

HIGH COURT OF GUJARAT (D.B.)

BHAGWANBHAI GOVINDBHAI BHARWAD

Versus

STATE OF GUJARAT & 3

Date of Decision: 13 April 2012

Citation: 2012 LawSuit(Guj) 170

Hon'ble Judges: [Ravi R Tripathi](#), [G B Shah](#)

Case Type: Letters Patent Appeal; Miscellaneous Civil Application For Restoration

Case No: 507 of 2012; 215 of 2012

Final Decision: Appeal dismissed

Advocates: [L R Pujari](#), [R C Jani](#)

Ravi R. Tripathi, J.

[1] The present Letters Patent Appeal is filed against the order passed by the learned Single Judge in Misc.Civil Application No.215 of 2012 dated 10.02.2012 as well as order dated 16.01.2012 passed in Special Civil Application No.11400 of 1994. It is prayed in the Letters Patent Appeal that the aforesaid two orders (order dated 10.02.2012 and order dated 16.01.2012) be quashed and set aside and the Special Civil Application be restored on its original file with all attached order and here the same finally in the interest of justice.

[2] Order dated 10.02.2012 is produced at Annexure-A, page Nos.F to I to this appeal memo. So far as order dated 16.01.2012 is concerned, it is reproduced in order dated 10.02.2012 in para-1. Order dated 10.02.2012 is passed in Misc.Civil Application No.215 of 2012 which was filed for restoration and the learned Single Judge, giving background of the matter, quoted order dated 16.01.2012.

[3] Learned Advocate for the appellant herein submitted that order dated 16.01.2012 contains contradictory averments namely the opening sentence is that, None present for the petitioner..... , whereas the second sentence is that, Even as the petition was dismissed for default on an earlier occasion and restored, only an adjournment was sought on behalf of learned counsel Mr.R.C.Jani by learned counsel Mr.Pritesh Parikh..... . The order then proceeds to state that, Even as the matter has been called

out twice during the course of the day and the petition is not even sought to be argued on merits, it is dismissed and Rule is discharged with no order as to costs..... .

[4] This Court is of the opinion that in view of the settled legal position, if the learned Advocate is of the opinion that there is some self-contradictory averment in an order then the remedy lies by way of filing a Speaking to Minutes and /or Review Application so as to point out to the author of the judgment the contradictory statements which can be taken care of and can be appropriately dealt. So far as this Court is concerned, this Court has to read the order as it is and when that order is read as it is, it transpires that it is recorded in clear terms that, 'None present for the petitioner'. This is the position on 16.01.2012. What is stated thereafter is about the situation which prevailed prior to 16.01.2012, because what is stated is, 'Even as the petition was dismissed for default on an earlier occasion and restored.....', is suggestive of the fact that prior to 16.01.2012 also, the petition was dismissed for default and it was restored. The Court has then recorded that, 'only an adjournment was sought on behalf of learned counsel Mr.R.C.Jani by learned counsel Mr.Pritesh Parikh'.

[5] Any ambiguity in the order is required to be got removed by the learned Advocate by approaching the same learned Judge by explaining the situation. In this matter, the Court granted time twice to the learned Advocate to undertake that exercise. The matter first appeared before this Court on 28.03.2012. It was adjourned to 03.04.2012. On 03.04.2012 again, time was granted and the matter was kept today, i.e. 13.04.2012. Today, learned Advocate for the appellant decided to argue the matter as it is. That being so, on perusal of order dated 10.02.2012, the Court finds no reason to interfere with the same.

[6] It is really painful that in a matter of 1994, even in 2012, learned Advocate could not make it convenient to argue the matter by appropriately adjusting his work. As the record suggests, the matter was dismissed on more than one occasion. In order dated 16.01.2012, it is mentioned that, even earlier, the petition was dismissed and was then restored. Then again on 16.01.2012, the petition came to be dismissed, for which restoration application came to be filed which is rejected by the learned Judge. The order passed by the learned Single Judge is self-explanatory and the only thing which could be culled out from that order is that learned Advocate for the appellant-original petitioner was not available before the Court to argue the matter, which was pending before the Court for almost 16 years by that time. If that is so, dismissing the matter by the learned Single Judge cannot be found fault with.

6.1 The learned Single Judge has mentioned in para-2 that from the earlier order, it can be seen that the matter was adjourned from time to time. Earlier, an order was passed on 30.04.2010, dismissing the matter and that was also required to be

done because earlier than that, the matter was adjourned to various dates which is clear from the order quoted by the learned Single Judge. For ready perusal, we quote the same portion of the order:-

This matter was on board time and again. Matter was earlier listed on 09.03.2010, 26.03.2010, 09.04.2010 and finally today. Even today Mr.Jani requests for time to enable him to place on record the inquiry report. S.O. To 30.4.2010.

6.2 On 30.04.2010, as is recorded in the order, learned Advocate was arguing the matter before a Division Bench, therefore conveyed his inability to remain present. In a matter of 1994, if the learned Advocate is not able to make it convenient to appear and argue the matter, this Court is of the opinion that passing of an order of dismissing the matter by the learned Single Judge cannot be found fault with. Therefore, this Court is not able to accept any of the contentions raised by the learned Advocate for the appellant.

[7] In the result, the appeal fails and the same is dismissed. Notice is discharged. No costs.

