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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE  
(MR.P.C.JOSHI), AT PORBANDAR.**

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**ORDER BELOW EXH.10 IN REGULAR CIVIL APPEAL  
NO.37 OF 2024**

- [1] The respondents (original plaintiffs) have preferred present application Exh.10 to reject the present appeal on the ground of Article-116(b) of the Limitation Act.
- [2] Ld. Advocate Mr. N. D. Khatri for the respondents (original plaintiffs) has argued and submitted that the appellants (original defendants) have filed the present appeal on 01.07.2024 against the judgment dated 31.01.2023 passed in Regular Civil Suit No.139/2017. It is further submitted that the appellants (original defendants) have filed the present appeal after causing delay of 11 months without filing any application for condonation of delay. As per the say of appellants (original defendants), the cause of filing the present appeal has arisen in view of the order dated 11.06.2024 passed by the Hon'ble High Court of Gujarat in R/Second Appeal No.231/2024. However, the Hon'ble High Court has passed the said order dated 11.06.2024 extending liberty to the appellants (original defendants) to file another appeal challenging judgment and decree passed to reject counter suit filed by the appellants (original defendants) in Regular Civil Suit No.139/2017 for appropriate proceedings, but the Hon'ble High Court has not given directions for the same. Moreover, as mentioned by the Hon'ble High Court in its order dated 11.06.2024

that, two appeals are required to be filed, one challenging judgment and decree favouring plaintiff and another judgment and decree whereby counter suit of the defendants is rejected and for that purpose, first appeal is remanded back by the Hon'ble High Court. Moreover, the Hon'ble High Court has extended liberty to the appellant (original defendants) to file an appeal challenging the judgment and decree whereby counter suit of the defendants is rejected, but the Hon'ble High Court has not passed any order or direction to condone the delay caused in filing the said appeal. Therefore, it is prayed to reject the present appeal as the present appeal is barred by the limitation considering the provision of Article-116(b) of the Limitation Act.

- [3] Ld. Advocate Mr. S. H. Parmar for the appellants (original defendants) has argued and submitted that the appellants (original defendants) have filed the present appeal as per the order dated 11.06.2024 passed by the Hon'ble High Court of Gujarat in R/Second Appeal No.231/2024. It is further submitted that no delay has been caused by the appellants (original defendants) in filing the present appeal. Lastly, it is prayed to reject the present application Exh.10 in the interest of justice.
- [4] This Court has gone through the present application Exh.10, order dated 11.06.2024 passed by the Hon'ble High Court of Gujarat in R/Second Appeal No.231/2024, Judgment & Decree of the learned Trial Court passed in Regular Civil Suit No.139/2017 as well as submissions

made by learned advocates for the parties. It is the case of respondents (original plaintiffs) that they have filed Regular Civil Suit No.139/2017 against the appellants (original defendants) seeking declaration and injunction to restrain the appellants (original defendants) from passing through their field. In the said suit, the appellants (original defendants) have filed counter suit for their right of way through the field of respondents (original plaintiffs). The learned Trial Court has allowed the said suit of respondents (original plaintiffs) and rejected the counter suit of the appellants (original defendants) vide judgment dated 31.01.2023 passed in Regular Civil Suit No.139/2017. Being aggrieved and dissatisfied with the same, the appellants (original defendants) have filed Regular Civil Appeal No.10/2023, which was allowed by the Additional District Court Porbandar vide judgment dated 01.06.2024 setting aside the judgment passed by the learned Trial Court. Thereafter, the respondents (original plaintiffs) have filed R/Second Appeal No.231/2024 before the Hon'ble High Court of Gujarat in which the Hon'ble High Court has passed the following order dated 11.06.2024 at para-9.

"9. In view of above, without entering into merits and de-merits of the case, I pass following order:-  
(a) Judgment and decree delivered in Regular Civil Appeal No.10 of 2023 is set aside and Regular Civil Appeal No.10 of 2023 is restored to original proceedings for further hearing.

(b) Since principle of law requires to file another appeal challenging another judgment and decree passed in Regular Civil Suit No.139 of 2017, respondents herein - defendants are at liberty to move learned Appellate Court for appropriate proceedings, whereby contention of the present appellant is kept open.

(c) Amount of Rs.25,000/- which is agreed shall be deposited by respondents herein before the learned Appellate Court within three weeks from today and that amount shall be invested in FDR and shall be subject to outcome of the appeals.

(d) Needless to say that judgment and decree delivered by learned Trial Court in Regular Civil Suit No.139 of 2017 shall remain in force till disposal of the appeals.

(e) In peculiar facts and circumstances, the appeals shall be invariably heard and decided by the learned Principal District Judge, Porbandar. It is expected from learned Principal District Judge to decide the appeals as early as possible in time bound manner considering pendency before it".

- [5] The main consideration in deciding the present application is whether the appellants (original defendants) have acted with reasonable diligence in presenting their appeal or not and whether the delay was bonafide one or not. The Hon'ble High Court has observed that the appellants (original defendants) have filed only one appeal in stead of filing two appeals and thereby principle of res-judicata

enshrined in section 11 of CPC is attracted. The appellants (original defendants) have filed their appeal vide Regular Civil Appeal No.10/2023 challenging judgment & decree favouring the respondents (original plaintiffs) and judgment & decree disfavoured the appellants (original defendants). Here, it appears that the appellants (original defendants) have filed one appeal challenging two separate decrees due to bonafide mistake since the appellants (original defendants) have challenged the judgment & decree passed by the Trial Court as a whole. Thereafter, the appellants (original defendants) have filed the present appeal before this Appellate Court on 01.07.2024 as per the liberty extended to them by the Hon'ble High Court of Gujarat vide order dated 11.06.2024 passed in R/Second Appeal No.231/2024 by the Hon'ble High Court of Gujarat to file another appeal challenging judgment and decree passed to reject counter suit filed by the appellants (original defendants) in Regular Civil Suit No.139/2017, for appropriate proceedings. In this regard, the time during which the appellants (original defendants) are prosecuting with due diligence another civil proceedings against the respondents (original plaintiffs) shall be excluded where the proceedings relates to the same matter in issue and is prosecuted in good faith in a court. A bonafide mistake of law in filing an appeal can be sufficient cause. Further, it is settled principle that the matter is to be decided on merits as far as possible rather than on a technical point. There will not be any harm to the respondents (original plaintiffs) if the matter will be decided on merits. Therefore, considering the said facts and circumstances, I come to the

conclusion that the present application deserves to be rejected. Hence, following order is passed in the interest of justice.

**ORDER**

- [1] The present application Exh.10 is hereby rejected.
- [2] No order as to cost.

Signed and pronounced in the open Court today on 1<sup>st</sup> day of February, 2025.

Date: 01/02/2025  
Place: Porbandar

(Pinakin Chandrakant Joshi)  
(GJ00334)  
Principal District Judge,  
Porbandar.

(AUK)