

ITEM NO.23 COURT NO.11 SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).5528/2011
(From the judgement and order dated 03/02/2011 in LPA No. 2851/2010
of The HIGH COURT OF GUJARAT AT AHMEDABAD)

VAGHRI LABHUBEN TEJASBHAI TR.PA HOLDER Petitioner(s)

VERSUS

STATE OF GUJARAT & ORS. Respondent(s)

(With appln(s) for exemption from filing O.T. and prayer for interim relief)

Date: 07/03/2011 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Dushyant A. Dave, Sr.Adv.
Mr. Naveen Pahwa, Adv.
Ms. Meenakshi Arora, Adv.
Ms. Vaishnavi, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The petitioner is aggrieved by order dated 3.2.2011 of the Division Bench of the Gujarat High Court whereby the letters patent appeal filed by her against the order of the learned Single Judge condoning the delay in filing of appeal by the respondents against judgment dated 30.10.2001 of the trial Court was condoned.

After 17 years of death of her husband, the petitioner filed an application under section 372 of the Indian Succession Act. She did not implead the State of Gujarat as a party to the succession proceedings despite the fact that the land belongs to the State. By an order dated

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30.10.2001, the trial Court granted succession certificate in favour of the petitioner. After six years, the respondents filed an appeal, which was returned by 2nd Additional District Judge, Gondal on the ground that he did not have the jurisdiction to entertain the same. Thereafter, the respondents filed First Appeal No.6027 of 2009 in the High Court questioning the correctness of order dated 30.10.2001. They also filed an application for condonation of delay.

The learned Single Judge entertained and allowed the application for condonation of delay of 2970 days. The Division Bench dismissed the appeal of the petitioner and upheld the order of the learned Single Judge.

We have heard Shri Dushyant Dave, learned senior counsel appearing for the petitioner and perused the record. Although, the order of the learned Single Judge

does not contain reasons for condonation of about 9 years delay in filing of the first appeal, the impugned order is well reasoned and is self speaking.

noted that the land in respect of certificate was issued in favour of the petitioner was allotted to her husband by the State Government; that the State was not impleaded as a party to the proceedings of the application filed by the petitioner under Section 372 of the Indian Succession Act; that for the first time, the State officials came to know about the succession certificate when application dated 12.12.2006 was made by the petitioner for mutation of her name in the revenue record and thereafter, steps were taken for challenging order dated 30.10.2001.

The Division Bench which succession was the petitioner was

The Division Bench also noted that the civil appeal filed by the respondents in the Court of Additional District Judge along with an application for condonation of delay remained pending for about two years and was returned vide order dated 18.4.2009 on the ground that the Court did not have jurisdiction to entertain the appeal and after

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receiving the order of the Additional District Judge, Gondal, appeal was filed in the High Court and held that the cause shown by the respondents for delayed filing of the appeal was sufficient.

The petitioner's plea that the State Government will be deemed to have acquired knowledge about of the order of the trial Court in November, 2001 when she had applied to Mamlatdar for mutation was rejected by the Division Bench by observing that in the petition filed by her on 14.12.2006, no mention was made about application filed on 5.11.2001.

Before this Court, the petitioner has not produced copy of application dated 5.11.2001 allegedly made to the Mamlatdar for mutation. It is, therefore, reasonable to presume that no such application was made by her and a false plea was raised before the Division Bench of the High Court to get the appeal of the State dismissed as barred by time.

In our view, the reasons assigned by the High Court for condonation of delay are legally sound and the impugned order does not call for interference under Article 136 of the Constitution.

The special leave petition is accordingly dismissed. However, the petitioner is given liberty to move the High Court for early hearing of the appeal. We hope that any such request shall receive sympathetic consideration by the concerned Bench.

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master