
(1993) 09 GUJ CK 0012
In the Gujarat High Court

Patel Karshanbhai Dwarkadas

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-09-1993

Acts Referred:

Constitution of India, 1950 — Article 227, 227

Citation : (1994) 2 CivCC 335 : (1994) 1 GLR 810

Hon'ble Judges : A.N. Divecha, J

Bench : Single Bench

Judgement

A.N. Divecha, J.—It is a settled principle of law in view of the ruling of the Supreme Court in the case of Rafiq and Another Vs. Munshilal and Another, that no litigant should suffer or should be penalised on account of default on the part of his Advocate, and yet this petition under Article 227 of the Constitution of India reflects the suffering of the petitioner on account of default of appearance on the part of his Advocate before the Gujarat Revenue Tribunal at Ahmedabad presumably on account of his professional preoccupation in this Court.

2. By means of this petition under Article 227 of the Constitution of India, the petitioner has questioned the correctness of the decision rendered by the Gujarat Revenue Tribunal at Ahmedabad ("the Tribunal" for convenience) on 4th December, 1987 in Restoration Application No. TEN. D.A. 99 of 1987. Thereby the Tribunal rejected the petitioner's restoration application against its decision rendered on 27th July, 1987 in Restoration Application No. TEN. D.A. 140 of 1986.

3. The facts giving rise to this petition move in a narrow compass. The petitioner had to face the proceedings under the Gujarat Agricultural Lands Ceiling Act, 1960 ("the Act" for brief). The first authority appears to have passed an order against him. He thereupon carried the matter in appeal before the Assistant Collector at Mehsana. It appears to have come to be registered as Ceiling Appeal No. 93 of 1983. By his order passed on 16th June, 1984 in the aforesaid appeal, the Assistant Collector at Mehsana dismissed it. The aggrieved petitioner thereupon invoked the revisional jurisdiction of the Tribunal for questioning the

correctness of the aforesaid appellate order. It came to be registered as Revision Application No. TEN. B.A. 1116 of 1982. It appears that it was set down for hearing on 14th July, 1986. According to the petitioner, the city of Ahmedabad was engulfed by communal tension around that period. He, therefore, thought of seeking an adjournment by means of a telegram. The telegram however reached the Tribunal on 15th July, 1986, that is, one day after the date on which the matter was fixed for hearing. The Tribunal however rejected the aforesaid revisional application for default of appearance. I) would have been better for the Tribunal not to have done so keeping in view the prevalent disturbed conditions in the city. The petitioner thereupon applied for setting aside the order rejecting his revisional application for restoration to file by means of his Restoration Application No. TEN. D.A. 140 of 1986. It appears that the petitioner had engaged one Advocate, named, Shri R.R. Tripathi, for conducting his restoration application. It appears to have been set down for hearing on 27th July, 1987. The learned Advocate for the petitioner could not remain present for conducting the said restoration application presumably on account of his professional preoccupation in this Court. The Tribunal however rejected the said restoration application for default of appearance. The petitioner again moved the Tribunal for setting aside the order rejecting his aforesaid restoration application for default of appearance and for its restoration to file by means of his another Restoration Application No. TEN. D.A. 99 of 1987. By its decision rendered on 4th December, 1987, in the aforesaid restoration application, the Tribunal rejected it. Its copy is at Annexure "A" to this petition. The aggrieved petitioner has thereupon moved this Court under Article 227 of the Constitution of India by means of this petition for questioning the correctness of the aforesaid decision at Annexure "A" to this petition.

4. This application deserves to be accepted on the basis of the aforesaid ruling of the Supreme Court in the case of *Rafiq (supra)*. In that case also, one second appeal came to be dismissed for default by the Allahabad High Court for default of appearance on the part of the learned Advocate for the appellant. No restoration thereof was permitted. In that context, the Supreme Court has held that no litigant should be allowed to suffer for default on the part of his Advocate. It has been observed therein that in this country a litigant remains supremely confident that his matter would be taken care of once he entrusts it to his chosen Advocate. The legal position is often such that a party in person has no audience once he is represented by an Advocate. Default of appearance on the part of this Advocate often works as a double-edged sword. Unless he retires his defaulting Advocate, a litigant may not be heard. His matter then goes by default of appearance of his Advocate. In the context of this system, I think a liberal view is required to be taken for restoring a matter to file if it has come to be dismissed or rejected for default of appearance of the litigant's Advocate. I have only elaborated what the Apex Court has ruled in its aforesaid ruling in the case of *Rafiq (supra)*.

5. Shri Patel is right in his submission to the effect that default of appearance

was not once but was twice, and as such the Tribunal was quite justified in viewing the default seriously. That may be so. As pointed out hereinabove, the first default was certainly on a justifiable ground. The averments made in para 2 of the petition to the effect that the city of Ahmedabad was visited by communal tension on or around 14th July, 1986 is not controverted by or on behalf of the respondent. The statement that the telegram was sent by the petitioner for seeking adjournment is also not controverted. Unfortunately for him, it reached the Tribunal the next day and not on 14th July, 1986 presumably because of the tense atmosphere prevalent in the city. In that view of the matter, the first default can easily be condoned. For the second default, the petitioner cannot and need not be held responsible. That is where the ruling of the Supreme Court in the case of Rafiq (*supra*) should go to his rescue.

5.1 In view of my aforesaid discussion, I am of the opinion that the decision at Annexure "A" to this petition cannot be sustained in law. It has to be quashed and set aside.

6. In the result, this petition is accepted. The decision rendered by The Gujarat Revenue Tribunal at Ahmedabad on 4th December, 1987 in Restoration Application No. TEN. D.A. 99 of 1987 is quashed and set aside. The matter is remanded to the Tribunal for its fresh decision on the said restoration application in the light of the observations made in this judgment after restoring the same to file. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.