

(2021) 03 GUJ CK 0064

In the Gujarat High Court

Case No : R/Special Civil Application No. 7038 Of 2018

Purva Rakesh Patel

APPELLANT

Vs

Parmar Abhesinh Chimanbhai & 3 Other(S)

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 227

Citation : (2021) 03 GUJ CK 0064

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : MB Gohil, R Thakkar

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Present petition, under Article 227 of the Constitution of India, is filed by the petitioner - original plaintiff praying for to quash and set aside the order dated 17.01.2017, passed by the learned 18th (Ad-hoc) Additional Senior Civil Judge, Vadodara below exh. 1 in Special Civil Suit No. 449 of 2015, whereby, the said suit came to be dismissed for default and the order dated 14.11.2017, passed by the learned 19th (Ad-hoc) Additional Senior Civil Judge, Vadodara below exh. 9 in Civil Misc. Application No. 87 of 2017, whereby, the said application for restoration of the aforesaid special civil suit came to be rejected.

2. Rule. Learned advocate Mr. P. R. Thakkar for the respondents waives service. With the consent of the learned advocates for the respective parties, the matter was heard finally.

3. Heard, learned advocate Mr. M. B. Gohil for the petitioner - original plaintiff and learned advocate Mr. P. R. Thakkar for the respondents - original defendants.

3.1 The learned advocate for the petitioner - plaintiff submitted that the petitioner herein had filed a civil suit being Special Civil Suit No. 449 of 2015 for

specific performance, declaration and permanent injunction against the respondents herein - original defendants. In the said suit, Issues have already been framed and the trial was to commence. However, due to serious problem in right knee and long treatment therefor, the petitioner could not remain present on the dates so fixed before the trial Court, due to which, the suit came to be dismissed for default and restoration application therein, also came to be rejected by the learned trial Judge. The learned advocate for the petitioner submitted that due to the aforesaid problem, which the petitioner is suffering from since 2010, the petitioner could not remain present before the learned trial Court nor could instruct the learned advocate representing his case before the trial Court. It is reiterated that due to the aforesaid medical problem only, the petitioner could not remain present, other wise, the petitioner has a good prime facie case and balance of convenience in his favour. Accordingly, it is urged that present writ petition may be allowed by setting aside the impugned order. The learned advocate for the petitioner, on instructions, has fairly submitted that the petitioner is ready and willing to pay the reasonable cost that may be imposed by the Court.

3.2 As against this, learned advocate Mr. Thakkar for the respondent - original defendants, while heavily opposing the present writ petition, submitted that no such stand of medical inability was taken by the petitioner before the trial Court concerned. It is submitted that, time and again, adjournments were sought for by the petitioner before the trial Court concerned and at no point of time, illness was mentioned even when the suit was dismissed for default or at the time of rejection of the restoration application. It is submitted that sufficient opportunity was given to the petitioner to lead the evidence, however, the petitioner failed and accordingly, the learned trial Court has rightly dismissed the suit for default. Accordingly, it is urged that present writ petition being devoid of any merits, may not be entertained.

4. In rejoinder, the learned advocate for the petitioner has submitted that the petitioner had already taken a ground of personal difficulty, and personal difficulty includes health issues as well as the medical treatment.

5. Having heard the arguments advanced by the learned advocates for the respective parties and considering the facts and circumstances of the case so also considering the papers available on record, the issue involved in the case appears to be in a very narrow compass, with regard to dismissing the suit for default and rejection of restoration application therein. The case of the petitioner was that due to illness, to be precise, problem in right knee, the petitioner could not remain present before the trial Court concerned nor could effectively convey the learned advocate representing his case before the trial Court concerned. The petitioner also had to travel abroad for treatment. In support of such a say, the learned advocate for the petitioner has produced the copies of medical papers at Annexure 'D' to this petition. However, the as per the say of the learned advocate for the respondents herein - original defendants, the same was never the

contention of the petitioner before the trial Court concerned and the ground of illness was never put before the concerned Court below. Be that as it may.

5.1 As it is apprised, in the suit in question, Issues have already been framed and the trial was to commence. The learned advocate for the petitioner has fairly submitted that due to illness, as aforesaid, the petitioner could not remain present before the trial Court concerned. To substantiate, the petitioner has also produced the medical papers. Moreover, the petitioner is ready and willing to pay the reasonable cost. There are catena of decisions, more particularly when 'sufficient cause' and 'reasonable ground' are not defined under the law, that in general, the dispute shall be resolved on its own merits rather than mere technicalities. Moreover, it is the duty of the Courts to avoid multiplicity of proceedings and procrastinating the issues on mere technicalities. Further, the learned trial Judge also appears to have failed to consider the doctrine of dominus litis, and the petitioner herein, who is original plaintiff, is the master of suit.

5.2 At this juncture, it would be beneficial to refer to the decision of the Hon'ble Apex Court in the case of Kusumben Indersinh Dhupia v. Sudhaben Biharilalji Bhaiya and Another, (2019) 3 SCC 569, wherein, the Hon'ble Apex Court has observed that the appellant - plaintiff was present in almost all hearings before the trial Court, which indicates that he was genuinely pursuing the matter. The plaintiff having filed the suit for declaration and injunction in our considered view ought to be given an opportunity to pursue his suit. In the present case, the petitioner - plaintiff could not remain present before the Court for a genuine medical reason i.e. problem in right knee and treatment therefor and accordingly, it cannot be said that the petitioner - plaintiff is not interested in proceeding with the suit. Besides, herein also, when the petitioner has filed a suit for specific performance, declaration and permanent injunction, in the considered opinion of this Court, the petitioner should be given an opportunity to pursue his suit.

5.3 Accordingly, in the aforesaid set of circumstances, without going much into the merits and demerits of the case, this Court is of the opinion that ends of justice would meet if the present writ petition is allowed and petitioner - plaintiff be given a chance to represent his case, however, by imposing exemplary cost.

6. In the backdrop, as aforesaid, present petition succeeds and is allowed in part accordingly. The impugned orders dated 17. 01.2017, passed by the learned 18th (Ad-hoc) Additional Senior Civil Judge, Vadodara below exh. 1 in Special Civil Suit No. 449 of 2015, whereby, the said suit came to be dismissed for default and the order dated 14.11.2017, passed by the learned 19th (Ad-hoc) Additional Senior Civil Judge, Vadodara below exh.

9 in Civil Misc. Application No. 87 of 2017, whereby, the said application for restoration of the aforesaid special civil suit came to be rejected, are hereby set aside. The Special Civil Suit No. 449 of 2015 is restored to its original file. The

trial Court concerned is directed to proceed with the suit in question in accordance with law, without being influenced by any order. The parties to the suit are directed to cooperate in the trial and shall not ask for unnecessary adjournments.

6.1 However, the petitioner - plaintiff is directed to deposit a sum of Rs.10,000/- (Rupees Ten Thousand only) before the trial Court concerned within a period of 02 (two) weeks from the date of receipt of copy of this order, which, the respondents - defendants are at liberty to withdraw the same.

6.2 Rule is made absolute accordingly.