

Gujarat High Court

Ravjibhai vs Dhirubhai on 3 March, 2011

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Gujarat High Court Case Information System

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CA/14795/2010      3/ 3      ORDER

IN  
THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL  
APPLICATION - FOR CONDONATION OF DELAY No. 14795 of 2010

In

SECOND  
APPEAL (STAMP NUMBER) No. 159 of 2010

With

SECOND  
APPEAL (STAMP NUMBER) No. 159 of 2010

With

CIVIL  
APPLICATION (STAMP NUMBER) No. 8751 of 2010

In  
SECOND APPEAL (STAMP NUMBER) No. 159 of 2010

=====

RAVJIBHAI  
KHIMABHAI SAVALIYA THROUGH POA KESHUBHAI RAVJIBHA - Petitioner(s)

Versus

DHIRUBHAI  
HARIBHAI SAVALIYA & 8 - Respondent(s)

=====  
Appearance :  
MR  
MB PARIKH for  
Petitioner(s) : 1,  
None for Respondent(s) : 1 -  
9.  
=====

CORAM

:

HONOURABLE

MR.JUSTICE RAJESH H.SHUKLA

Date  
: 09/12/2010

ORAL  
ORDER

1. Rule.

2. Heard learned counsel Mr. Parikh for the appellant. The Second Appeal has been sought to be preferred posing the substantial questions of law as follow:

(1) Whether the judgment, order and decree passed by the learned Appellate Court quashing and setting aside the judgment and order dated 31.08.2007 passed by the learned Principal Senior Civil Judge, Amreli in Special Civil Suit No. 1 of 2002 and remanding the matter back by framing an issue as to whether defendant has proved the will dated 27.12.1971 and to what effect is correct?

(2) Whether the judgment and order of remand is sustainable in view of the plaintiffs have miserably failed to prove their case?

(3) Whether the judgment and order of remand the case to the trial Court is bad in law in view of the facts that the suit filed by the plaintiffs was barred by law of limitation.

(4) Whether judgment and order passed by the learned Appellate Court for remand the matter and directing the defendant to prove the will is contrary to the law itself?

3. Thus, the Second Appeal has been preferred challenging the impugned order passed by the lower Appellate Court remanding the matter back to the trial Court for deciding afresh with regard to a particular issue regarding the will. There is a delay in filing the Second Appeal and therefore the aforesaid Civil Application No. 14795 of 2010 has been preferred for condonation of delay of 383 days on the grounds set out in this application.

4. Having heard the learned counsel, the explanations offered do not justify the condonation of delay. Though, normally, the delay is condoned with liberal approach. However, considering the facts and circumstances with regard to the grounds mentioned for justifying the delay cannot be said to be sufficient and as there is no sufficient cause made out for condonation of delay, present Civil Application deserves to be rejected. Hence, the application stands rejected.

5. In view of the order passed in Civil Application for condonation of delay refusing to condone the delay, Second Appeal Stamp No.159 of 2010 as well as Civil Application Stamp No. 8751 of 2010 for stay do not survive and shall stand dismissed accordingly. Rule discharged.

(RAJESH H. SHUKLA, J.) jani Top