

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 7291 of 2025**

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DIPAKKUMAR KIRTILAL SHAH

Versus

NAVINKUMAR BANSIDHAR MAHESHWARI

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Appearance:

PRATEEK S BHATIA(8629) for the Petitioner(s) No. 1

VISHWA G PATEL(8610) for the Petitioner(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA**Date : 28/05/2025****ORAL ORDER**

1 In this petition, the petitioner challenges the order passed on 24.03.2025 in Regular Civil Suit No. 156 of 2007 below Exh.92 by the Principal Senior Civil Judge, Palanpur and the order dated 09.05.2025 passed in Misc. Civil Appeal No. 18 of 2025 passed by 2nd Additional District Judge, Palanpur at Banaskantha.

2 It was submitted that in the original suit, interim relief was granted whereby shop No.8 belonging to the present petitioner was ordered not to be sold and status quo in respect of the same was to be maintained. On perusal of the said order dated 21.02.2008, the 4th



Additional Senior Civil Judge, Palanpur, has observed that whether the possession of Shop No.8 is legal or otherwise is a matter of evidence, but if during pendency of the suit, if the said shop is transferred, then it would add to the multiplicity of litigations and therefore on those counts, the said application Exh.5 was allowed and the status-quo was ordered to be maintained in respect of Shop Nos. 6 and 8 as described in the said order.

3 Admittedly, the said shop came to be sold in the year 2017. This resulted in the Court passing the impugned order dated 24.03.2025 in Regular Civil Suit No. 156 of 2007. When the said order was carried in appeal, in the appeal itself the appellant has admitted that owing to his disability he sometimes forgets, and that for those reasons, he has forgotten that there existed a status-quo order against the selling of the said shop. It is his case that the said shop was sold but it was not a deliberate act to flout the orders of the Principal Senior Civil Judge, Palanpur.



4 It is now, the contention of the learned advocate that owing to disability of the petitioner and for the purpose of treatment of the petitioner, the said shop was sold. It was thus stated that it was out of compulsion that the said shop was sold. However, such vague and utterly cooked up versions cannot be relied on. Hence, such contention is rejected.

4.1 In second limb of the contentions, it was argued by the learned advocate that the proportionality of the consequences as narrated in the Order 39 Rule A of the Code of Civil Procedure, should have been weighed, especially considering the disability of the petitioner.

4.2 It was thus submitted that the Court ought not to have ordered civil imprisonment of 30 days. It was submitted that the Court ought to have weighed other options available to it, namely, attachment of the property of the person guilty of such disobedience. It was when the



advocate was questioned as to the property which was made available or which was pointed out to the Court for being attached, the advocate could not satisfy this Court as to the property which could have been attached. The only instruction that the advocate had was that there was some property in Ahmedabad. However, the advocate could not provide the particulars of the said property.

5 In view of this petition, this Court believes that without mentioning the alternative options available to this Court, (or for that matter the Trial Court and the First Appellate Court, which could have weighed those options for exercising other mode of consequences owing to the disobedience of breach of injunction), the order of the Trial Court and that of the Appellate Court cannot be faulted on the ground that the said Courts did not weigh alternative options for exercising whilst punishing for breach for injunction.

6 Hence, this Court believes that there is no error in



the impugned orders. Therefore, this petition is dismissed, as devoid of merits.

BIMAL

(J. L. ODEDRA, J)