

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3109 of 2020

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JSK SONS
Versus
STATE OF GUJARAT

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Appearance:

KISHAN Y DAVE(8293) for the Petitioner(s) No. 1,2
MR RASESH H PARIKH(3862) for the Petitioner(s) No. 1,2
MR.HEMANG H PARIKH(2628) for the Petitioner(s) No. 1,2
MR SOAHAM JOSHI, AGP for the Respondent(s) No. 1,2,3
MR PS GOGIA(2751) for the Respondent(s) No. 6
NOTICE SERVED BY DS(5) for the Respondent(s) No. 4,5

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CORAM: HONOURABLE MR. JUSTICE J.B.PARDIWALA
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 05/03/2020

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. By this petition under Article 226 of the Constitution of India, the petitioners have prayed for the following reliefs :

“(A) **Your Lordship** may be pleased to admit this petition:

(B) **Your Lordship** may be pleased issue a writ of mandamus or any other appointment writ, order and/or directions in the nature of mandamus, quashing and setting aside the provisional order of attachment said to have been issued by Respondent No.2 for attaching the Bank Accounts, as per the Table mentioned herein above at para 2C, of the Petitioners maintained with the Respondent No.4 to 6 Banks, in the interest of justice;

(C) Pending admission hearing and till final disposal of the present petition, Your Lordship may be pleased to suspend operation, execution and implementation of the order of provisional attachment said to have been issued by Respondent No.2 for attachment of above mentioned Bank Accounts of the Petitioners maintained with Respondent No.4 to 6 to permit the Petitioners to operate the said Accounts, in the interest of justice:

(D) Your Lordship may be pleased to pass such other and/or further orders as may be deemed fit, just and proper in the interest of justice.”

2. It is the case of the petitioners that the bank accounts of the petitioners have been provisionally attached under section 83 of the Gujarat Goods and Service Tax Act, 2017 (for short “GGST Act”) without considering the provisions of section 83 of the GGST Act, as in the case of the petitioners no proceedings are pending under any of the sections mentioned therein.

3. Brief facts of the case are as under :

3.1) Petitioner no.2 is a proprietor of petitioner no.1 firm. It is the case of the petitioners that respondents no. 1 to 3 have attached the following bank accounts of the petitioners maintained with respondents no. 4 to 6 banks without intimating the petitioners about their action of attaching such bank accounts of the petitioners :

Sr. No.	Bank Account Name	Capacity	Bank Name	Account Number	Balance attached
1	Chiragkumar Chaniyara	Individual	ICICI BANK Ltd.	347301501736	NIL
2	Chiragkumar Chaniyara	Individual	ICICI BANK Ltd.	348601000997	124.90

3	JSL Sons	Firm	ICICI BANK Ltd.	348605500540	94,09,458.66
4	JSK Sons	Firm	ICICI BANK Ltd.	348605000659	-8,45,746.82
ICICI Bank Total					85,63,836.74
5	Chiragkumar Chaniyara	Individual	Bandhan Bank Ltd	501800020261820	20,212.00
6	JSK Sons	Firm	Bandhan Bank Ltd	50180003886502	86,200.00
Bandhan Bank Total					1,06,412.00
7	JSK Sons	Firm	Axis Bank Ltd.	918020046771485	3,04,060.63
8	JSK Sons	Firm	Axis Bank Ltd.	918030090849647	88,742.63
Axis Bank Total					2,15,318.00
9	Chiragkumar Chaniyara	Individual	HDFC Bank Ltd.	50100270207554	1,521.40
HDFC Bank Total					1,521.40
					88,87,088.14

3.2) It is the case of the petitioners that respondent no.6 informed the petitioner no.2 that on the basis of various notices received from GST department, the above-stated accounts of the petitioners were attached.

3.3) It is the case of the petitioners that pursuant to incorporation of petitioner no.1 firm, the bank accounts were opened with respondent no.4 to 6. It is the case of the petitioners that petitioner no.1 was incorporated since February 2018 and is registered under the provisions of GGST Act having registration number being GSTIN No. 24BTYPC8659P1ZJ and always adhered to all the provisions including filing of periodical returns such as GSTR-1 and GSTR-3B since the month of February, 2018 till the month of July 2018 when the State GST authority unilaterally ordered retrospective cancellation of

registration of petitioner no.1 with effect from 25th July, 2019. It is the case of the petitioners that no outward tax liability is outstanding and no periodical GST returns remained to be filed by petitioner no.1.

3.4) It is the case of the petitioners that one of the extended family members of the petitioner no.2 Mr. Sandip Chaniyara and some corporate entities where he is director and shareholders are under investigation by respondent no.3 with respect to violation of provisions of the GGST Act under the allegation of creating fake turnover. It is the case of the petitioners that Mr. Sandip Chaniyara is in no way connected with the business of petitioner no.1 either directly or indirectly as an owner or as a beneficial owner and therefore, no illegality can be alleged against the petitioners who are otherwise legal entity in the eye of law and therefore, the orders of provisional attachment are bad in law.

4. Learned advocate Mr Rashesh Parikh for the petitioners submitted that respondent no.3- Commissioner of State Tax has failed to form an opinion that is necessary to pass the order of provisional attachment for the purpose of protecting the interest of the Government Revenue. It was submitted that respondent no.3 has failed to consider whether the petitioners would be able to pay the tax dues after completion of the assessment proceedings inasmuch as it is not the case of the respondent authorities that the petitioners are a fly by night operators or they do not have

the means to pay the dues that may result at the end of the assessment proceedings which has not yet commenced.

4.1) Learned advocate for the petitioners submitted that in absence of any formation of the opinion and without recording any satisfaction that the respondent authorities would not be in a position to recover any amount that the petitioners may be ultimately held liable to pay, impugned order of provisional attachment so as to protect the interest of Government Revenue could not have been passed.

4.2) It was also pointed out that the respondent authorities ought to have considered and were supposed to strike a balance between the interest of the Government revenue as well as the petitioners to ensure that while the interest of the Revenue is safeguarded, the petitioners are also in a position to continue with their business because it is only if the petitioners continue to do the business then, only the petitioners would be able to pay the dues which may ultimately be held liable to be paid. It was therefore, submitted that the respondent authorities by passing the impugned order has put the business of petitioner no.1 and personal life of petitioner no.2 to a halt and due to such action, business of the petitioner no.1 is paralyzed resulting into huge financial difficulties. It was submitted that the impugned orders passed under section 83 of the GGST Act is without jurisdiction and not tenable in law as the impugned order which is required to be passed by the Commissioner has been passed by the State Tax Officer-

Unit-1, Jamnagar.

4.3) Reliance was placed on the decision of this Court in case of **Valerius Industries v. Union of India** rendered on 28th August, 2019 in Special Civil Application No.13132/2019 wherein certain principles have been laid down for exercising powers by the respondent authorities under section 83 of the GGST Act. Referring to the various guidelines stipulated in the said decision, it was submitted that the respondent authorities have misused the powers under section 83 of the GGST Act by passing the impugned order of provisional attachment of bank accounts of the petitioners, resulting into abuse of process of law and violation of fundamental rights of the petitioners under Articles 14 and 19(1)(g) of the Constitution of India.

4.4) It was therefore, submitted by the learned advocate for the petitioners that the provisional attachment of the bank accounts results into drastic civil consequences on the business of the petitioner no.1 and further provisionally attaching the bank accounts of the petitioners with respondents no. 4 to 6 are contrary to the provisions of section 83 of the GGST Act. It was further pointed out that the impugned orders are also vitiated as respondent no.2 has failed to serve copy of the said order upon the petitioners and as such respondent no.2 failing to serve the copy of the orders results into the impugned action being void as it violates the principles of natural justice.

4.5) Learned advocate for the petitioners relied upon the following decisions in support of his submissions :

i) **Kaish Impex Private Limited (Through its Director – Deep Kumar Goyal) v. Union of India, through the Secretary and others** reported in 2020 SCC OnLine Bom 125, wherein the Bombay High Court in similar circumstances has held as under :

“18. The analysis of section 83 of the Act will show that such interpretation is not permissible and not contemplated by the legislature. Section 83 read with Rule 159(1), and the form GST DRC-22, lay down a scheme as to how provisional attachment in certain cases is to be levied. Section 83 though uses the phrase ‘pendency of any proceedings’, the proceedings are referable to section 62, 63, 64, 67, 73 and 74 of the Act and none other. The bank account of the taxable person can be attached against whom the proceedings under the sections mentioned above are initiated. Section 83 does not provide for an automatic extension to any other taxable person from an inquiry specifically launched against a taxable person under these provisions. Section 83 read with section 159(2), and the form GST DRC-22 show that a proceeding has to be initiated against a specific taxable person, an opinion has to be formed that to protect the interest of Revenue an order of provisional attachment is necessary. The format of the order, i.e. the form GST DRC-22 also specifies the particulars of a registered taxable person and which proceedings have been launched against the aforesaid taxable person indicating a nexus between the proceedings to be initiated against a taxable person and provisional attachment of bank account of such taxable person.

19. Power to provisionally attach bank accounts is a drastic power. Considering the consequences that ensue from provisional attachment of bank accounts, the Courts have repeatedly emphasized that this power is not to be routinely exercised. Under Section 83, the legislature has no doubt conferred power on the authorities to

provisionally attach bank accounts to safeguard government revenue, but the same is within well-defined ambit. Only upon contingencies provided therein that the power under section 83 can be exercised. This power is to be used in only limited circumstances and it is not an omnibus power.

20. It is therefore not possible to accept the submission of the Respondents that even though specified proceedings have been launched against one taxable person, bank account of another taxable person can be provisionally attached merely based on the summons issued under section 70 to him.

21. In view of our discussion as above, we hold that the order dated 22 October 2019 provisionally attaching the bank account of the Petitioner was without jurisdiction and is liable to be quashed and set aside.

22. The Petitioner also advanced various contentions to demonstrate how the Petitioner is not involved in the money trail or is not guilty of the offences under the Act. We do not have to go into that question because of our conclusion of the absence of power with the Authorities to provisional attach the bank account of the Petitioner in the facts.

23. The Petition succeeds. Rule is made absolute in terms of prayer clause Para 21(i), (ii) and (iii) of the provisional attachment on the bank account specified in the prayers clause stands lifted. The concerned bank authorities will act upon the same. All parties to act on the authenticated copy of the order.”

ii) **Pranit Hem Desai v. Additional Director General, DGGI** reported in 2910 (30) G.S.T.L. 396(Guj), wherein this Court has held as under :

“28. Section 83 of the State GST Act empowers the Assessing Authority to make a provisional attachment of any property of the assessee during the pendency of any

proceeding for the assessment or reassessment of any turnover, even though there is no demand outstanding against the assessee, if he is of the opinion that it is necessary to do so to protect the interest of the revenue. This provision has been made, in our opinion, in order to protect the interest of the revenue in cases where the raising of demand is likely to take time because of the investigations and there is apprehension that the assessee may default the ultimate collection of the demand. In other words, [Section 83](#) gives a power to be exercised during the pendency of any proceeding for assessment or reassessment, so that the assessee may not fritter away or secrete his resources out of the reach of the Commercial Tax department when the assessment or reassessment is completed. The expression "for the purpose of protecting the interest of the revenue" occurring in [Section 83](#) of the Act is very wide in its meaning. Further, the orders of provisional attachment must be in writing. There must be some material on record to indicate that the Assessing Authority had formed an opinion on the basis thereof that it was necessary to attach the property in order to protect the interest of the revenue. The provisional attachment provided under [section 83](#) is more like an attachment before judgment under the Code of Civil Procedure. It is a liability on the property. However, the power conferred upon the Assessing Authority under [Section 83](#) is very drastic, far-reaching power and that power has to be used sparingly and only on substantive weighty grounds and for valid reasons. To ensure that this power is not misused, no safeguards have been provided in the Section 83. One thing is clear that this power should be exercised by the Authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and circumspection. It should not be exercised unless there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of the whole or any part of his property with a view to thwarting the ultimate collection of the demand. Moreover, attachment should be made of the properties and to

Page 32 of 33 Downloaded on : Sun Jun 14 20:45:20 IST 2020 C/SCA/9392/2019 JUDGMENT the extent it is required to achieve the above object. It should neither be used as a tool

to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

29. The Bombay High Court in [Gandhi Trading v. Asst. CIT 3](#) reported in (1999) 239 ITR 337 Bom. has opined that the attachment should be made, as far as possible, of the immovable properties if that can protect the Revenue. The attachment of bank accounts and trading assets should be resorted to only as a last resort because, the attachment of the bank accounts of the assessee would paralyse the functions and business of the assessee. The Authority, therefore, should exercise the power conferred upon him under [Section 83](#) of the Act with circumspection and fairly and reasonably. No hard and fast rule can be laid down as to how and under what circumstances the power under [Section 83](#) can be invoked by the Authority. The discretion conferred on the Authority shall be brought to bear having regard to the facts and circumstances of each case. It is not permissible for the Authority to equate the provisional attachment envisaged under [Section 83](#) of the Act with attachment in the course of the recovery proceedings.”

5. On the other hand, learned Assistant Government Pleader Mr. Soham Joshi for the respondents no. 1 to 3 submitted that the petitioner no.1 issued various E-Way bills over a short span of time with different entities namely, Chaniyara E-Commerce situated at Jamnagar, Solani Brothers situated at Jamnagar and other such entities, which according to the opinion of the respondent authorities are involved in bogus billing transactions. Learned Assistant Government Pleader referred to the report which was submitted to the Enforcement department of the respondent authorities to point out that the petitioners as well as the parties with whom the petitioners had business transactions were admittedly involved in activities of bogus billing.

5.1) Learned Assistant Government Pleader Mr Joshi pointed out from the said report that the petitioners were prima facie found to be involved in the activity of bogus billing. Learned Assistant Government Pleader further pointed out that out of 20 business entities stated in the said report, name of petitioner no.1 appears at Serial no.14 and the business place of such entities were either at the residential place or any small villages of Jamnagar district. It was further pointed out that the address of various entities were similar. Learned Assistant Government Pleader also invited the attention of the Court to the authorisation for inspection or search dated 26th August, 2019 issued by the Joint Commissioner of State Tax, Division-11, Rajkot at the business premises of the petitioners. Learned Assistant Government Pleader also referred to the statement dated 27th August, 2019 of petitioner no.2 and referred to question no. 16, whereby he was asked with regard to details of E-Way bills generated from May 2018 to May 2019 for Rs.8,44,26,683/- and outward supply of Rs.10,68,24,458/- as per the return filed with the respondent authorities and for such question, the petitioner no.1 replied that he was not aware about such details. It was pointed out that petitioner no.2 has denied the knowledge of any of the information with regard to petitioner no.1 -M/s JSK Sons.

5.2) Learned Assistant Government Pleader also tendered a copy of opinion on the basis of which search and seizure

was carried out at the business premises of the petitioners and other associate concern on 27th August, 2019 and it was pointed out that huge transactions were recorded in the bank account of petitioner no.1 with ICICI bank and Axis bank, Jamnagar and has come to a prima facie conclusion that it is a case of bogus billing and therefore, in order to protect the interest of the Revenue, it was pointed out that the bank accounts of the petitioners are required to be provisionally attached. Learned Assistant Government Pleader has also relied upon the following averments made in the affidavit in reply filed on behalf of respondent no.2 :

“8. In this regard the attention of this Hon'ble Court is drawn to the provisions of Section 83 of the Goods and Services Tax Act, 2017 wherein during the pendency of any proceedings in the interest of Government Revenue the respondent authorities are empowered to attach the bank account of the petitioner. It is pertinent to note here that a search proceedings under Section 67 of the Act came to be initiated by the respondent authorities at the residential premises of the petitioner and in this regard a statement of the petitioner came to be recorded under Section 67(2) of the Act. If the said statement is perused, it would be clear that the petitioner has stated that the bank accounts that are being attached by the respondent authorities are not belonging to the petitioner and the petitioner has no interest whatsoever in the operation or maintenance of the said bank accounts. A copy of the statement dated 27.08.2019 is annexed hereto and marked as **Annexure-R3.**

9. In this regard as the respondent authorities realized that the petitioner is involved in issuing of doubtful and fictitious E-way bills, summons under Section 70(1) of the Act also came to be issued upon the petitioner on 27.08.2019. A copy of the said summons is annexed hereto

and marked as **Annexure-R4.**

10. In light of above facts and circumstances, it is clear that the petitioner is involved in billing transactions without physical movement of goods whatsoever and therefore, in interest of government revenue as there was a reason to believe, the respondent authorities were constrained to exercise powers as conferred under Section 83 of the Act for attaching the bank accounts of the petitioner.”

5.3) Relying upon the aforesaid averments in the affidavit in reply, learned Assistant Government Pleader submitted that it is apparent that the petitioners are involved in issuance of doubtful and fictitious E-Way bills and bogus billing transactions without physical movement of goods whatsoever and therefore, in the interest of Revenue, the bank accounts of the petitioners were required to be attached and accordingly, the respondent authorities have passed the impugned orders of provisional attachment of the six bank accounts of the petitioners.

6. Having heard the learned advocates for the respective parties and having considered the materials on record, prima facie, it appears that the petitioners have issued very large number of E-Way bills within a short period of time between their associate concern without movement of goods like cement, iron, tiles, brass etc. From the report, submitted to the Enforcement department of the respondent authorities, it is also revealed that the petitioners were involved in carrying out the transactions on paper without actual physical movement of goods. It is also pertinent to note that petitioner no.2 has shown total

ignorance with regard to the transactions which were reported to be fictitious, more particularly, when the petitioner no.2 is the owner of the petitioner no.1 firm having GST No. 24BTYPC8659P1ZJ.

7. With regard to the contention raised on behalf of the petitioners for exercise of powers under section 83 of the GGST Act for provisional attachment by the respondent authorities are concerned, this Court in case of **Valerius Industries** (supra) has given guidelines for invoking the powers under section 83 of the GGST Act which reads as under :

“52 Our final conclusions may be summarized as under:

[1] The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information and also should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far fetching, which would warrant the formation of the belief.

[2] The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.

[3] The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be

raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.

[4] The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his / her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.

[5] The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.

[6] The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.

[7] The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things: (i) whether it is a revenue neutral situation (ii) the statement of "output liability or input credit". Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment."

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8. In view of the aforesaid guidelines and in view of the facts emerging from the record, prima facie, there is reasonable apprehension that the petitioners may default in the ultimate collection of the demand that is likely to be raised on completion of the assessment. It appears that prima facie there is sufficient material on record to justify the

satisfaction in view of denial of the petitioner no. 2 with regard to the transactions carried out by the petitioner no.1 which is a proprietary concern of petitioner no.2. It also emerges from the materials on record that this is a fit case to invoke the provisions of section 83 of the GGST Act as apparently the petitioners seem to have been indulging in bogus billing causing loss to the Revenue and as such it cannot be said that passing of the impugned order under section 83 of the GGST Act is for recovery of dues but it is only for the purpose of protecting the Government revenue as the petitioner has failed to produce on record to show as to the capacity to pay the tax dues which may be levied upon the petitioners on completion of the assessment proceedings. It is also not in dispute that as per the returns filed by the petitioner no.1, there is an outward supply of Rs.10,68,24,458/- and generation of E-Way bill amounting to Rs.8,44,26,683/- of which the petitioner no.2 has no knowledge. Petitioner no.2 has also replied to question no.17 in his statement that he is not aware about e-mail ID used for the purpose of obtaining GST number. Petitioner no.2 has raised his hands in ignorance with regard to the benefits received by him out of the transactions carried out in the account of petitioner no.1. Petitioner no.2 has also stated that the entire transactions were carried out by one Sandipbhai Maganbhai Chaniyara and petitioner no.2 was not aware about such transactions. In such circumstances, it cannot be said that the respondent authorities have no reason to form an opinion as required by section 83 of the GGST Act for

passing the impugned order of provisional attachment.

9. Section 83 of the GGST Act reads as under :

“83 Provisional attachment to protect revenue in certain cases :

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property including bank account belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).”

10. On bare perusal of the aforesaid provision, it is clear that once an opinion is formed by the competent authority as stipulated in section 83 that there is a reasonable apprehension that the petitioners may default in ultimate collection of demand that is likely to be raised on completion of the assessment, then it was incumbent upon the respondent authorities to exercise powers under section 83 of the GGST Act.

11. With regard to reliance placed by the petitioners on the decision in case of **Kaish Impex Private Limited** (supra), it is true that the Courts have repeatedly emphasized that such power of provisional attachment is not to be routinely exercised under the pretext to safeguard the Government revenue and it is not an omnibus power. However, in the

facts of the case it has prima facie emerged from the material on the record that the petitioners were involved in bogus billing to defraud the Revenue by generating E-Way bills without physical movement of the goods. Therefore, the power exercised by the respondent authorities cannot be said to be without jurisdiction.

12. With regard to the reliance placed on the decision of this Court in case of **Pranit Hem Desai** (supra), the same would not come to help the petitioners in view of gross facts of the case of the petitioners as the respondent authorities have opined that there is a reasonable apprehension that the petitioners may default in the ultimate collection of demand that is likely to be raised on completion of the assessment, more particularly, in absence of any material on the record disclosing the assets of the petitioners in form of movable or immovable properties so as to show that the petitioners even otherwise are capable of payment of the demand that is likely to be raised on completion of the assessment. As prima facie it appears from the record that the petitioners were involved in the activity of bogus billing and generation of E-Way bill without physical movement of the goods, it cannot be said that the impugned orders passed for provisional attachment are used as tool to harass the petitioners or it would have irreversible detrimental effect on the business of the petitioners. In the facts of the case, prima facie it appears that the petitioners have misused the provisions of the GGST Act by generating E-Way bills so as to claim

input tax credit by indulging in bogus billing without physical movement of the goods from remote villages in Jamnagar district.

13. In view of the foregoing reasons no interference is required to be made in exercise of powers under section 83 of the GGST Act by the respondent authorities while exercising extraordinary powers under Articles 226 and 227 of the Constitution of India.

14. The petition therefore, being devoid of any merit, is summarily dismissed. Notice is discharged with no order as to costs.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR

