

(2010) 07 GUJ CK 0109

In the Gujarat High Court

Case No : Misc. Civil Application - For Orders No. 1199 of 2010 in Letters Patent Appeal No. 1403 of 2009 in Miscellaneous Civil Application - For Orders No. 1521 of 2009

Rainbow Surgical Dressing Manufacturing Co. and Others

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Gujarat High Court Rules, 1993 — Rule 132, 132(2)

Citation : (2010) 07 GUJ CK 0109

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : B.J. Trivedi, J.T. Trivedi and Jignasa B. Trivedi, for the Appellant; Government Pleader for Opponent 1, for the Respondent

Judgement

S.J. Mukhopadhaya, C.J.—This Miscellaneous Civil Application has been preferred by the petitioners to set aside the order dated 9th April, 2010 passed by this Court in Letters Patent Appeal No. 1403 of 2009 and to restore the said Appeal. The said case was disposed of on 9th April, 2010 on merits which reads as follows:

1. The writ petition preferred by the appellants was disposed of with the consent of the parties with liberty to the appellants to revive the prayers in case of non-compliance. On the ground that the authorities have not complied with the order, as was contended before the Court, the Misc. Civil Application was filed which having not entertained by the learned Single Judge, the present appeal has been preferred.

2. The learned Counsel appearing on behalf of the respondents rightly submitted that once a writ petition is finally disposed of, the matter cannot be reopened by filing miscellaneous petition. In this connection, we may refer to the decision in the case of State of Haryana v. Babu Singh reported in AIR 2009 SC 472,

wherein the Court observed that once the order passed in writ petition filed under Article 226 of the Constitution of India had attained finality, the matter cannot be reopened by filing miscellaneous petition. For the said reason, we are not inclined to entertain this writ petition, but allow the appellants to file a fresh writ petition, if the earlier consented order has not been complied with.

3. The appeal stands disposed of with the aforesaid observations. No costs.

2. The main plea taken by the petitioners is that the learned Counsel for the petitioners had already filed a leave note and therefore, the Court ought not have taken up the matter to dispose of the same on merits. While it is accepted that Gujarat High Court Rules, 1993 do not provide leave note, but submitted that there has been a precedence of this Court to accept leave note, such leave note ought to have been allowed and case should have been adjourned. Learned Counsel for the petitioners placed reliance on the Supreme Court decision in *Rais Ahmad v. State of U.P. and Ors.* reported in AIR 1999, 3080, whereby the Supreme Court having noticed that on sick note of the learned Counsel, the Court had not granted adjournment observed that it is a tradition of Allahabad High Court to accept such sick note and such tradition need not be abolished on isolated cases.

3. We have heard learned Counsel for the petitioners and perused the record.

4. It is not in dispute that the Rules do not permit the acceptance of any leave note. There is a provision of accepting leave note subject to the provisions of Rule 132(2) of Gujarat High Court Rules, 1993 which read as under:

Leave granted to the following advocates subject to provisions of Rule 132(ii) of the Gujarat High Court Rules, 1993. As provided in the Rules, Leave Note does not apply to the following cases:

(i) Criminal cases;

(ii) Special Civil Applications;

(iii) Matters special fixed for hearing or expedited by the order of the Court; and

(iv) Matters on daily Board.

From the daily advocate-wise leave notes, it will be evident that leave note is not applicable to Criminal Cases, Special Civil Applications, matters specially fixed for hearing and matters on daily board. It is not in dispute that Letters Patent Appeal was on the daily board.

5. The Letters Patent Appeal in question was listed in the daily board on 9th April, 2010. As per the provision, the leave note was not applicable to such Letters Patent Appeals already running in the board. Therefore, the case was taken up but nobody appeared nor any counsel prayed for time. This Court having noticed the fact that the writ petition preferred by the petitioners was disposed with the consent of the parties, the question of filing a petition in the

said disposed of case does not arise. The leave was granted to revive the prayer, means leave to file a fresh writ petition for having not complied with the consent order. Such right of the petitioners was protected by this Court vide order dated 9th April, 2010. In the facts and circumstances, the question of recalling or reviewing the aforesaid order does not arise. This Miscellaneous Civil Application being devoid of any merit, is not entertained. The petitioners may take advantage of opportunity given in Letters Patent Appeal. Miscellaneous Civil Application stands disposed of.