original partners, against the third parties, such clauses will not bind them, such of the clauses in the partnership deed, which run contrary to provisions of [Indian Partnership Act, 1932](#), are void and unenforceable. Such clauses are also opposed to public policy."

13. In view of the aforesaid reasons, appeal deserves consideration and accordingly is allowed to the extent that impugned judgment and decree passed in Regular Civil Suit No.4507 of 1987 by the City Civil Court Ahmedabad is modified to the extent that impugned decree shall be operable or executable only against original defendant No.1 – Multi Marine Products. Appellant – Hima Marine Traders or its partners are not responsible to satisfy the decree.

14. Decree to be drawn accordingly. Record and proceedings, if any, be send back to learned Trial Court concerned.

15. Connected Civil Application also stands disposed of.

SATISH

(J. C. DOSHI,J)