

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3017 OF 2011

SHREE KODINAR TALUKA CO-OP.
BANKING UNION LTD. & ANR. ..APPELLANT(S)

VERSUS

MADHUBHAI ARJANBHAI BORAIYA AND ORS. ..RESPONDENT(S)

O R D E R

1. This appeal is directed against the judgment and order passed by the learned Single Judge of the Gujarat High Court in S.C.A. No.9314 of 2008, dated 10.09.2008.

2. It seems that the appellants without exhausting the remedy of an appeal before the Division Bench of the High Court, has approached this Court.

3. In our view, the appellants without exhausting the remedy of an appeal before the Division Bench, could not have approached this Court.

4. However, Shri Amar Dave, learned counsel appearing for the respondents brings to our notice the order passed by this Court in the case of *Samatbhai*

Merubhai Vainsh vs. Madhubhai Arjanbhai Boraiya & Ors., decided on 01.02.2013 and submits that against the same impugned judgment, the petitioner-therein had approached this Court and this Court had dismissed the Special Leave Petition both on the ground of delay as well as on merits. Therefore, requests us to dismiss the instant appeal.

5. In our view, dismissal of the Special Leave Petition on the ground of delay as well as on merits at the threshold would not be a binding precedent for us to follow. Therefore, we are not in agreement with the submission made by Shri Dave, learned counsel appearing for the respondents.

6. In view of the above, we now dispose of this Civil Appeal and permit the appellant-herein, if it so desires, to question the correctness or otherwise of the orders passed by the learned Single Judge in S.C.A.No.9314 of 2008, dated 10.09.2008 before the Division Bench of the High Court within a month's time from today.

7. If such an appeal is filed within the time granted by this Court, the High Court will decide the appeal on merits without reference to the period of limitation.

8. Since the learned counsel for the appellants was not present before this Court when the matter was heard, we direct the Registry to send a copy of this Court's order to the learned counsel for the appellants.

9. The Civil Appeal is disposed of accordingly. No costs.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

NEW DELHI,
SEPTEMBER 09, 2015.

ITEM NO.6

COURT NO.1

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 3017/2011

SHREE K.T.CO-OP.BANKING UNION LTD.& ANR.

Appellant(s)

VERSUS

MADHUBHAI ARJANBHAI BORAIYA & ORS.

Respondent(s)

(with office report)

Date : 09/09/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA

For Appellant(s) Mr. Abhijat P. Medh, Adv.

For Respondent(s) Mr. Amar Dave, Sr. Adv.
Ms. Nandini Gore, Adv.
Ms. Neha Khandelwal, Adv.
Mrs Manik Karanjawala, Adv.

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

The appeal is disposed of, in terms of the signed order.

(G.V.Ramana)
AR-cum-PS
(Signed order is placed on the file)

(Charanjeet Kaur)
AR -cum-PS