

**(2010) 05 GUJ CK 0032**  
**In the Gujarat High Court**

**Case No :** First Appeal No. 5471 of 2007 and Civil Application No. 5353 of 2010

Ashok Manharlal Shah

APPELLANT

Vs

Ajay Manharlal Shah

RESPONDENT

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**Date of Decision :** 04-05-2010

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 24

**Citation :** (2010) 05 GUJ CK 0032

**Hon'ble Judges :** K.M. Thaker, J

**Bench :** Single Bench

**Advocate :** Jigar P. Raval, for the Appellant; Party-in-Person, for the Respondent

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**Judgement**

K.M. Thaker, J.—An application dated 18.01.2010 has been filed by the opponent in the captioned First Appeal 5471/2007, who appears in the First Appeal as "party-in-person". Hence, for the sake of convenience the opponent of First Appeal No. 5471/2007 is, hereafter, referred to as "the applicant". Heard the appellant and Mr. Bhatt for the opponent. Rule Mr. Patel for the opponent has waived Notice of Rule. The said application reads thus:

Pursuant to the Judgment dated 04.11.2009 of the Hon''ble High Court, Bombay granting Letters of Administration in my favour having effect throughout the Union of India, for the last Will dated 25.04.1986 executed by deceased Lalitaben, hence the said First Appeal has to be dismissed with Costs and with Directions for Criminal Proceedings to be initiated against the Appellant (Orig. Plaintiff) for using a Forged and Concocted document dt.15.02.1993 to initiate false Court Proceedings to grab the properties left by the deceased and also for misleading all the Hon''ble Courts from the year 1993 till to date.

Copy of the said Judgment dated 04.11.2009 of the Hon''ble High Court, Bombay is on the record of this Hon''ble High Court. I, hereby produce and keep on record of this Hon''ble High Court the Letters of Administration dated 14.01.2010 granted in my favour.

In view of the above facts the said first Appeal has to be dismissed with immediate effect.

(emphasis supplied)

2. It needs to be noted that the above referred application is in form of only written request and it is not made in prescribed format of a Civil Application. It also does not contain appropriate and necessary averments. The application also does not contain even prayer clause and does not contain former prayer/s.

2.1 However, considering the fact that the applicant is appearing as party-in-person and would not know all requirements, this Court has, for the benefit of the applicant and despite opponent's objection, decided to waive all technicalities and treat the said request dated 18.01.2010 as a Civil Application. Though the application filed by the applicant is not in the format of application and cannot be said to be fulfilling all technicalities as normally known to and required under the Rules of the Court, the technicalities of proper format of the application, appropriate prayer clause, proper incorporation of the relief etc. may not be given much weightage or importance and the purpose of the application would be taken into account.

2.2 The office shall register the said request as a Civil Application in First Appeal No. 5471/2007.

3. The said application has been tendered on the strength of the judgment dated 04.11.2009 passed by the High Court of Bombay, in Testamentary Suit No. 66/1993 in Testamentary Suit No. 495/1993. In the said proceedings, the Hon''ble High Court of Bombay framed below mentioned five issues:

(i) Whether the Petitioner/Plaintiff proves that the Deceased has duly executed at Ahmedabad her Will dated 25th April, 1986?

(ii) Whether the Caveator/Defendant proves that the Deceased has duly executed her last Will dated 15th February, 1993?

(iii) If answer to issue No. 2 is in the affirmative, whether the Will dated 25th April, 1986 is revoked by the Will dated 15th February, 1993?

(iv) Whether the Caveator/Defendant proves that on 22nd February, 1993 a complete settlement was arrived at between the Petitioner/Plaintiff and Caveator/Defendant regarding the division of properties left by the Deceased?

(v) What order and decree?

3.1. So far as the first issue is concerned, the Hon''ble Court replied in the affirmative and inter-alia, recorded below mentioned finding and conclusion:

The Plaintiff/Petitioner has through the evidence of P.W.2 proved/established beyond any reasonable doubt that the deceased has duly executed at Ahmedabad her Will dated 25th April, 1986. I have found all the allegations of suspicious circumstances raised by the Defendant to be untrue and baseless.

Under the circumstances I answer Issue No. 1 in the Affirmative.

3.2 For the purpose on hand the observations and findings with regard to Issue No. 2 is relevant. So far as the Issue No. 2 is concerned, the Hon''ble High Court, in para-35 of the judgment observed as follows:

35. So far as Issue No. 2 is concerned, the execution of the Will dated 15th February, 1993 was the subject matter in the Ahmedabad Suit filed by the Defendant herein. Admittedly the said Suit is dismissed and an Appeal preferred therefrom is admitted by the Gujarat High Court, and the same is pending. The Caveator/Defendant herein has neither examined himself nor any other witness in the present proceedings. I therefore answer Issue No. 2 in the Negative. This of court will not in any way prejudice the Appeal filed by the Defendant before the Gujarat High Court.

3.3 With regard to Issue No. 3, the Hon''ble High Court observed that since the answer to the Issue No. 2 is in negative, Issue No. 3 need not be answered. Issue No. 4 also came to be answered in negative by the Hon''ble High Court and with regard to Issue No. 5, the Hon''ble High Court observed as follows:

The suit is allowed/decreed is prayed for in terms of Paragraph 10 of the petition/ complaint which reads thus:

That the Letters of Administration with the Will annexed of the Property and Credits of the deceased may be granted in his favour having effect throughout the Union of India.

The Defendant is directed to pay costs of this Suit to the Plaintiff/Petitioner as incurred by the Plaintiff/Petitioner.

4. In view of the said judgment, the applicant has filed the above mentioned application dated 18.01.2010 and has demanded that the First Appeal No. 5471/2007 should be dismissed without conducting it further on merits. After the application was submitted, the Court passed following order:

Considering submissions made by Party-in-Person for respondent Mr. Ajay Manharlal Shah and his wife Mrs. Shah in such a manner without maintaining decorum of this Court, even addressing this Court not in proper language, therefore, this Court is not able to take up this matter, considering the attitude and behaviour of the respondent husband and his wife which is not proper before this Court. Hence, NOT BEFORE THIS COURT.

4.1 Subsequently, on 26th February, 2010, the Court (Coram: Z.K. Saiyed,J.) passed following order:

1. Heard Mr. Jigar Raval, learned Counsel for the Appellant and Mr. Ajay Manharlal Shah, respondent Party-in-Person.

2. Respondent Party-in-Person has prayed that the matter is required to be heard as early as possible. Hence, the matter is adjourned to 09th March 2010.

3. Registry is directed to show the name of Mr. Ajay Manharlal Shah as Party-in-Person.

4.2 Thereafter, somewhere in March-2010 the First Appeal was placed before this Court and on 19th March, 2010, the Court was passed following order:

1. The present appeal came to be admitted by order dated 20.02.2008. A separate order on Civil Application No. 15623/2007 has been passed on 20.02.2008. Subsequently, the opponent herein tendered application dated 18.01.2010, which reads thus:

....

2. It is, in view of the said Application dated 18.01.2010, tendered by the present opponent that the present appeal has been listed for hearing, more particularly because the opponent herein by virtue of his application dated 18.01.2010, brought on record a copy of the judgment dated 04.11.2009 passed by the High Court of Bombay in Testamentary Suit No. 66/1993 (in Testamentary Suit No. 495/1993) and submitted that in view of the said final judgment by the High Court of Bombay granting letter of administration in his favour, present appeal i.e. First Appeal No. 5471/2007 needs to be and should be disposed of and the order on Civil Application may be vacated. The appeal was listed for hearing today. The appellant has tendered a reply to the opponent's application dated 18.01.2010.

3. Mr. Jigar P. Raval, learned advocate for the appellant, submitted that the appellant herein i.e. the opponent in the Suit before the High Court of Bombay, has preferred an appeal against the said judgment dated 04.11.2009 in Testamentary Suit No. 66/1993. He has also submitted that the said appeal was listed for hearing Yesterday before the Division Bench and it has been adjourned to 30.03.2010.

4. ....

5. ....

6. ....

7. ....

8. Relying upon the observation that the caveator/defendant i.e. present appellant had not examined himself during the proceedings before the High Court of Bombay, the opponent/party-in-person has submitted that now there is nothing left for the appellant to contest and since the appellant failed to examine himself or any other witness, he should be deemed to have accepted the contention of the opponent. He has also relied upon the judgment of the Hon'ble Supreme Court in support of his submissions.

9. Mr. Raval, leaned advocate for the appellant, has also made a reference to the observation made by the High Court of Bombay with regard to the Issue No. 2.

He relied upon the following observation:

...I therefore answer Issue No. 2 in the Negative. This of course will not in any way prejudice the Appeal filed by the Defendant before the Gujarat High Court.

10. In view of the said observation made by the High Court in the judgment dated 04.11.2009, coupled with the fact that the present appellant has filed an appeal, which is scheduled for further hearing before the Division Bench of the High Court of Bombay on 30.03.2010, it appears appropriate that the opponents' application dated 18.01.2010 may be presently differed. S.O. to 05.04.2010.

On 6th April, 2010, the below mentioned order was passed:

In view of and pursuant to the order dated 19th March, 2010, the captioned Appeal was listed for final hearing yesterday i.e. on 5th April, 2010. It was upon considering the request of the opponent (party-in-person) that the appeal may be scheduled at an early date that on 19.3.2010, the matter was adjourned to 5.4.2010, though other older matters are pending on the cause list for final hearing even prior to the captioned appeal.

On 5th April, 2010, 78 matters were listed in the cause list of "Admission Matters" and the subject appeal was listed at Sr. No. 21 in the cause list for final hearing after the matters on the "urgent" and "regular" admission hearing list. However, in view of the old matters which were listed ahead in the cause list, the captioned Appeal could not be taken up.

Since the opponent insisted that the matter may be listed for hearing on the next date, only with a view to accommodating the opponent who comes from out-station, the captioned Appeal was directed to be listed on 6th April, 2010 i.e. today (while other Final Hearing matters had to be adjourned to different dates) with clarification that if time permits, only after completion of hearing of older matters listed ahead in the list, the captioned Appeal may be taken up.

Today, the matter was listed at Sr.No.82 in final hearing cause list.

This Court has the roster of Applications-Petitions u/s 24 of CPC and First Appeal (Admission & Final Hearing) which include First Appeals e.g. Appeals arising from Motor Accident Claims Tribunal cases, Workmen's Compensation Claims Cases, Land Acquisition Reference (in Appeals) Cases, First Appeals under Civil Procedure Code, First Appeals under Special Acts, etc. The matters relating to M.A.C.T. Cases and Workmen's Compensation Cases are given precedence in Final Hearing after the Admission matters' list gets over. However, the Court tried to accommodate the opponent.

There were 39 matters on Admission Board and on the final hearing list at Sr. Nos. 1 to 81 Final Hearing matters relating to Appeals under Workmen Compensation Act were specially listed. As, due to paucity of time, the older appeals listed ahead in the Final Hearing Cause list than the captioned Appeal

could not be completed, there is no option, but to adjourn the Appeal.

Considering the request of the opponent for early date, the Appeal, which came to be admitted by order dated 20th February, 2008 is directed to be listed for hearing on 28th April, 2010, with clarification that on which date, after completion of the hearing of the matters on admission list and the older matters which may be listed by the office ahead in the final hearing cause list than the captioned Appeal, this Appeal may be taken up for final hearing.

5. In view of the persistent demand being made by the applicant on the ground that he appears as party-in-person and comes from Bombay his matters may be heard out-of-turn, the application dated 18.01.2010 and the First Appeal were, only with a view to accommodating the applicant in view of his persistent demand (despite the factual position regarding the daily cause list/roster as recorded in the orders dated 19.03.2010 and 06.04.2010) taken up for hearing out-of-turn on 28th April, 2010 and since the hearing did not get concluded at conclusion of the Court hours, the hearing had to be adjourned to 3rd May, 2010. Again on 03.05.2010 also the matter had to be taken up for hearing out-of-turn and the applicant and Mr. Bhatt learned advocate for the appellant have been heard.

6. The applicant has, inter-alia, submitted that in view of the judgment dated 04.11.2009 by the Hon"ble Bombay High Court, nothing further is required to be heard or done in respect of the First Appeal No. 5471/2007 and the subject appeal should be dismissed with immediate effect without further discussion or hearing, in light of the said judgment. The applicant has also relied upon the letter of administration issued in his favour pursuant to the aforesaid judgment. The said letter of administration has been issued in following terms:

(1) Subject to the provisions of Sub-section (2), an executor or administrator has power to dispose of the property of the deceased, vested in him u/s 211, either wholly or in part, in such manner as he may think fit.

(2) If the deceased was a Hindu, Mohamadan, Buddhist. Sikh or Jain or an exempted person, the general power conferred by Sub-Section (1) shall be subject to the following restrictions and conditions, namely:

(i) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the Will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

(ii) An administrator may not, without the previous permission of the Court by which the letters of administration were granted:

(a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him u/s 211, or

(b) lease any such property for a term exceeding five years.

(iii) A disposal of property by an executor or administrator in contravention of Clause (i) or Clause (ii), as the case may be, is voidable at the instance of any other person interested in the property

6.1 The applicant has, in support of the demand made by the application dated 18.01.2010, also referred to and relied upon the decree drawn by the Hon"ble High Court as per which the defendant (i.e. present applicant) is directed to pay cost (Rs.1,01,409/-) of the suit to the applicant. Accordingly, relying upon the said judgment, decree and letter of the administration, the applicant has submitted and insisted that the appeal should be dismissed without going into any other details and merits.

7. Per contra, Mr. Bhatt learned advocate for the appellant has relied upon the observation made by the Hon"ble Bombay High Court with regard to Issue No. 2 in para-35 of the said judgment and submitted that the Hon"ble Bombay High Court has clarified that the said judgment would not, in any way, prejudice the appeal filed in the Gujarat High Court and in view of the fact that the appellant has raised several contentions in the First Appeal against the judgment and decree dated 22.10.2007 passed by the City Civil Court, Ahmedabad in the Civil Suit No. 3523/1997, the appeal deserves to be and is required to be heard and decided on merits. However, as mentioned above, the applicant has different view and submissions on this issue from which the applicant is not ready to shift or to see the reason. Resultantly it became impracticable, rather impossible, to hear and decide the appeal on merits.

7.1 The crux of the submission is that since the appeal has been admitted after hearing both the sides at length, it deserves to be decided after examining the merits and when the order dated 20.02.2008 also was passed after hearing the applicant there is no cause or justification to vacate or modify said order, more so when such relief is not even prayed for in said request - application dated 18.01.2010. The learned advocate also referred to a separate order of even date i.e. 20.02.2008 passed in Civil Application (for stay) No. 15623/2007. The said order, inter-alia, reads thus:

Rule. Heard learned advocate Mr. M.C. Bhatt for learned advocate Mr. Jigar Raval and party-in-person, Mr. Ajay Manharlal Shah, at length and in great detail. By consent, the application is taken up for hearing today.

I have perused the averments made in the application. The reasoning given by the learned Judge in the Judgment rendered in Civil Suit No. 3523/1997 has been carefully considered by me. On perusal of the reasoning given by the learned Judge and the documents on which reliance is placed by both the parties, prima facie, I am of the considered view that since the First Appeal is admitted, the applicant is required to be protected till the final hearing of the appeal and if the interim relief as prayed for by the applicant is not granted, then it might cause prejudice to the applicant. As the applicant has made out a prima facie

case, the prayer as set out in paragraph 8(B) of the application is granted and both the sides are hereby directed to maintain status-quo with regard to the property as mentioned in Schedule I of the Suit bearing No. 3523/1997 till the final disposal of the appeal. In case of difficulty, the applicant is at liberty to move an application for modification of the order.

In view of the above observation, the application stands disposed of. Rule is made absolute with no order as to costs.

7.2 In counter the applicant has referred to and relied upon the averments made in the rejoinder affidavit and submitted that an alternative request for vacating the interim relief has been made and the averments in the rejoinder are required to be read to mean that the alternative prayer for vacating the interim relief has been made. Despite the objection by the appellant, the Court is inclined to accept the said submission and the said aspect was made clear to the learned advocate of the applicant at the outset. Hence, the learned advocate for the applicant has made submissions as if the relief seeking vacation of interim relief has been prayed for. Hence, it is not the case that the order is being passed without affording opportunity to the appellant to make submission with regard to the request against the interim relief.

8. The learned advocate of the appellant of First Appeal may be right in his contention that the challenge against the judgment raised by the plaintiff-appellant is alive since the appeal has been admitted and that the interim relief order was passed after hearing present applicant, however, the following discussion would reveal that in face of the facts of this case he would not be justified in contending that it is not open to the applicant to request the Court to vacate or modify the earlier interim relief.

9. It can be noticed from the text of the order dated 20.02.2008, that the Court granted interim relief in terms of para-8(B). The above referred prayer Clause 8(B) reads thus:

8(B) Your Lordships may be pleased to restrain the opponent from transferring, alienating by way of sale, mortgage, lease or otherwise or from transferring the possession of the disputed property as per the schedule I and be further pleased to direct the opponent to maintain statusquo in respect of disputed property as per Schedule I pending hearing and final disposal of the aforesaid appeal.

9.1 At this stage, it is pertinent to note that in the Civil Application No. 15623/2007, the applicant-appellant had also prayed for another interim relief incorporated in prayer Clause 8(A) however, the Court has not granted the relief prayed for in para-8(A), which reads thus:

(A) Your Lordships may be pleased to allow the present application and be further pleased to stay the implementation and execution of the judgment and decree dated 22.10.2007 delivered by the learned City Civil Judge, (Court No. 5), Ahmedabad in Civil Suit No. 3523/97 pending hearing and final disposal of the



appeal aforesaid.

9.2 Meaning thereby the Court has not stayed the operation of the judgment and decree dated 22.10.2007, consequently the operation and implementation thereof continues, except to the effect that by the order dated 20.02.2008, the applicant has been restrained from taking actions mentioned in para-8(B) and is required to maintain status-quo in respect of the "disputed property as per Schedule-I

10. It is pertinent that in the said judgment and decree dated 22.10.2007, the learned Trial Court has observed and has recorded conclusion - finding that:

...In that view of the matter, it is held that the defendant has successfully proved that the document dated 15.02.1993 purported to be the Will was concocted and forged and did not bear and signature of deceased Lalitaben, and could not be said to be the last Will of the deceased and that the plaintiff is not entitled to get the probate with respect to the properties shown in Schedule-A annexed to the plaint. The plaintiff has also not adduced any evidence to show the movable and immovable properties of the deceased or to prove the valuation of the properties mentioned in Schedule-A to the plaint....

(emphasis supplied)

10.1 The aforesaid observations, from the judgment of the learned Trial Court, are reproduced in view of the fact that though prayed for in the Civil Application, the Court did not grant interim relief in terms of para-8(A) and has not stayed the judgment declaring the "will" made in 1993 as concocted and forged.

11. The Court, for more than once asked the applicant-opponent whether he was ready to deal with and make submission with regard to the applicant's contentions and the grounds mentioned in the appeal being First Appeal No. 5471/2007 against the judgment dated 22.11.2007 passed by the learned City Civil Court. In response to the repeatedly put query, the short and evasive reply given by the applicant, each time, was to the effect that in view of the judgment by the Hon'ble Bombay High Court and the letter of administration, coupled with the fact that the appellant in the First Appeal No. 5471/2007 had not entered into witness box during the proceedings before the Bombay High Court, any hearing with regard to the contentions in the First Appeal No. 5471/2007 was not at all necessary and any hearing with regard to the said contention was mere waste of time and amounts to delay in dismissing the appeal as a part of design to cause delay to harm him and his interests. The applicant has repeatedly and continuously emphasized that in view of the judgment of the Hon'ble Bombay High Court, the appeal, as mentioned in the application dated 18.01.2010, "must" be dismissed in toto.

12. Notwithstanding the constraint and paucity of time to take up for final hearing of the appeal being First Appeal No. 5471/2007 when much older appeals are pending, the Court, as mentioned above, tried to take up the matter

for hearing in view of the applicant's insistence for out of turn hearing on the ground that for appearing as a party-in-person he has to travel from Bombay to attend the hearing. However, in view of the aforesaid situation and the insistence and stand taken by the applicant, on one hand it was not possible to take-up, hear and decide the First Appeal for final hearing on merits and on the other hand it would neither be permissible in law nor justified and proper to dismiss the entire appeal - without hearing on merits - by simply observing that in view of the judgment in the Testamentary Suit passed by the Bombay High Court, the First Appeal stands dismissed as insisted by the applicant. Hence, for the present applicant's alternative request with regard to the interim relief is taken up for consideration. Even otherwise, when the appeal has been admitted for final hearing, it is necessary for the Court to decide the contentions raised by the appellant in the appeal.

13. The facts in the background of the dispute are that two real brothers are the contesting parties and the dispute is with regard to two wills. One of the two sons i.e. elder brother contends that the Will said to have been executed on 15th February, 1993 is the last Will. On the other hand, the younger brother (i.e. the applicant) claims that the so-called Will dated 15.02.1993 is forged and concocted Will and the only will executed by their mother is the Will dated 25.04.1986. After the sad demise of the mother, younger brother initiated proceedings before the Hon'ble Bombay High Court on the strength of the above mentioned Will dated 25.04.1986. The said proceedings came to be registered as Testamentary Suit No. 66/1993 (in Testamentary Suit No. 495/1993). After the institution of the said proceedings by younger brother, the elder brother filed the subject suit being Civil Suit No. 3523/1997 (actually filed in 1995) on the basis of the Will dated 25.04.1986. The appellant herein had originally filed Civil Miscellaneous Application (Testamentary And Intestate Jurisdiction) No. 210/1995 seeking probate of Will dated 15.02.1993 and it was converted into the Civil Suit by order dated 26.05.1997. The Suit thus came to be numbered as Civil Suit No. 3523/1997. The appellant herein lost in the Suit and the learned City Civil Court rejected the prayer for granting probate on the basis of the Will dated 15.02.1993 and in fact, the learned City Civil Court has declared that the said Will was concocted and forged and the plaintiff is not entitled to receive probate. Against the said declaration, judgment and decree, the subject appeal being First Appeal No. 5471/2007 is preferred and is pending after admission.

13.1 On the other hand, the proceedings instituted by the younger brother on the basis of the Will dated 25.04.1986 came to be allowed by virtue of the above mentioned judgment dated 04.11.2009 and pursuant to the said judgment, the Hon'ble Bombay High Court has also issued, on 14th January, 2010, letter of administration in favour of the applicant. The appellant of First Appeal has claimed that against the said judgment and decree dated 04.11.2009 passed by the Hon'ble Bombay High Court in Testamentary Suit No. 66/1993 (in Testamentary Suit No. 495/1993) he has preferred an appeal which is registered as Appeal No. 45/2010 and the application for interim relief has been registered

as Notice of Motion No. 296/2010 wherein initially stay against the judgment dated 04.11.2009 had been prayed for but subsequently by amendment prayer for stay against the letter of administration also has been incorporated. This version also has been disputed by the party-in-person.

13.2 The appellant herein has also claimed that after hearing the counsel and also the applicant (party-in-person), the appeal has been admitted by order dated 30.03.2010. It has also been submitted that the Notice of Motion had lastly come up for hearing on 18th March, 2010, however, any order has not been passed. The applicant has disputed the version of the learned advocate and submitted that though the interim relief was prayed for, it has not been granted. Be that as it may, the fact remains that any order or interim relief on Notice of Motion has not been granted by the Hon"ble Bombay High Court.

14. In face of all these disputes, the final position, which emerges with regard to the proceedings is that (a) the Suit being Civil Suit No. 3523/1997 filed by the elder brother on the basis of the Will dated 15.12.1993 has been dismissed, and (b) the learned City Civil Court has declared the said Will as forged and concocted, (c) Appeal being First Appeal No. 5471/2007 against the said judgment has been admitted by the High Court of Gujarat (by order dated 20.02.2008) and the same is pending after admission, (d) in the Civil Application for stay (preferred along with the appeal) the Court has, after hearing the applicant granted interim relief in terms of para-8(B) thereof (which has been reproduced hereinabove), (e) on the other hand, the Suit filed by younger brother in the High Court of Bombay (on the basis of the Will said to have been executed on 25th April, 1986) has been allowed by the judgment dated 04.11.2009, (f) the High Court of Bombay has also issued the letter of administration on 14th January, 2010 (g) it is pertinent that the aforesaid two events at Sr. No. (e) & (f) above have occurred after the interim relief order dated 20.02.2008 in First Appeal was passed, (h) even more important is the fact that any order of interim relief, either against the judgment or against the letter of administration, has not been granted by the Hon"ble Bombay High Court (i) another relevant fact is that in the First Appeal No. 5471/2007 pending in this Court the operation of the judgment dated 22.10.2007 passed by the City civil Court has not been stayed.

15. Under the circumstances, after the order dated 20.02.2008 granting interim relief was passed in Civil Application No. 15623/2007 substantive change in the facts and circumstances has taken place inasmuch as, when the said interim order was passed, (a) the judgment in the Testamentary Suit proceedings pending in the High Court of Bombay was not delivered and (b) the declaration with regard to the Will dated 25.04.1986 was also not made, (c) the letter of administration dated 14.01.2010 was also not issued whereas now (i) the judgment in the proceedings before the High Court of Bombay has been rendered, (ii) the Bombay High Court has accepted the 1986 will, (iii) in view of which the letter of administration has also been issued in favour of present

opponent-applicant, (iv) though appeal against the judgment by Bombay High Court has been admitted, any stay against judgment and/or letter of administration has not been granted.

16. The aforesaid events constitute "change" which have taken place after 20.02.2008. In view of the aforesaid facts constituting change in earlier status, more particularly, after the interim order in Civil Application No. 15623/2007, the applicant is justified in his request for re-look at (i.e. to vacate or modify) the order dated 20.02.2008 granting interim relief.

16.1 It is undisputed fact that though appeal against the judgment dated 04.11.2009 is admitted by the High Court of Bombay, any interim relief or stay against the judgment and its operation, though prayed for in the Notice of Motion, has not been granted. Almost six months have rolled-by since by the judgment dated 04.11.2009 came to be rendered and more than three months have passed since the letter of administration came to be issued and any order restricting the judgment or the letter of administration has not been passed.

16.2 In response to the query put by the Court, the learned advocate for the appellant has clarified that any step for requesting the Court to revoke the letter of administration has not been taken.

16.3 Even attempt to seek interim relief with regard to the judgment by the High Court of Bombay or letter of administration does not appear to have been made.

16.4 In such circumstances and particularly in view of the changes and events that have taken place after 20.02.2008 the request to allow the letter of administration operate in accordance with law cannot be denied. Hence, the said letter of administration deserves to be given effect to.

16.5 Furthermore, though the appeal against the judgment of the City Civil Court, Ahmedabad is admitted and pending, it cannot be overlooked that any stay against the judgment (declaring that the 1993 will is forged and concocted) passed by the City Civil Court has not been granted in the First Appeal. If even after the aforesaid developments and changes the interim order dated 20.02.2008 is continued in the original form and with the same scope, it would obstruct the letter of administration and its operation.

17. In view of the foregoing discussion, particularly the discussion and reasons recorded in paras 14, 15, 16, 16.4 and 16.5 the order of interim relief passed on 20th February, 2008 is modified and it is clarified that the letter of administration will have, provided its operation is not or does not get stayed or restricted by Court of Competent Jurisdiction, precedence over the said order dated 20.02.2008 and the said order dated 20.02.2008 would operate subject to the letter of administration. Differently put, the interim relief granted by order dated 20.02.2008 is made subject to the letter of administration - provided Court of competent jurisdiction does not stay or restrict its operation - and the said letter of administration dated 14.01.2010 issued by the High Court of Bombay may be

implemented in accordance with the law. It is, however, clarified that the applicant will file, as and when any action with regard to the suit properties is taken on the basis of letter of administration, the relevant particulars and details on the record of the First Appeal No. 5471/2007 as well as the Appeal No. 45/2010 pending before the Hon"ble Bombay High Court. With regard to the matters not covered by the letter of administration and matters/properties not falling within the purview of the administration the order of the interim relief passed on 20th February, 2008 will operate whereas with regard to the properties and mattes covered by virtue of letter of administration, the letter of administration will have precedence in accordance with law and the interim order dated 20.02.2008 will be subject to the letter of administration.

18. With the aforesaid clarification, the application made by the applicant is partly allowed.

19. After order is pronounced, Mr. Raval has requested for stay of order for a period of eight weeks, the request is rejected.

20. For the reasons mentioned hereinabove and also in the order dated 03.05.2010 & 04.05.2010, the First Appeal No. 5471/2007 could not be taken up for hearing and that therefore, the aforesaid order dated 03.05.2010 & 04.05.2010 had to be passed. Since the appeal could not be and has not been taken up for final hearing for the reasons mentioned in the order dated 30.05.2010 & 04.05.2010 as well as order dated 19.03.2010 and 06.04.2010, the Registry is directed to list the First Appeal in regular course in the cause list of final hearing, in the week beginning from 28th June, 2010.

In view of the order passed in main First Appeal, the Civil Application No. 5353 of 2010 also stands disposed of.