

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 287 of 2024
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In
R/SECOND APPEAL NO. 287 of 2024

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STATE OF GUJARAT & ANR.
Versus
GIRDHARLAL SAVDASBHAI

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Appearance:

MR BHARAT VYAS, AGP for the Appellant(s) No. 1,2
MS MAMTA R VYAS(994) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

Date : 10/06/2025
ORAL ORDER

1. The present Second Appeal has been filed challenging the judgment and decree passed by Additional District Judge, Porbandar in Regular Civil Appeal No.17 of 2012, whereby the first appellate Court upheld the judgment and decree dated 11.05.2010 passed by 2nd Additional Senior Civil Judge, Porbandar in Regular Civil Suit No.903 of 2003.
2. For the sake of brevity, the parties are referred to at their original status as that in the Civil Suit.
3. The brief facts arising in the present Second Appeal are that the plaintiff has been serving as Assistant Sub Inspector at Kutiyana Police Station, District: Porbandar and in view of the

misconduct of the plaintiff, show cause notice was issued to the plaintiff on 19.10.1999, to which the plaintiff had given reply. Thereafter, a departmental inquiry was held against the plaintiff and as the allegations were proved against the plaintiff, the plaintiff was dismissed from service from 05.08.2000. The said order of dismissal was challenged by the plaintiff by way of appeal before the Police Commissioner and by an order dated 16.03.2001, the said appeal has been dismissed. As against that, the plaintiff challenged the said order by filing Revision Application before Director General of Police, Gandhinagar which was also ultimately rejected by an order dated 11.01.2002, and thereafter, the plaintiff had filed Revision Application before the defendant No.1 which was also rejected, and therefore, the plaintiff filed suit, challenging the action of defendant. The trial Court after taking into consideration the oral evidence, documentary evidence and giving findings on all the issues which were framed vide Exhibit-9, the trial Court quashed and set aside the dismissal order that was passed by the defendant and it was held that the plaintiff is entitled for all the benefits i.e. entitled as an ASI. The said order was challenged by

way of Regular Civil Appeal and the said appeal was dismissed.

4. Learned Assistant Government Pleader Mr. Bharat Vyas has mainly argued that it has been proved that the plaintiff has misconducted during his duty as an ASI and the plaintiff was found at the address of one Fatimaben, and therefore, the order of dismissal was after giving full opportunity to the plaintiff to justify his act. It has also been argued by learned Assistant Government Pleader that, the plaintiff being a member of Police Force has committed a grave misconduct by remaining absent from his official duty during his official work hours and was found with another woman from the quarter No.24 of old City Police Line during the night time and after a full fledged departmental inquiry the order has been passed. It has also been argued that the act done by the plaintiff was unprofessional and being personal in nature, the plaintiff could not have remained absent during his official place of duty and the same amounts to misconduct during official duty.

5. It has also been argued that Senior Civil Judge, Porbandar has no jurisdiction to hear and decide the said dispute and in

view of the same, substantial questions of law which are suggested in the memorandum of appeal and appeal is required to be admitted.

6. Per contra, learned advocate for the respondent has mainly argued that only the misconduct that has been alleged against the plaintiff is that the plaintiff is found at the house of one Fatimaben, but the fact remains that, Fatimaben has not filed complaint against the plaintiff. Moreover, said Fatimaben has also deposed vide Exhibit-13 and explained the reason of plaintiff being at her residence. Moreover, during departmental inquiry, said Fatimaben had informed that she knew the plaintiff since a very long time and as she is staying alone and that she takes assistance of the plaintiff for her work and as she was not keeping good health, she had taken help of plaintiff for making Ration Card and to pay Electricity Bills, and therefore, during the night time, the plaintiff had come to her premises to return the form, and the bill and money and that the plaintiff had come to the said Fatimaben with her consent and that there is no illegitimate relation between the plaintiff and said Fatimaben,

and therefore, there are no substantial questions of law involved in the present Second Appeal. Therefore, the present Second Appeal required to be dismissed.

7. Having heard learned advocate for the parties and considering the judgment and decree passed by the trial Court and the appellate Court, the fact remains that it is neither the case of the defendant that the plaintiff was during duty hours has been caught in a compromised position with Fatimaben nor the same is alleged by the plaintiff nor the said fact has been proved by the defendant. The only misconduct that has been alleged is that during duty hours the plaintiff was not on his duty and the said fact has also not come forward in the departmental inquiry that the plaintiff has been accused of any misconduct pursuant to be found at the residence of Fatimaben. There are no cognate evidence to prove the said fact.

8. In view of the same, there are no substantial questions involved in the present Second Appeal.

9. In the case of **Jaichand (Dead) through Lrs and Other v. Sahnulal and Another** reported in **2024 SCC OnLine SC 3864**, the Hon'ble Apex Court has observed as under:-

“28. It is thus clear that under Section 100 CPC, the High Court cannot interfere with the findings of fact arrived at by the first Appellate Court which is the final Court of facts except in such cases where such findings were erroneous being contrary to the mandatory provisions of law, or its settled position on the basis of the pronouncement made by the Apex Court or based upon inadmissible evidence or without evidence.”

10. Considering the submissions made and after examining the findings of both the Courts below on the issue raised in the suit and upon examining the judgment and orders of both the Courts below, this Court is of the considered opinion that the learned advocate for the plaintiffs is unable to point out any infirmity, perversity or impropriety in the concurrent findings of the fact recorded by both the Courts below, not only that, the learned advocate for the plaintiffs is unable to show that the findings recorded by the learned Courts are without any evidence or there is any illegality in the findings.

11. Under the circumstances, this Second Appeal is devoid of any substantial questions of law. Both the learned Trial Court and first appellate Court have rightly decided the issue between the parties in the right perspective and as stated above no substantial questions of law arises in the present appeal. The appellant has failed to prove his case before the learned trial Court as well as before the first appellate Court. This Court does not find any substance in the present Second Appeal as the same is devoid of any merit both on facts and law and the same is dismissed at admission stage.

12. In view of the order passed in main matter, Civil Application does not survive and stands disposed of accordingly.

(SANJEEV J.THAKER,J)

Manoj Kumar Rai

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MANOJKUMAR RAI(HC01072), PRIVATE SECRETARY, at High Court of Gujarat on 10/06/2025 19:07:44