

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 1389 of 2018****In R/SPECIAL CIVIL APPLICATION NO. 1837 of 2012**

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SHANTABEN D/O BHIKHABHAI KHUSHALBHAI W/O MAGANBHAI PATEL
Versus
RAMANBHAI BHAGUBHAI

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Appearance:

MR NM KAPADIA(394) for the Appellant(s) No. 1,1.1,2,2.1,2.2
GOVERNMENT PLEADER for the Respondent(s) No. 4,5,6
MR AB MUNSHI(1238) for the Respondent(s) No. 1,2
MR HR PRAJAPATI(674) for the Respondent(s) No. 1,2
MR JITENDRA M PATEL(620) for the Respondent(s) No. 3
RULE SERVED BY DS for the Respondent(s) No. 10,7,8,9

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CORAM:MR. M. K. UPADHYAY, SPECIAL OFFICER**Date : 10/10/2023****ORAL ORDER**

1. Heard Mr. N. M. Kapadiya, learned advocate for the appellant. None has appeared for the respondents either in the first session or in the second session.
2. Perused the note dated 14.09.2023 filed by Mr. Jitendra M. Patel, learned advocate for respondent no.3 and perused the office note dated 20.09.2023.
3. A note has been submitted by the learned advocate for respondent no.3 for withdrawal of appearance and deletion of his name as an advocate representing respondent no.3. It is submitted in the

note that the case papers of the aforesaid petitions were taken away by respondent no.3 to engage another advocate and that he does not have any instructions regarding the case. Therefore, note has been submitted requesting to delete his name as an advocate representing respondent no.3. But today, he has chosen not to remain present in spite of due knowledge regarding fixing of the matter on board today.

4. Per contra, it is vehemently submitted by the learned advocate for the appellant that Mr. J. M. Patel, learned advocate has not produced any acknowledgement in support of his note on record. It prima facie shows that he has not duly complied with the provisions prescribed under Rule 133(i) of the Gujarat High Court Rules, 1993. Mr. N. M. Kapadiya, learned advocate has further submitted that the intention of the learned advocate for respondent no.3 is to linger the matter anyhow and hence, he has vehemently submitted to decline the request in absence of due acknowledgement on record.

5. Now, on perusal of the record, it prima facie appears that the Mr. J. M. Patel, learned advocate has simply submitted the note without producing any acknowledgement to the effect that the case papers

of the aforesaid petitions were taken away by respondent no.3 to engage another advocate. Even, the record does not reflect the appearance of another advocate appearing on behalf of respondent no.3 in place of Mr. J. M. Patel, learned advocate.

6. Now, Rule 133(i) of the Gujarat High Court Rules, 1993 clearly prescribes that an advocate may with the leave of the Court withdraw his appearance if his client has instructed him to that effect or if he has duly intimated to the client his inability to represent respondent no.3. It is further prescribed in the aforesaid rule that, in case his client has instructed him to withdraw his appearance, in that case, the advocate shall file the letter, if any, received from the client. It prima facie appears that there is nothing on record to show that respondent no.3 has either instructed him to withdraw appearance or to show that case papers of the said petition were taken away by respondent no.3 from the learned advocate to engage another advocate and that the learned advocate does not have any instructions regarding the case. In other words, there is no due acknowledgement been brought on record by the learned advocate for respondent no.3. Thus, Mr. J. M. Patel, learned advocate for respondent no.3 has not duly complied with the provision prescribed under

Rule 133(i) of the Gujarat High Court Rules, 1993.

7. Considering the aforesaid reasons, the request of the learned advocate for respondent no.3 for deletion of his name as an advocate in the present matter is declined herewith. Hence, the matter be placed before the Hon'ble Court.

(M. K. UPADHYAY)
(SPECIAL OFFICER)

SSVohra