

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
MISC. CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022
In R/FIRST APPEAL NO. 815 of 1985

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PATEL AMBALAL KALIDAS
Versus
PATEL MOTIBHAI KALIDAS

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Appearance:

MR. HEMANG H PARIKH(2628) for the PETITIONER(s) No.
for the RESPONDENT(s) No.

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CORAM: HONOURABLE THE CHIEF JUSTICE MR. JUSTICE
ARAVIND KUMAR
and
HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI

Date : 19/12/2022

IA ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE ARAVIND KUMAR)

[1] The First Appeal, namely, First Appeal No. 815 of 1985 was disposed of by this Court on 25.11.2004 by remanding the matter to the Trial Court for deciding the disputes regarding the properties mentioned in paragraphs 8 and 9 of the consent terms dated 8 / 9th October, 1997 as also the disputes which were raised before the arbitrators which remained undecided concerning the movable and immovable properties along with the dispute about the accounts. A direction was issued that top

priority should be given to the suit since it was filed way back in the year 1977 and to dispose of the suit expeditiously at any rate within the outer limit of 31.12.2005.

[2] On account of aforesaid direction having not been complied, applicant, namely, first respondent in appeal has filed this Misc. Civil Application No.1 of 2022 stating thereunder that he is already 86 years old and would like to see the result of the suit during his lifetime. It is also contended that direction issued by this Court on 25.11.2004 has been flouted by the learned trial Judges with impunity. Having noticed the shocking factor that direction issued by this Court way back on 25.11.2004 has not been complied or adhered to and also in the background of there being no material to show any extension of time having been sought for by the learned trial Judges, we directed the Registrar General to call for explanation from the said court, namely, from all the all Presiding Officers who have presided the Court of Principal Senior Civil Judge, Anand between December, 2004 till date before whom Regular Civil Suit No.182 of 1977 (Old), New No.400 of 2005 is pending *vide* our order dated 16.12.2022.

[3] Pursuant to the same, Registrar General has filed a report dated 18.12.2022 along with explanation received from the respective Judicial Officers which, on perusal, would reveal further shocking facts. During the aforesaid period, in all 16 Judicial Officers have worked in the said Court, out of which, 10 Judicial Officers are still serving, 6 Judicial Officers have retired and 2 Judicial Officers have expired. The Judicial Officers, Ms. P. P. Mokashi, now working as a Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Jagadhia, Bharuch and Mr. Sunil Choudhary, Principal Civil Judge, JMFC, Lakhtar, Surendranagar have submitted their explanation by letter dated 17.12.2022 stating thereunder that they have not dealt with the said suit during their tenure at Anand. However, the fact remains that during the period of Ms. P. P. Mokashi the suit was pending before her Court from 09.09.2009 to 16.12.2009. Likewise, before the same Court which was then presided by Mr. Sunil Choudhary it was pending from 02.07.2015 to 20.12.2015. The explanation offered by these two Officers when perused would indicate that in a most cavalier manner reply has been furnished. Ms. P. P. Mokashi has stated that in the short

period the suit "***might not have been listed***" and "***parties might not have remained present***". Even Mr. Sunil Choudhary has stated in his reply that direction issued by this Court was not to his knowledge. He further goes to the extent of stating that he had no opportunity to see the records of the case. It is needless to point out that it would be incumbent upon every Judicial Officer to look into the records to ascertain as to whether in any particular case there has been any direction / order issued by higher courts or not. It is also equally important that Registry of the concerned Court, after having made an entry at the first instance about such direction issued by the High Court to the Trial Court to dispose of the suit within a time frame, has to continue such entry in the order-sheet / rojkam / record and proceedings of the case till its disposal or such order is modified or varied. If this has not been done, it would indicate the sorry state of affairs in which the matters are being dealt with by the learned trial Judges.

[4] The other Judicial Officers who are still in service and before whom said suit was posted have also offered their explanation. Same is also perused by us. It would indicate that

matter was pending for various periods before the respective Judicial Officers ranging from 99 days to 1035 days. Ms.J.R.Dodiya was then working as the Principal Senior Civil Judge, Anand from 14.05.2018 to 04.10.2018, 13.02.2019 to 09.05.2019 and 13.06.2019 to 22.05.2022 and she states in her reply that direction issued by the High Court might not have come to her knowledge at that time. Hence, we are performed to observe at the cost of repetition that casual manner in which the direction issued by this Court having been dealt by her. To substantiate her defence she has stated on account of bulkiness of the records, she might not have had knowledge.

[5] It is also noticed that when direction has been issued by the this Court and when the Judicial Officer was unable to conclude the proceedings within the time frame, it was incumbent upon the Judicial Officer to seek for extension of time from this Court. Even this exercise seems to have not been undertaken by any of the officers including the respective Principal District Judges. This again is a shocking feature which cannot go unnoticed.

[6] The explanation offered by these officers, namely, the serving officers cannot be accepted and it not only requires to be deprecated and also requires to be stopped. Hence, we call upon said Judicial Officers to file their affidavits-in-reply as to why contempt proceedings should not be initiated against them for not complying with the direction issued by this Court on 25.11.2004.

[7] The judgment of this Court rendered on 25.11.2004 would disclose that appeal filed in the year 1985 was taken up and disposed of by the said order, which was on account of certain subsequent developments, namely, during the pendency of suit, the dispute which is the subject matter of the suit was referred to arbitrators of four and out of them three arbitrators gave their award on 10.09.1982. However, one of the arbitrators namely one appointed by the appellant did not sign the award. In fact there was a consent terms worked out by the parties which was submitted before this Court and in the background of consent terms, appeal came to be disposed of with reference to the properties described in paragraphs 3, 4, 5 and 7 therein. However, the dispute continued with reference to the properties

described in paragraphs 8 and 9 of the consent terms dated 8 / 9th October, 1997 and for this limited purpose, matter came to be remitted back to the trial Court.

[8] The original dispute arose somewhere in 1970s which culminated in filing of the suit i.e. Regular Civil Suit No.182 of 1977 and the appeal filed in 1985 came to be disposed of by order dated 25.11.2004 on consent terms with a direction to the learned trial Judge to dispose of the suit within a time frame which, as already observed hereinabove, has been patently violated, ignored and not implemented. Though proceedings before Trial Court moved at a snail's pace after remand, the matter was listed for arguments on 27.12.2016. The current status of the said suit as per the District Courts Information System (DCIS) which is placed along with the report of the Registrar General would evidence this fact from 27.12.2016 till date the matter has been adjourned for hearing final arguments. The records and proceedings of the suit which has since been secured on perusal would also disclose that without assigning any reason matter has been adjourned many a time. In spite of

there being a direction issued by this Court, the concerned Judicial Officers who handled the matter have ignored the direction so issued by this Court. Hence, before proceeding to pass any orders, we deem it proper to issue show-cause notice to the following 9 Judicial Officers:-

Sr.No.	Name of the Officers	Present Posting
1.	Ms. P. P. Mokashi	Additional Senior Civil Judge & ACJM, Jagadhia, Bharuch.
2.	Mr. D. J. Parmar	Metropolitan Magistrate, Ahmedabad.
3.	Mr. B. B. Jadav	11 th Additional District Judge, Rajkot.
4.	Mr. Sunil Choudhary	Principal Civil Judge & JMFC, Lakhtar, Surendranagar.
5.	Mr. P. J. Chaudhary	Principal Senior Civil Judge, Dhoraji, Rajkot.
6.	Ms. M. S. Soni	2 nd Additional District Judge, Rajula, Amreli.
7.	Ms. J. R. Dodiya	Principal Senior Civil Judge, Vadodara.
8.	Mr. S. A. Pathan	Additional Senior Civil Judge, Gandevi, Navsari.
9.	Mr. N. G. Parmar	Principla Senior Civil Judge, Ananad

[9] This Court calls upon the aforesaid nine (9) Judicial Officers to show-cause as to why contempt proceedings should not be initiated against them for willfully disobeying the order and direction passed / issued by this Court on 25.11.2004 in First Appeal No.815/1985. The reply affidavit, if any, shall be filed on or before 20.01.2023 for which limited purpose this matter be listed by the Registry on the said date. If the aforesaid officers intend to see or peruse the record and proceedings of Regular Civil Suit No.400/2005 (Old Special Civil Suit No.182/1977) they would be at liberty to examine them in the presence of Chief Administrator or **Sheristadar** of said Court.

[10] To ensure such incidents do not recur in future, we hereby direct the Registrar General to issue a circular specifying thereunder that henceforth in all such matters where a direction has been issued by the High Court for disposing of the matter in a time frame or where there has been stay of further proceedings before the High Court, the same shall not only be entered in the record and proceedings of the Trial Court but

such entry shall continue to be reflected in the record and proceedings on every date of hearing till the matter is disposed of or till the directions so issued is modified or varied. It should also be made further clear in the said circular that at least a fortnight before the expiration of the time frame fixed by the High Court, a request letter through the concerned presiding officer of the Court be transmitted to the Court for being placed before the appropriate Bench and such request should be routed through concerned Principal District Judge so as to avoid any delay being caused.

[11] Now coming back to the prayer sought for in this application which has been filed, namely, Misc. Civil Application No.1 of 2022, we hereby issue **Notice** to all the respondents of this application who have been contesting before the Trial Court and who have not been placed *ex parte* before the Trial Court. The said notice shall be issued through Registered Post Acknowledgment Due and appellant shall furnish the requisite number of copies, postal covers, stamps, acknowledgment etc. to enable the Registry to dispatch such notices to the concerned

respondents. In the meanwhile, we also permit the appellant to take out notice on the learned advocates appearing before the Trial Court notifying the hearing date as **20.01.2023**. In the meanwhile, we make it expressly clear that pendency of this application would not come in the way of Trial Court hearing and disposing of the suit in due compliance of the order / direction issued by this Court on 25.11.2004 in First Appeal No.815/1985. It is needless to state that learned advocates appearing before the learned Trial Court shall cooperate with the present presiding officer and the learned trial Judge would be at liberty to regulate the proceedings if required by imposing exemplary costs on such of those advocates who seek for adjournment without any justifiable cause to the satisfaction of the Trial Court.

[12] Registry is directed to forward this order by mail forthwith to the Principal District Judge, Anand and to the jurisdictional court. The report of the Registrar General and the record and proceedings (photocopies) secured from the jurisdictional court is ordered to be kept in a sealed cover and same be kept in the

custody of Registrar Judicial and shall be placed before this Court as and when matter is listed.

(ARAVIND KUMAR, C.J.)

(ASHUTOSH J. SHASTRI, J.)

DHARMENDRA KUMAR

