

**HIGH COURT OF GUJARAT (D.B.)**

**BIRLA VXL LTD  
V/S  
HONBLE MR JUSTICE K RAMAMOO RTHY (RETD)**

**Date of Decision:** 12 August 2008

**Citation:** 2008 LawSuit(Guj) 1798

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**Hon'ble Judges:** [Bhagwati Prasad](#), [S R Brahmbhatt](#)

**Case Type:** Letters Patent Appeal; Special Civil Application

**Case No:** 730 of 2005; 9710 of 2004

**Final Decision:** Appeal disposed

**Advocates:** [K S Nanavati](#), [Abhishek Mehta](#), [Anshu Bhanot](#), [Trivedi & Gupta](#), [S B Vakil](#),  
[Zubin F Bharda](#)

**Reference Cases:**

[Cases Referred in \(+\): 6](#)

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**Judgement Text:-**

Bhagwati Prasad, J

[1] Heard learned counsel for the parties.

[2] Learned counsel for the appellant urges that this Letters Patent Appeal may be disposed of as having not been pressed and liberty be reserved to the appellant to urge factual as well as legal submissions before the appropriate forum permissible under law.

**[3]** To this submission, learned counsel for the respondent raised objection. His objections are interalia in the following terms :

(i) That there is no occasion for passing the observations as prayed for.

(ii) There is no jurisdiction with the High Court which invest it with plenary jurisdiction or equity jurisdiction or advisory jurisdiction or inherent jurisdiction when the petition is held not maintainable.

(iii) If there is no petition pending before the High Court and same has been withdrawn, such observations could not be made.

**[4]** Learned counsel for the respondent has submitted that such observations, which are sought to be made by the Court in a proceedings which is sought to be not pretend so, are not innocuous because, they will have an effect for prejudging the jurisdiction of Arbitrator in Arbitration proceedings.

**[5]** Learned counsel for the respondent relied on following judgments :

(1972) 3 SCC 234, in case of SHEO NATH SINGH VS. APPELLATE ASSISTANT COMMISSIONER OF INCOME TAX, CALCUTTA,

(2004) 12 SCC 73, in case of ASHOK KUMAR JAIN VS. NEETU KATHORIA AND OTHERS,

(2002) 1 SCC 475 in case of GAGANDEEP PRATISHTHAN PVT. LTD. AND OTHERS VS. MECHANO AND ANOTHER,

(2004) 6 SCC 186 in case of COLLECTOR OF CENTRAL EXCISE, CALCUTTA VS. ALNOORI TOBACCO PRODUCTS AND ANOTHER,

(2003) 7 SCC 410 in case of NATIONAL HIGHWAYS AUTHORITY OF INDIA VS. GANGA ENTERPRISES AND ANOTHER.

**[6]** Learned counsel for the respondent has also placed reliance in case of SBP & CO. VS. PATEL ENGINEERING LTD. AND ANOTHER, reported in (2005) 8 SCC 618 in support of his submission with regard to maintainability of the petition.

**[7]** The ratio laid down by the Apex Court in the aforesaid judgments is absolutely clear but they do not lay down any absolute proposition of law which is being canvassed opposing the request of learned counsel for the appellant for reserving liberty.

**[8]** In the aforesaid circumstances, this Court proposes that in case learned counsel for the appellant does not press the Letters Patent Appeal, he may make submissions, which are available in law and legally permissible, before the appropriate forum. To be decided in accordance with law.

**[9]** In view of the aforesaid, the Letters Patent Appeal stands disposed of as not pressed. Liberty is granted to the parties to make their submissions as permissible in law before the appropriate forum and the authority is directed to decide the same in accordance with law.

