IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 435 of 2022
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In
R/SECOND APPEAL NO. 435 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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AKIL VALIBHAI PIPLODWALA
Versus
CENTRAL GOVERNMENT

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Appearance:
MR IH SYED M R MOLAVI(3362) for the Appellant(s) No. 1
MR DEVANG VYAS for the Respondent(s)

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 02/08/2022

ORAL JUDGMENT

1. This Appeal under Section 100 of the Code of Civil Procedure, 1908 is directed against the judgment and decree dated 12.07.2022 passed by the learned Principal District Judge, Panchmahals at Godhra in Regular Civil Appeal No.20 of 2012 (In short “the impugned order”). By said impugned order, learned District Judge has quashed and set aside the judgment and decree

dated 01.01.1999 passed in Regular Civil Suit No.22 of 1992 passed by the learned 3rd Civil Judge (SD), Panchmahals at Godhra.

2. The facts which emerges on record as pleaded by the appellant herein are briefly summarized as under:

2.1 It is the case of the appellant-original plaintiff, that his father namely Valibhai Asgarali and his mother namely Rubab w/o. Valibhai were born in India and therefore, they were citizens of India. The appellant claims to have been born in India at Civil Hospital, Godhra on 03.08.1962 and has taken primary education at Safaiya Madress, Godhra and thereafter, at the Iqbal Union High School, Godhra.

2.2 The appellant claims to have left India around 1976 and had settled in Pakistan and in the year 1983, had returned back to India on temporary residential permit. Thereafter, the appellant got married on 02.03.1984 with one Sakina Kurbanhusain Dalal, who is an Indian citizen and have three children out of this legal wedlock, who were born between the year 1985 to 1991. He therefore, claimed that his wife and children are nationals and citizens of India. The appellant claims to have been returned back

to India again in October, 1991 by obtaining requisite permission and thereafter, settled in India. He therefore claims to be residing in India since last more than 40 years.

2.3 Under an apprehension that the respondent Authorities shall deport the appellant out of India, the cause of action arose for the appellant to file the Civil Suit being Regular Civil Suit No.22 of 1992 before the Court of learned Civil Judge, Panchmahals at Godhra. In the aforesaid Civil Suit, the appellant – original plaintiff after pleading the aforesaid facts, had contended that by virtue of Section 5(1)(c) of the Indian Citizenship Act, he is entitled to stay back in India and therefore, the defendants have no right to deport him from India. He further contended that the respondent Authorities may be restrained from deporting the plaintiff till the decision is taken by the Central Government under Sub-section 2 of Section 9 of the Indian Citizenship Act. He had alternatively prayed for direction to confer his Indian citizenship in terms of Section 5(1)(c) of the Indian Citizenship Act that he has married to an Indian citizen.

3. The learned trial Court had framed issues vide Exhibit 121, which are reproduced as under:

1. *Whether the plaintiff is an India Citizen?*

2. *Whether the plaintiff proves that defendant can not deport him from India without taking decision U/s.9(2) of the Indian Citizenship Act?*

3. *Whether the plaintiff proves that he is entitled to live in India as he is married to a lady who is having the Indian Citizenship, as per Section 5(!) of the Indian Citizenship Act?*

4. *Whether the plaintiff is entitled to get the relief as prayed by him in para 7 of the plaint?*

5. *What order and decree?*

4. After considering the evidence, which has come on record as well as provisions of the Indian Citizenship Act, the learned trial Court has partly decreed the Suit in favor of the plaintiff whereby the learned trial Court was pleased to record that so far as issue No.1 is concerned, the same is not required to be discussed, however, on issue No.2, the learned trial Court found that Civil Court have no right to decide the aspect of conferring citizenship in terms of provisions of the Indian Citizenship Act. But at the same time, no person can be deprived of his life or personal liberty except in terms of procedure established by law. The learned trial Court therefore, directed the respondent Authorities to not to deport the appellant – original plaintiff till the decision is taken by the Central Government under Sub-section 2 of Section 9 of the Act. Thus, vide judgment and decree dated 01.01.1999, learned

3rd Civil Judge (S.D.), Panchmahal at Godhra was pleased to partly decreed the Suit in favour of the appellant – original plaintiff.

5. The Union of India – respondents herein being aggrieved with the judgment and decree dated 01.01.1999 passed by the learned trial Judge, Godhra, in Regular Civil Suit No.22 of 1992 belatedly preferred an Appeal under Section 96 of the Code of Civil Procedure being Regular Civil Appeal No.20 of 2002 before the Court of learned Principal District Judge, Panchmahals at Godhra. The learned District Judge was pleased to frame the following points for determination which read as under:

1. *Whether ld. Trial Court was right in holding that plaintiff was entitled to live in Union of India till and until decision under Section 9(2) of the Citizenship Act is arrived by the Central Government?*

2. *Whether ld. Trial Court was right in holding that plaintiff was entitled to live in Union of India till and until decision under Section 9(2) of the Citizenship Act is arrived by Central Government?*

3. *Whether ld. Trial Court had jurisdiction under Section 9 of C.P.C. to decide the issue that in which circumstances, deportation can be made?*

4. *Whether ld. Trial Court has erred in granting relief other than the claimed in the plaint?*

5. *Whether ld. Trial Court erred in decreeing the suit in favour of plaintiff?*

6. *What order?"*

6. The learned District Judge upon considering the submissions made by the learned counter part appearing for the respective parties as well as upon appreciation of the record and proceedings of the learned trial Court, held in favour of the appellant on two issues and thereby quashed and set aside the judgment and decree dated 01.09.1999 passed by the learned trial Court, Godhra, vide impugned order.

7. Heard Mr. I.H. Syed, learned senior counsel appearing with Mr. M.R. Molavi, learned advocate on record for the appellant and Mr. Devang Vyas, learned Additional Solicitor General of India appearing for the respondent Authorities on advance copy.

8. Mr. Syed has submitted that the learned Appellate Court has failed to appreciate the evidence which has come on record i.e. Leaving Certificate (Exhibit 130), Birth Certificate (Exhibit 135) and Marriage Certificate (Exhibit 136). He further submitted that the learned Appellate Court failed to appreciate the fact that the appellant is born and brought up in India and has also done his primary education in India. Said fact is supported by the evidence on record. Thus, the learned trial Court ought to have considered him as National and Citizen of India. He further submitted that the

respondent Authorities cannot deport the appellant from India without taking decision under Sub-Section 2 of Section 9 of the Indian Citizenship Act, 1995. He referred to and relied upon the issues framed by the learned trial Court and the reasons assigned while deciding such issues. He submitted that the learned trial Court after considering the legal position has specifically recorded the findings that no material has been placed on record by the respondent to show that the plaintiff had voluntarily acquired citizenship of another country. He further submitted that the learned trial Court had rightly held that the documents relied upon as evidence by the respondent Authorities cannot be accepted as evidence to establish the fact that the appellant had voluntarily acquired the citizenship of another country. In absence of any document to suggest about the decision being taken by the respondent Authorities under Sub-Section 2 of Section 9 of Act, the learned trial Court had passed order directing the respondent Authorities to not to deport the plaintiff – appellant herein till the decision under Sub-Section 2 of Section 9 of the Act. He further submitted that the judgment and decree was passed by the learned trial Court on 01.01.1999 whereas the Appeal came to be filed belatedly by the respondent Authorities under Section 96 of the Code of Civil Procedure, almost after a period of 4 years i.e. in

the year 2002. He further submitted that even during the aforesaid period, the respondent Authorities have failed to comply with the directions issued by the learned trial Court as regards decision to be taken under Sub-Section 2 of Section 9 of the Act. By drawing attention of this Court to the point of determination framed by the learned District Judge, Mr. Syed submitted that learned District Court transgressed its jurisdiction vested in it without assigning any reasoning to the findings arrived at by the learned trial Court and thereby upsetting the findings of the learned trial Court. He further submitted that learned Appellate Court while deciding the Appeal under Section 96 of the Code of Civil Procedure has taken contrary view to the conclusion reached by the learned trial Court, which otherwise was based on the evaluation of the evidence which has come on record. He further submitted that the learned trial Court had committed grave error in not considering the provisions, more particularly Sub-Section 2 of Section 9 of the Indian Citizenship Act by holding that the learned trial Court could not have taken the decision under Sub-Section 2 of Section 9 of the Act. At this stage, he again referred to and relied upon the judgment and decree passed by the learned trial Court and submitted that the order restraining the respondent Authorities from not proceeding by taking action against the appellant till the

decision is taken under Sub-Section 2 of Section 9 of the Act in no manner can be termed as decision in exercise of powers conferred under Sub-Section 2 of Section 9 of the Act. He further submitted that the judgment and order passed by the learned trial Court is in the nature of specific relief granted to the citizen protecting his civil rights and at the most can be termed as direction issued to the respondent Authorities to act as per the provisions of law and procedure prescribed thereunder. He further submitted that no prejudice would have been caused to the respondent Authorities if the appellant is protected till the decision is taken by the respondent Authorities under Sub-Section 2 of Section 9 of the Act. Mr. Syed in support of his submission, relied upon the decision of the Court in the case of ***State of Gujarat Vs. Kayamali Hasimbhai Electricwala*** reported in ***2013 1 GLR 861***. He invited attention of this Court to the facts of the case and also referred to the issues framed by the learned trial Court as well as substantial questions of law which were framed by this Court in the appeal preferred by the appellant State of Gujarat therein. He further submitted that almost similar facts and similar questions of law have been raised in the aforesaid case. He therefore, submitted that the appellant herein may be presumed to be an Indian citizen and similar protection may be extended restraining the defendants

from deporting the plaintiff – appellant till the decision is taken by the Central Government under Sub-Section 2 of Section 9 of the Act in consonance with law declared by the Supreme Court in the case of ***Bhagvati Prasad Dixit Vs. Rajeev Gandhi*** reported in ***1996 SCC 78***. He, therefore, prayed to admit the present Appeal and to extend the protection by restraining the defendants from deporting the appellant till the decision is taken by the Central Government under Sub-Section 2 of Section 9 of the Act.

9. On the other hand, Mr. Devang Vyas, learned ASG appearing with Mr. Siddharth Dave, learned counsel for the respondent – Central Government has vehemently opposed the admission and grant of any relief in the present Second Appeal. At the outset, Mr. Vyas has invited the attention of this Court to the order dated 18.07.2022 passed by the Coordinate Bench of this Court in Special Civil Application 13566 of 2022. He invited attention of this Court to the relief sought for in the aforesaid petition and submitted that after the impugned judgment and order dated 12.07.2022 passed by the learned District Judge, Panchmahals at Godhra, the competent Authority has issued Deportation Order No.LIP/PAK /LEAVEINDIA/2679/22 dated 13.07.2022 passed by the Superintendent of Police and FRO,

Panchmahals at Godhra, in exercise of powers conferred by Clause 2 of Sub-section 2 of Section 3 of the Foreigners Act,1946 read with Notification issued by the Ministry of Home Affairs, Union of India. He invited attention of this Court to the prayer (B) in the aforesaid petition, wherein present appellant, who is petitioner has prayed for direction to permit him to stay in India till requisite formalities in respect of his citizenship are concluded according to law. He, therefore, submitted that appellant has prayed for grant of relief, which was otherwise refused by the District Court by passing the impugned judgment and order. He further invited attention to the order dated 22.07.2022 passed by the Coordinate bench in Habeas Corpus Petition being Special Criminal Application No.7501 of 2022 which came to be withdrawn by the appellant with a view to avail appropriate remedy. By referring to the aforesaid orders passed by the Coordinate Bench in collateral proceedings, Mr. Vyas strenuously submitted that the present appellant is guilty of suppression of material facts. He submitted that the appellant at the outset should have drawn attention of this Court to the aforesaid orders passed by the Coordinate Bench in collateral proceedings. He further submitted that the Coordinate Bench having not extended the protection in substantial petition having wider jurisdiction under Article 226 of the Constitution of India, this

Court may not exercise its discretion by entertaining present Second Appeal or grant of any interim protection, more particularly, when no substantial questions of law have been raised in present Second Appeal.

Mr. Vyas has further submitted that the appellant herein is a habitual of making bald assertion. By referring to the impugned judgment and order passed by the learned District Judge, he submitted that no error of fact or error of law has been committed by the learned District Judge, while interfering in First Appeal under Section 96 of the Code of Civil Procedure. He further invited attention of this Court to the assertion made by the appellant and submitted that on one hand, the appellant has claimed to be citizen of India by birth and also claims that parents were also born and have expired in India and therefore, under the shelter of Article 5 and 7 of the Constitution of India, he claims to be an Indian citizen and has prayed for restraint order against deportation. In same breath, the appellant asserts his right to be an Indian citizen on the ground that he is married to Indian citizen and therefore also, in terms of Section 5(1)(c) of the Citizenship Act,1955 read with Article 10 of the Constitution of India, he is entitled to claim Indian citizenship under the Act and thereafter, the plaintiff himself in the

plaint has contended that till the decision is taken under Sub-Section 2 of Section 9 of the Act as regards voluntarily surrendered citizenship of India, the respondent Authorities should be restrained from taking any action. He further submitted that no cogent material which can be read as evidence in the eye of law has been brought on record to establish the claim put forward by the appellant. He further submitted that the documents referred to by the appellant are merely Xerox copy, which cannot be read as evidence though exhibited. On the other hand, the respondent Authorities have placed on record substantial proof to establish the fact that the appellant has been conferred Pakistani citizenship and he has been permitted to travel to India on temporary residential permit. He referred to the documentary evidence produced by the Government from Exhibit 144 to 146 and submitted that the documents coming from the record of the Government have been treated as valid documents in the eye of law in terms of Section 74 of the Indian Evidence Act. He, therefore, submitted that no error of law has been committed by the learned District Judge while giving weightage to the aforesaid documents as compared to the evidence of the appellant which has come on record in the form of Xerox copies. He further submitted that on evaluation of such valid proof of documents

being placed by the Government, the burden of proving the fact that the appellant is not a Pakistani citizen but an Indian citizen has been shifted upon the appellant. The learned District Judge was therefore rightly held that appellant had failed to dislodge such burden. The respondent Authorities have succeeded to establish the fact that the appellant is Pakistani having permanent address at Karachi, Pakistan, which led to reverse the finding of the learned trial Court, which otherwise held the appellant herein to permit him to live in India till and until any decision under Sub-Section 2 of Section 9 of the Citizenship Act arrived at by the Central Government.

10. Mr. Vyas invited attention to various provisions of the Citizenship Act, 1955 and the rules framed thereunder, He submitted that Section 9 pertains to termination of citizenship. He also invited attention to the word '*person'* appearing in the original section before amendment Act, 2004 which is subsequently substituted by word '*the citizen*'. He emphasized section 9 will come into play when the person who is a citizen of India, his/ her citizenship is required to be terminated. He referred to section 40 of the Act, which vest power in the authority to determine acquisition of citizenship of another country, for the purpose of

termination of citizenship as per subsection (2) of Section 9 of the Act. He further submitted that section 40 further directs the authority to abide by the rules of procedure as specified under schedule III of the Rules framed thereunder. He referred to clause (7) under schedule III of the Citizenship Rules, 2009 and submitted that cogent material has come on record to show that the appellant has settled in Pakistan and has returned back to India on temporary permit from Pakistan.

He further submitted that while passing the order dated 18.07.2022 in Special Civil Application No.13566 of 2022, the Coordinate Bench while recording findings as recorded in para 9 has specifically observed that "*it is an admitted fact that the petitioner is not a citizen of India and the petitioner has applied only on Saturday vide his application for claiming citizenship of India*". He further submitted that before the District Court also, the Court upon appreciation of record and proceedings has specifically recorded that the person having failed to establish himself as Indian citizen and the Government having successfully proved the appellant to be foreigner as defined in Foreigners Act, the order under Section 3(2) of the Foreigners Act is bound to follow. He further submitted that Exhibit 145 which is a copy of the passport

submitted by the appellant along with Exhibit 146 which is a Visa application for Pakistani Nationals - General Consulate of India are documents produced before the competent Authority at the stage when the appellant had arrived back in India. He therefore submitted that admittedly, the fact remains that the appellant is not a citizen of India but of another country. In light of the aforesaid fact, Mr. Vyas submitted that there is no question of passing any order under Sub-section 2 of Section 9 of the Act, which otherwise pertains to termination of citizenship.

11. Mr. Vyas strenuously urged to take notice of conduct of the appellant. He again invited attention of this Court to the subsequent developments which had taken place after passing of the impugned judgment and order. He submitted that the impugned judgment and order was passed on 12.07.2022. The competent Authority in absence of any restrained order in force, immediately proceeded for issuance of the order of deportation of the appellant on 14.07.2022. Thereafter, the aforesaid order was challenged by the appellant herein by filing the petition before this Court being Special Civil Application No.13566 of 2022. The said petition was listed for admission, hearing on 18.07.2022. The Coordinate Bench of this Court specifically recorded that

indisputably the writ applicant being a Pakistani citizen has no right to continue within the territory of India and the order dated 14.07.2022 of deportation passed by the respondent Authorities not to be interfere. Additionally, the Court found that the appellant herein had not challenged the impugned judgment and order passed in Regular Civil Appeal No.22 of 2012 and observation made therein have attained finality. He further submitted that subsequently, on the same day, the present appellant moved an application under Sub-section 2 of Section 9 of the Act seeking Indian citizenship on the ground that he is married to an Indian citizen and his children are also born in India. He further submitted that the present Second Appeal ultimately came to be filed on 22.07.2022, which was in fact registered on 30.07.2022.

12. Mr. Vyas further submitted that no substantial questions of law formulated by the appellant needs consideration by this Court in the present Second Appeal. He lastly submitted that the impugned judgment and order passed by the District Court is based on the cogent material which has come on record before the learned trial Court but being ignored, has constrained the learned District Court to intervene at the stage of First Appeal in exercise of powers conferred under Section 96 of the Code of Civil

Procedure. He reiterated that no error of fact or law can be said to have been committed by the learned District Judge while reversing the incorrect findings and reasons not being assigned. He therefore prays not to admit and entertain the present Second Appeal and no interim protection may be extended to the appellant.

13. Mr. Syed, in rejoinder, has strongly objected to the allegations made about suppression of material facts and submitted that the order passed by the authority of deporting the appellant is placed on record and never intended to mislead or suppress any facts. He reiterated that only relief which is seeking is the extension of protection till his application under section 5(1)(c) of the Act is decided by the authority. He therefore prayed for reliefs pending the Second Appeal.

14. Having heard the learned counsels appearing for the respective parties at length, and having perused the impugned judgment and order passed by the learned District Judge as well as the judgment and order passed by the Trial court, this Court under section 100 of the Code of Civil Procedure has limited scope to examine as to whether any substantial questions of law has

been raised in the appeal.

15. Before considering the questions of law whether substantial or not, one of the core facts which requires immediate attention is the recording of the fact by both the Learned District Judge as well as by the learned Coordinate Bench of this court , that the appellant is not an Indian Citizen. The copy of the original plaint of Regular Civil suit no. filed before the Trial Court has been placed on record by the learned counsel for the appellant. On careful examination of the pleadings and the prayers sought, it transpires that on one hand the appellant claims to be Indian citizen by birth, parents being Indian citizens and then on the basis of fact being married to Indian citizen and has thereby prayed for declaration restraining the defendants from deporting him out of India till any decision is taken under subsection (2) of section 9 of the Act and on other hand has alternatively prayed for conferment of citizenship under section 5(1)(c) of the Act. The District Court is considered the last court as fact finding authority. It is a well settled position of law that High Court in second appeal cannot go behind the facts recorded by the District Court unless the court finds that the District court has arrived at such a finding without any evidence on record or has misdirected itself in law while recording such

finding. In the case on hand, the trial court has chosen not to decide Issue no.1 whereby the court was expected to decide as to whether the appellant proves that he is holding Indian citizenship. On other hand, the appellate court has proceeded to record the finding that the appellant is not an Indian citizen but holding nationality of Pakistan. In arriving at such a finding, the appellate court has assigned cogent reasons by referring to EXH. 144 to 146. In the opinion of this Court, the appellate court has not committed error or has misdirected itself by relying upon such documents which are otherwise proved as per provisions of the Evidence Act. In such circumstances, the burden has rightly been shifted upon the appellant to prove that he is not the citizen of Pakistan and having failed to lead any evidence contrary, the appellate court has rightly held so.

16. The Court did find some force in the argument canvassed by the learned counsel for the appellant that the District Court misdirected in finding that the trial court committed gross error in assuming the jurisdiction to decide the question of section 9(2) of the Citizenship Act, and extending protection from deporting. The Court while examining the said submission of the appellant noticed that under section 4 of the Specific Relief Act, the party can always

approach civil court for protection of it's civil right. The Trial court by the judgment and order had as such directed the respondent authorities to act in accordance with law i.e. to decide as regards section 9(2) of the Act. However, in the given facts of the case where the appellant being not found to be an Indian Citizen and having approached by way of an application under section 5(1)(c) of the Act, excludes the jurisdiction of civil court to even look into the infringement of his civil right. At the same time, the Court finds that any order rendering with issue falling under the domain of the Citizenship Act shall in no uncertain terms can be said to be usurpation of jurisdiction of authority under the Citizenship Act. However, the circumstances go against the appellant which indicates the appellant has ceased to be an Indian citizen. The Coordinate Bench has rightly recorded in para -9 that admittedly the petitioner is not an Indian citizen, more particularly having noticed the fact that the appellant herein has not challenged the impugned judgment of the District Judge and now applied under section 5(1)(c) of the Act.

17. The substantial question of law, which further emerges in the present case, is about jurisdiction of the Civil Court after coming into force of the Citizenship Act, 1955. The facts as recorded by

the Court below reflects that the birth of the appellant is in Godhra in the year 1968 is not disputed but as per visa Exhibit 146, he migrated to Pakistan in Year 1976 and remained there upto Year 1983 and after obtaining passport and visa from Pakistan came to India in Year 1984. The second question which is required to be looked into is whether he acquired the citizenship of another country or not, or can be said to have renounced Indian citizenship on issuance of passport of another country. There is no iota of doubt that as per Sub-section (2) of Section 9 of the Citizenship Act, 1955, read with section 40 along with schedule III of the Citizenship Rules, 2009, the said question can exclusively be tried by the Central Government.

17. It would be appropriate to look into relevant provisions of law, more particularly, Article 5 of the Constitution of India, Section 9 of the Citizenship Act, 1955 and Rule 40 of the Citizenship Rules, 2009, are reproduced as under:

"Article 5 of the Constitution of India :

5. Citizenship at the commencement of the Constitution.-- At the commencement of this Constitution every person who has

his domicile in the territory of India and--

(c) who was born in the territory of India: or

(d) either of whose parents was born in the territory of India; or

(e) who has been ordinarily resident in the territory of India for not less than five years immediately preceding such commencement, shall be a citizen of India.

Section 9 of the Citizenship Act. 1955:

9. Termination of citizenship.--

(1) Any citizen of India who by naturalization, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any (citizen of India) has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Rule 40 of the Citizenship Rules. 2009:

40. Authority to determine acquisition of citizenship of another country.-- (1) if any question arises as to whether, when or

how any person had acquired the citizenship of another country, the authority to determine such question shall, for the purpose of , be the Central Government.

(2) The Central Government shall in determining any such question have due regard to the rules of evidence specified in Schedule III."

18. The question of law as to whether the Civil Court has jurisdiction to entertain suit seeking declaration falling within provisions of the Citizenship Act, is concerned is no more res integra. The Hon'ble Supreme Court in the case of ***State of U.P. vs. Shah Mohammad*** reported in ***AIR 1969 SC 1234,*** has held that the questions falling within Section 9(2) of the Citizenship Act, 1955 have to be determined to the extent indicated therein by the Central Government and not by the Courts. Even thereafter, the Hon'ble Supreme Court in the case of ***State of U.P. vs. Mohammad din*** reported in ***AIR 1984 SC 1714,*** by relying upon the earlier decision of Shah Mohammad (supra) has reiterated and held that the Civil Court will have no jurisdiction to decide the issue arising in a suit instituted before the commencement of the Citizenship Act, 1955 as the Central Government alone has been constituted as exclusive forum for the same. The relevant observations reads as under:

> "*7. In Shah Mohammad's case , this Court specifically overruled the decision in Abida Khatoon's case . This Court specifically held that from the amplitude of the language employed in Section 9, the legislative intention has been made clear that all cases which come up for determination where an Indian Citizen has voluntarily acquired the citizenship of a foreign country after the commencement of the Constitution, that is after January 26, 1950 and before the commencement of the Act i.e. December 30th, 1955 have to be dealt with and decided in accordance with the provisions contained in Section 9(2) of the Act. This Court specifically held that Civil Court will have no jurisdiction to decide the issue arising in a suit instituted before the commencement of the Act as the Central Government alone has been constituted the exclusive forum for the same. This legal position is unquestioned and unquestionable. Therefore the decision of the High Court is wholly unsustainable, and both the appeals will have to be allowed.*"

19. The learned District Judge has relied upon the decision of the Hon'ble Supreme Court in the case of ***Bhagwati Prasad Dixit Ghorewala vs. Rajeev Gandhi*** reported in ***AIR 1983 SC 1534***, wherein it is held that "for the purpose of deciding the question arising under Section 9(1) of that Act, the Central Government by virtue of the power conferred on it by Section 9(2) has been given an exclusive power to determine in accordance with the Rules of evidence provided for the purpose whether a person has acquired the citizenship of another country". It has been further held that "section 9 of the Citizenship Act, 1955 is a complete Code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country." Therein it has been further

held that The policy behind Section 9(2) appears to be that the right of citizenship of the person who is admittedly an Indian citizen should not be exposed to attack in all forums in the country, but should be decided by one authority in accordance with the prescribed rules and that every other Court or authority would have to act only on the basis of the decision of the prescribed authority in that behalf and on no other basis."

20. In light of the above settled legal position, it would be apt to look into section 9 of the Code of Civil Procedure, 1908 which deals with jurisdiction of civil courts to try the suits.

> **"Section 9 Courts to try all civil suits unless barred.**
> The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.
> 1[*Explanation I*].--A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
> 2[*Explanation II*].--For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.]
>
> The expression "*their cognizance is either expressly or impliedly barred"* clearly takes away the jurisdiction of the civil court to deal with the issue falling within the exclusive domain of Citizenship Act, 1955, wherein though there is no expressive provision barring civil court jurisdiction but by implied bar in the form of the provisions of Section 9(2) and

> 18(2)(h) of the Citizenship Act, 1955 and the Rule 40 and Schedule III of the Citizenship Rules, 2009, the Central Government alone is constituted as the authority to decide the question of voluntary acquisition of citizenship of a foreign country and consequent determination of the citizenship of India. Thus, the trial court fell in error to assumed jurisdiction to restrain the authority from deporting the appellant. No other Court or authority has the power to decide the question as to whether, when or how an Indian citizen has acquired the citizenship of another country."

21. In view of the above provisions of law as well as law laid down by the Hon'ble Supreme Court that the civil court lacks jurisdiction to entertain and decide the question about citizenship of a person, the decision on the questions formulated in the memo of appeal, becomes irrelevant. I do not find merits in any of the contentions raised by the learned Counsel for the appellants and the same are rejected. Even otherwise on appreciation of the impugned judgment and order passed by the District Court as well as the trial court below, no substantial questions of law arise for consideration by this Court.

22. Consequently, the present Second Appeal fails and is dismissed as not entertained. No order as to costs. Civil application seeking stay is disposed of accordingly.

(NISHA M. THAKORE,J)

Y.N. VYAS