

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 2994 of 2025**

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RAMESH MULJIBHAI PATEL

Versus

LALITABEN WD/O BHAILALBHAI DEVJIBHAI PATEL & ORS.

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Appearance:

MR JAMSHED KAVINA(11236) for the Petitioner(s) No. 1

MR JAY SNEHAL SHAH(13391) for the Petitioner(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 10/03/2025****ORAL ORDER**

1. Heard learned Senior Advocate Mr. Percy C. Kavina with learned advocate Mr. Jamshed Kavina for the petitioner. Learned Senior Advocate Mr. Kavina submits that the impugned order passed by the trial Court is erroneous inasmuch as specific averments made in the impugned application regarding the non-submission of documents along with the written statement have escaped the notice of the trial Court while rejecting the impugned application.

2. Learned Senior Advocate Mr. Kavina would further submit that the petitioners submitted an application below Exh.329 on 13.11.2019 before the trial Court, thereby pointing out that the documents sought to be relied upon by the petitioners were submitted in a cognate suit, being Special Civil Suit No.152 of 2016, and that all such original documents are part of the record of that suit.

3. Learned Senior Advocate Mr. Kavina would further submit that the aforesaid suit came to be disposed of on 17.10.2023, and thereafter, the petitioners were able to receive back the original documents, which are

now sought to be submitted in the present suit. Learned Senior Advocate Mr. Kavina would further submit that considering the provisions of Order 8 Rule 1A(3) of the Code of Civil Procedure, 1908, which is a law of procedure and a handmaid of justice, and in light of the decision of the Hon'ble Supreme Court of India in the case of **Sugandhi (Dead) vs. P. Rajkumar Rep. By Power Agent Imamoli**, (2020) 10 SCC 706, a hypertechnical approach ought to have been avoided by the trial Court.

4. Lastly, learned Senior Advocate Mr. Kavina would submit that granting leave in favor of the petitioner to submit documents could not, in any case, prejudice the interest of the plaintiff, as the petitioners have, since inception, intended to rely upon those documents. Due to the aforesaid handicap on the part of the petitioners, the original documents could not have been submitted.

5. Considering the submissions made by learned Senior Advocate Mr. Kavina, prima facie, this Court is of the view that the trial Court has not considered the matter from a proper perspective and has overlooked the averments made in the impugned application and previous applications filed by the petitioners, wherein the petitioners have clearly stated the reason for not submitting the original documents, as they were not in their possession. Even otherwise, as per the decision of the Hon'ble Supreme Court in the case of **Sugandhi** (supra), it is now well-settled law that the rule of procedure is the handmaid of justice, and a hypertechnical approach in such matters ought to be avoided.

6. Issue **Notice** for final disposal, returnable on **21.4.2025**.

7. Direct service is permitted. Ad-interim relief in terms of para 18(B) is granted.

(MAULIK J.SHELAT,J)

MANISH MISHRA