

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15942 of 2024

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RAMSINGBHAI DHANJIBHAI PRAJAPATI

Versus

DAHYABHAI DHANJIBHAI PRAJAPATI & ORS.

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Appearance:

MR NISARG J DESAI(13298) for the Petitioner(s) No. 1

MS ROMA I FIDELIS(3529) for the Petitioner(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 31/01/2025

ORAL ORDER

1. Heard learned advocate Mr. Nisarg Desai for the petitioner. The present petition is filed under Article 227 of the Constitution of India with the following prayers:

“a. YOUR LORDSHIPS may be pleased to allow and admit this Application;

b. YOUR LORDSHIPS may be pleased to issue appropriate writ of certiorari or writ of prohibition or any other writ, order or direction and may be pleased to quash and set aside the cost imposed by the Ld. 2nd Additional Chief Judicial Magistrate, Anand in Civil Misc. Application No. 91 of 2021 vide order dated 04.07.2023; marked as Arm" A"

c. Pending admission, hearing and final disposal of this Application, YOUR LORDSHIPS may be pleased to issue appropriate writ, order or direction to the Registrar, District Court, Anand to allow the Applicant in preferring and filing of appeal challenging the Judgment and B Colly Decree dated 01.10.2021/passed by the Ld. 3rd Additional Senior Civil Judge, Anand, without Payment of costs; and

d. YOUR LORDSHIPS may be pleased to grant any other and further relief deem fit and proper considering the facts and circumstances of the case.”

2. At the outset, the learned advocate for the petitioner submits that the prayer made in the present petition is for quashing and setting aside the order of the trial court, but it is confined only to the part of the cost which has been imposed by the trial court.

2.1 He would further submit that after the dismissal of the suit, as per the legal advice received by the petitioner, a review application was filed before the trial court being Civil Misc. Application No.91 of 2021, which came to be rejected vide impugned order, whereby the trial court imposed a cost of ₹25,000 to be paid to the District Legal Services Authority, Anand.

2.2 He would submit that the cost imposed is exorbitant and not germane to the application. He would submit that it has not been observed in the order that any fraud has been committed by the petitioner. He would submit that due to the non-payment of cost, even the petitioner is not able to file an appeal before the District Court as the registry of the District Court is insisting on first depositing the cost, thereby seriously

affecting the rights of the petitioner. He would lastly submit that the cost imposed upon the petitioner may be reduced, and if this court thinks it fit, the reasonable cost may be imposed.

3. This court has gone through the impugned order passed by the trial court. Prima facie, it appears that the trial court has rejected the review application, being not satisfied that there is any error apparent on the face of the record, as shown by the petitioner. It is thereby observed that having consumed the judicial time in such an application, which is bereft of any merit, the application is rejected with a cost of ₹25,000.

4. I have considered the entire set of facts and circumstances of the case and examined the aspect of the cost imposed. It is required to be noted that the trial court, while imposing a cost of ₹25,000, has not reached to the conclusion that the review application filed by the petitioner is vexatious or false. It is true that no case might have been made out for review, and thereby, the time of the civil court must have been consumed to decide such an application, but at the same time, the right available to the party cannot be taken away by the court, as all concerned, including the court, are governed by the law. It is deplorable to note that, in the absence of

payment of cost, the petitioner is deprived of even filing a regular first appeal before the concerned District Court, despite there being no such observation made in the impugned order to that effect.

4.1 Whenever the court feels that a litigant has consumed the time of the court by filing frivolous litigation, then surely the court has the power to impose a cost. Nonetheless, such a cost should be reasonable and not unbearable to the litigant. All other factors, including the conduct of the parties while pursuing legal remedies, are required to be taken note of by the concerned court before imposing the cost.

4.2 Considering the entire set of facts and peculiar circumstances, especially when there are no findings recorded by the trial court to the effect that the impugned application is vexatious, I am of the view that the cost of ₹25,000 is exorbitant and not in consonance with the misconduct on his part, if any.

4.3 At this stage, learned advocate Mr. Desai, under the instruction of his client, states that the petitioner is ready and willing to deposit ₹15,000 as cost, which will be paid by the petitioner to the District Legal Services Authority, Anand,

within one month from today.

4.4 As such, when there is no prohibition in the impugned order to pay the cost to file any substantive appeal or any other proceedings permissible in law, the registry of the higher court should not insist upon such deposit, thereby denying the right of the litigant to file any such appeal or proceedings. It is always to be decided by the appellate court and other competent courts to examine the aspect of the cost when such appeals or any other proceedings are put forth. In the present case, it is observed that the judgment and decree challenged by the petitioner were passed on 1st October 2021, and now there would be a delay in filing such a first appeal. If the petitioner desires to file an appeal with a delay application, the District Court may examine the said facts and decide on such a delay application in accordance with the law.

5. With the above observations, discussions, and assurance given by the learned advocate for the petitioner that the petitioner will deposit a sum of ₹15,000 towards cost to the District Legal Services Authority, Anand, the impugned order dated 04.03.2023 stands modified to the extent that the cost is reduced to ₹15,000. The rest of the order remains undisturbed.

5.1 In view of the above, the petition is partly allowed. No order as to costs.

6. At this stage, it is required to be noted that this petition is otherwise not touching upon the main issue. Nonetheless, it is open for the respondent to approach this court if they are aggrieved by this order by filing an appropriate application within one month from the date of receipt of this order.

DRASHTI K. SHUKLA

(MAULIK J.SHELAT,J)