

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO.1354 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 6525 of 2018
With

CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In R/LETTERS PATENT APPEAL NO. 1354 of 2023

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RAJENDRA CHOTUBHAI DESAI (DECEASED)

Versus

ISHWARNAGAR CO-OPERATIVE HOUSING SOCIETY LTD.

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Appearance:

MR HENIL M SHAH(10677) for the Appellant(s) No. 1,2,3,3.1,4,4.1,5
for the Respondent(s) No. 1,2,3,4,5,6,7

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CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 02/11/2023

ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. Heard Shri Mehul S. Shah, the learned senior counsel assisted by Shri Henil M. Shah, the learned counsel appearing for the appellants and perused the record.

2. The submission of the learned senior counsel appearing for the appellants is that there was no justification for the learned Single Judge to condone the delay of six years in filing appeal before the Tribunal under Section 102 of the Gujarat Cooperative Societies Act, 1961, when explanation offered for delay was not proper. The submission of the learned senior counsel is that the award dated 18.10.2011 passed by the Board of Nominee categorically records that the advocates engaged by the respondents were appearing

before the Board of Nominee. The entries in this regard from the Rojkam have been noted by the Appellate Tribunal while rejecting the delay condonation application. The opinion drawn by the learned Single Judge that the presence of the lawyers appearing on behalf of the parties cannot be deemed to be presence of the party personally and there was a requirement of sending the notice of the award to the parties personally in view of Rule 41 of the Gujarat Cooperative Societies Rules, 1965, is a result of misreading of the said provision.

3. The matter requires consideration. Let a Notice be issued to the respondent Nos.1 to 3 through RPAD, returnable on 13.12.2023.

4. Till the next date of listing, the effect and operation of the judgment and order dated 22.09.2023 passed by the learned Single Judge shall be kept in abeyance.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

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