

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SECOND APPEAL NO. 244 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

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Approved for Reporting	Yes	No
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STATE OF GUJARAT & ANR.
Versus
SAMANTSINH GOPALSINH RATHOD & ORS.

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Appearance:
MR. CHIRAGKUMAR UPADHYAY, ASST. GOVERNMENT PLEADER for the
Appellant(s) No. 1,2
RULE SERVED for the Respondent(s) No. 1.1,1.2,1.3,1.4,1.5

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 16/09/2026****JUDGMENT**

1. Heard Mr. Chiragkumar Upadhyay, learned AGP for the appellants. Though served, none appeared for the respondents.

2. This Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 is arising out of judgment and decree dated 29.01.2009 passed by Additional District Judge, Sabarkantha and 2nd Fast Track Court, Modasa in Civil Appeal No. 38 of 2005, whereby, it has dismissed the appeal and confirmed judgment and decree dated 26.03.1984 passed by Civil Judge (Senior Division) Court at Himmatnagar in Special Civil

Suit No. 21 of 1981.

3. This Court, vide its order dated 18.10.2010, admitted this Second Appeal on following substantial questions of law: -

“(a) Whether in the facts and circumstances of the case the First Appellate Court committed error in dismissing the Regular Civil Appeal on the ground of limitation?”

“(b) Whether in the facts and circumstances of the case the First Appellate Court committed error in dismissing the appeal on the ground of limitation by not considering the fact that the appeal was already admitted by the High Court and by operation of Gujarat Civil Court Act 2005, it was transferred to the District Court?”

4. Mr. Upadhyay, learned AGP, would submit that Appellate Court has committed serious error in law by dismissing the Regular Civil Appeal No.38 of 2005 on the ground of limitation and such gross error of law may be corrected by this Court by allowing this Second Appeal.

4.1 It is submitted that judgment and decree passed by trial Court was initially challenged before this Court by way of First Appeal No.1706 of 1984 and it was admitted by this Court but before it was finally

adjudicated, due to Section 30(3) of Gujarat Civil Courts Act, 2005 (for short '*the Act, 2005*'), this Court, vide its order dated 17.08.2005, transferred the aforesaid appeal to the District Court concerned.

4.2 It is further submitted that since the appeal filed before this Court was admitted, being a regular First Appeal, its transfer to the District Court concerned would also require to be treated as regular appeal filed in time.

4.3 Mr. Upadhyay, learned AGP would further submit that District Court concerned, though registered the appeal as Civil Appeal No.38 of 2005, to avoid any technicality, a separate application seeking condonation of delay was also preferred by the appellants, but the Appellate Court did not entertain such application only on the ground that it was without any affidavit.

4.4 Lastly, Mr. Upadhyay, learned AGP would submit that considering the entire set of facts and circumstances of the case, the regular First Appeal filed by Appellants ought to have been decided on its own merit rather than on technicalities, i.e., limitation.

5. Having heard Mr. Upadhyay, learned AGP and upon perusal of the impugned judgment and decree passed by Appellate Court, *prima facie*, it

appears that Appellants had challenged the judgment and decree passed by Trial Court before this Court by way of First Appeal No. 1706 of 1984. It appears from the record that said appeal was registered as a regular First Appeal by this Court and before it was finally adjudicated, pursuant to Section 30(3) of the Act, 2005, it was transferred to the concerned District Court. Accordingly, the aforesaid First Appeal was transferred to Appellate Court concerned, and thereby, it was registered as Civil Appeal No.38 of 2005.

6. It is unfathomable that once the First Appeal filed before this Court was registered as a Regular Appeal and even if there was any delay in presenting such appeal before this Court, it must have been condoned by this Court, otherwise it could not have been given regular number, then question of again filing separate delay application by appellants would not arise especially when said appeal transferred to District Court.

7. Having gone through the impugned judgment passed by Appellate Court, it appears that Appellate Court concerned had taken very hyper-technical approach while deciding the Civil Appeal No.38 of 2005. According to my view, there was no delay in filing the said appeal, inasmuch as such appeal was a transferred appeal as per the order passed by this Court in First Appeal No.1706 of 1984 and it was in fact

registered before the Appellate Court by giving new number only, otherwise all purposes such appeal was required to be treated as First Appeal filed before this Court.

7.1 According to me, such appeal could not have been treated as a fresh appeal filed by the appellants against the judgment and decree passed by the Trial Court, but required to be treated as a Regular Civil Appeal registered by this Court, but transferred due to operation of law.

8. Thus, taking the aforesaid facts into account, the observations made by Appellate Court and findings of fact recorded while dismissing the aforesaid appeal is not only perverse, but grossly erroneous and runs contrary to law, thereby it requires to be interfered by this Court in this Second Appeal.

9. In view of foregoing reasons, it can be held that Regular Civil Appeal No.38 of 2005 was not filed beyond period of limitation and the view taken by First Appellate Court while dismissing the appeal that it was barred by limitation, is perverse and grossly erroneous. Accordingly, both the substantial questions of law are answered accordingly.

10. In view of the foregoing conclusion, the present Second Appeal is allowed. Accordingly, the impugned judgment and decree dated

29.01.2009 passed by Additional District Judge, Sabarkantha at Modasa in Civil Appeal No. 38 of 2005 is hereby quashed and set aside. Consequently, the aforesaid appeal is restored back on its original file and the matter is remanded to the Appellate Court to hear and decide afresh the Regular Civil Appeal No. 38 of 2005 on its own merits.

11. Since the original suit proceeding was instituted in the year 1981 and the original first appeal was of the year 1984, the Appellate Court is hereby requested to hear and decide the aforesaid appeal as early as possible after giving an opportunity to all parties concerned. R & P shall be sent back to the Court concerned. Decree shall be drawn accordingly.

Lalji Desai

(MAULIK J.SHELAT,J)