
(1996) 09 GUJ CK 0013

In the Gujarat High Court

Case No : M.I.S.C. Civil Application No. 1952 of 1995 Special in Civil Application
No. 3241 of 1983

N.R. Parmar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 26-09-1996

Acts Referred:

Citation : (1996) 09 GUJ CK 0013

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : Arun H. Mehta, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—Special civil application No.3241 of 1983 was dismissed by this court for nonprosecution on 12-12-1995. The special civil application was called for hearing in the first round, then in the second round and lastly in the third round, but none remained present on behalf of the petitioner and therefore the same was dismissed for non-prosecution.

2. The petitioner filed this Misc. Civil Application and prayer has been made for restoration of special civil application No.3241 of 1983. In support of the application no affidavit has been filed. Prayer has been made for dispensing with filing of affidavit. Even affidavit of junior advocate has not been filed. Be that as it may. The grounds which have been given for absence of the learned counsel are to be briefly stated.

3. Firstly the learned counsel for the petitioner has come with the case that the practice of the court is that the entire board is called out thrice and the matters in which counsel for either parties are not present in the court are adjourned twice. In the third round the court dismisses the matters if the counsel for the parties are not present; notwithstanding the fact that junior advocate on behalf of the advocate for the petitioners makes a mention that the matter be kept back

for some time to enable such advocate to call the counsel for petitioners to conduct the matter. It has further been stated that the practice which is followed by the court is not to give even few minutes to junior advocates to call the counsel for the petitioners. So far as the facts of the present case are concerned, learned counsel for the petitioner stated that the matter was called out in the third round and Ms. Nandini N. Joshi, advocate on behalf of the counsel for petitioners mentioned to the court that the matter may be kept back for some time and that she will go forthwith to call the counsel for petitioners. However the learned Judge felt that he will not adjourn the matter even for some time in third round and dismissed the matter for default.

4. It has further been mentioned that the petitioners' advocate was engaged in matters before another learned Judge of this Court. In para 5 of the application the petitioner mentioned that with so many courts functioning with the increase in number of Judges being appointed in this High Court it is physically impossible for any advocate to remain present in all courts at the same time or at the very moment when a matter is called out. It has further been stated that advocates are doing their best to deal with matters as and when they are called out in various courts. It is also stated that large number of matters are required to be attended to every day by the advocates in different courts for admission and final hearing and therefore it is impossible for advocates to remain present at the very minute in every court or in all the courts whenever matters are called out at a particular time.

5. In para 6 of the application it is mentioned that Ms. Nandini N. Joshi was also told by the learned Judge to inform the counsel for petitioners not to mention the matter at 2.45 p.m. for restoration and hearing because the court does not permit such mentioning. The practice of the court is not to restore the matter which he has dismissed, even if the matter is mentioned for restoration on the same day. This, according to the learned counsel for the petitioners, is contrary to the practice which has been followed by this Court and its predecessor court, i.e. Bombay High Court. The matters were always restored when the petitioners' counsel mentioned the same on the same day and was ready and willing to conduct the same. In para 7 and 8 of the application it is stated as follows:

"It may be mentioned that Ms. V.P. Shah's matter was also dismissed for the very reason above mentioned. The matter was entrusted by Ms. V.P. Shah to her junior Ms. Kalpanaben Brahmbhatt. She was in another court when the matter was called out but within a matter of few minutes she came back in the court and mentioned to the learned Judge that the matter be restored as it was entrusted to her for being conducted. The Hon'ble Judge, however, asked her to file MCA. When the Misc. Civil Application was filed, the same was also dismissed on the ground that it had no merit. Under the circumstances, the matter was not mentioned for restoration by the petitioners' counsel on the same day and Misc. Civil Application is filed.

It is submitted that the petitioners' counsel was at all times ready and willing to

conduct the matter though the matter could not be conducted as counsel for the petitioners was busy in another court and junior lawyer was asked to remain in court to mention the matter and call the counsel immediately when the matter was called out. As sufficient cause exists for restoration of the special civil application above numbered which has been dismissed for default, the petitioners humbly pray that the matter be restored to the file of this Hon''ble Court and thereafter be disposed of in accordance with law. The litigant may not be made to suffer because counsel was not available when the matter was called out and though matter was mentioned, it was not kept back even for couple of minutes for hearing on merits."

6. It is the practice of this court for last many months that the advocates are adjusted in the first and second round when matters are called out. In the third round in case the advocate is not present or any request is made on his behalf for adjournment the same is not entertained. The reason is obvious. These are old matters. This court has time and again made it clear that alternate arrangement should be made and juniors should be entrusted with the matter for hearing. If request was made by Ms. Nandini N. Joshi, when the matter was called out in the third round, to adjourn the matter, certainly this court would have asked her to make submission on merits and she would have declined to make the same. The matter has come up for hearing after 13 years and in case the matter is adjourned on the ground advanced by the learned advocate, then the same would not be disposed of. It is not the case where indulgence has not been granted. Learned counsel for the petitioner is unable to cite any provision from the High Court Rules or from any Act which permits that in such cases, once the court having passed a judicial order for dismissal of the petition, when oral request is made the matter has to be restored. He is only relying on the practice of this court, being followed for last many months. It is not the first case which has been dismissed. In the third round this court did not wait, and order was passed. Reference made to the case of Ms. V.P. Shah has no relevance because in the third round when no body was present the court has rightly dismissed the matter. If some one has come after dismissal of the matter, they may move application for restoration, and the court will consider the same on merits. In case restoration application is filed and this court considers that the ground given for absence of the counsel was not sufficient, I fail to see any justification in the contention of the learned counsel for the petitioner that the same should not have been dismissed. There is no provision that restoration application has to be accepted whether there is sufficient reason or not for absence of the counsel when the matter was called out.

7. Absence was for the reason that the learned counsel was held up in another court. That is hardly a sufficient ground. There are so many courts, as stated by the learned counsel for the petitioners. In case one court adjourns the matter on this ground old matters cannot be decided. It is the exigency of the profession that a counsel may remain busy, but at the same time it is also expected of the counsel to make arrangement to make alternative arrangement in the matter.

8. The last point which needs to be considered is that because of increase in the number of judges it is physically impossible for the advocates to remain present in all courts. It may be mentioned that the court is not working with full strength. The strength of Judges of this court is 28, and there are 14 additional posts. Thus against the sanctioned strength of 43, at present only 29 Judges are working. In future appointments are to be made and number of courts is likely to be increased. If it is taken to be a ground for restoration of a matter, then in majority of courts there will be no hearing because counsel of the standing of Mr. Mehta will remain busy in some other courts. This is no ground whatsoever for absence of the counsel from court when matter is called out in third round.

9. In the result this MCA fails and the same is dismissed.