

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**MISC. CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022**  
**In**  
**R/FIRST APPEAL NO. 815 of 1985**

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**PATEL AMBALAL KALIDAS**  
**Versus**  
**PATEL MOTIBHAI KALIDAS**

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Appearance:  
MR.HEMANG H PARIKH(2628) for the PETITIONER(s) No.  
for the RESPONDENT(s) No.

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**CORAM:HONOURABLE THE CHIEF JUSTICE MR. JUSTICE**  
**ARAVIND KUMAR**  
and  
**HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI**

**Date : 07/02/2023**

**IA ORDER**  
**(PER : HONOURABLE THE CHIEF JUSTICE MR. JUSTICE**  
**ARAVIND KUMAR)**

1. We have heard the learned advocates appearing for the respective parties and perused the reply affidavits filed.

2. First Appeal No. 815 of 1985 was filed challenging the judgment and decree passed in Special Civil Suit No. 182 of 1977 on 06.02.1985. The said appeal came to be disposed of by judgment and order dated

25.11.2004 by quashing and setting aside the judgment and decree passed by the trial Court and remanding the matter for adjudicating the dispute relating to the properties described in paragraphs 8 and 9 of the Consent Terms dated 8 / 9<sup>th</sup> October 1997 as also the disputes which were raised before the Arbitrators which remained undecided, concerning the movable and immovable properties along with the dispute about the accounts.

2.1 On account of the said suit having been instituted in the year 1977 and the matter was being remanded only with reference to certain properties, since in respect of other properties, the dispute was resolved by consent, this Court deemed it fit to issue direction to the trial Court to dispose of the suit expeditiously and at any rate, within an outer limit fixed therein namely on or before 31.12.2005 and accordingly, direction came to be issued on 25.11.2004.

2.2 The first respondent in the appeal has filed this Misc. Civil Application No. 1 of 2022 seeking for a direction to the trial Court to dispose of the said suit and to pronounce the judgment on or before 31.12.2022 contending *inter alia* that he is 86 years old and would like to see the result of the suit during his life time. It has been specifically

contended that direction issued by this Court on 25.11.2004 has been completely ignored by the learned Judges who were hearing this matter and they have not even cared to look into the direction issued by this Court. Taking cognizance of this fact and having noticed that though direction was issued way back on 25.11.2004 directing the jurisdictional Court to dispose of the suit on or before 31.12.2005, had not been complied, notices were ordered to be issued to all the Judicial Officers who had handled this matter at relevant point of time namely when they were posted as Presiding Officer of the Court where Special Civil Suit No. 182 of 1977 was pending namely the Principal Senior Civil Judge, Anand.

2.3 A report came to be filed by the Registrar General on 18.12.2022 along with explanation received from the respective Judicial Officers, which was taken note of by this Court and observed as under:

*“[3] Pursuant to the same, Registrar General has filed a report dated 18.12.2022 along with explanation received from the respective Judicial Officers which, on perusal, would reveal further shocking facts. During the aforesaid period, in all 16 Judicial Officers have worked in the said Court, out of which, 10 Judicial Officers are still serving, 6 Judicial Officers have retired and 2 Judicial Officers have expired. The Judicial Officers, Ms. P. P. Mokashi, now working as a Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Jagadhia, Bharuch and Mr.*

*Sunil Choudhary, Principal Civil Judge, JMFC, Lakhtar, Surendranagar have submitted their explanation by letter dated 17.12.2022 stating thereunder that they have not dealt with the said suit during their tenure at Anand. However, the fact remains that during the period of Ms. P. P. Mokashi the suit was pending before her Court from 09.09.2009 to 16.12.2009. Likewise, before the same Court which was then presided by Mr. Sunil Choudhary it was pending from 02.07.2015 to 20.12.2015. The explanation offered by these two Officers when perused would indicate that in a most cavalier manner reply has been furnished. Ms. P. P. Mokashi has stated that in the short period the suit "might not have been listed" and "parties might not have remained present". Even Mr. Sunil Choudhary has stated in his reply that direction issued by this Court was not to his knowledge. He further goes to the extent of stating that he had no opportunity to see the records of the case. It is needless to point out that it would be incumbent upon every Judicial Officer to look into the records to ascertain as to whether in any particular case there has been any direction / order issued by higher courts or not. It is also equally important that Registry of the concerned Court, after having made an entry at the first instance about such direction issued by the High Court to the Trial Court to dispose of the suit within a time frame, has to continue such entry in the ordersheet / rojkam / record and proceedings of the case till its disposal or such order is modified or varied. If this has not been done, it would indicate the sorry state of affairs in which the matters are being dealt with by the learned trial Judges.*

*[4] The other Judicial Officers who are still in service and before whom said suit was posted have also offered their explanation. Same is also perused by us. It would indicate that matter was pending for various periods before the respective Judicial Officers ranging from 99 days to 1035 days. Ms.J.R.Dodiya was then working as the Principal Senior Civil Judge, Anand from 14.05.2018 to 04.10.2018, 13.02.2019 to 09.05.2019 and 13.06.2019 to 22.05.2022 and she states in her reply that direction issued by the High Court might not have come to her knowledge at that time. Hence, we are forced to observe at the cost of repetition that casual manner in which the direction issued by this Court having been dealt by her. To substantiate her defence she has stated on account of bulkiness of the records, she*

*might not have had knowledge.*

*[5] It is also noticed that when direction has been issued by the this Court and when the Judicial Officer was unable to conclude the proceedings within the time frame, it was incumbent upon the Judicial Officer to seek for extension of time from this Court. Even this exercise seems to have not been undertaken by any of the officers including the respective Principal District Judges. This again is a shocking feature which cannot go unnoticed.*

*[6] The explanation offered by these officers, namely, the serving officers cannot be accepted and it not only requires to be deprecated and also requires to be stopped. Hence, we call upon said Judicial Officers to file their affidavits-in-reply as to why contempt proceedings should not be initiated against them for not complying with the direction issued by this Court on 25.11.2004.*

*[7] The judgment of this Court rendered on 25.11.2004 would disclose that appeal filed in the year 1985 was taken up and disposed of by the said order, which was on account of certain subsequent developments, namely, during the pendency of suit, the dispute which is the subject matter of the suit was referred to arbitrators of four and out of them three arbitrators gave their award on 10.09.1982. However, one of the arbitrators namely one appointed by the appellant did not sign the award. In fact there was a consent terms worked out by the parties which was submitted before this Court and in the background of consent terms, appeal came to be disposed of with reference to the properties described in paragraphs 3, 4, 5 and 7 therein. However, the dispute continued with reference to the properties described in paragraphs 8 and 9 of the consent terms dated 8 / 9 th October, 1997 and for this limited purpose, matter came to be remitted back to the trial Court.*

*[8] The original dispute arose somewhere in 1970s which culminated in filing of the suit i.e. Regular Civil Suit No.182 of 1977 and the appeal filed in 1985 came to be disposed of by order dated 25.11.2004 on consent terms with a direction to the learned trial Judge to dispose of the suit within a time frame which, as already observed hereinabove, has been patently violated, ignored and not implemented. Though proceedings before Trial Court*

*moved at a snail's pace after remand, the matter was listed for arguments on 27.12.2016. The current status of the said suit as per the District Courts Information System (DCIS) which is placed along with the report of the Registrar General would evidence this fact from 27.12.2016 till date the matter has been adjourned for hearing final arguments. The records and proceedings of the suit which has since been secured on perusal would also disclose that without assigning any reason matter has been adjourned many a time. In spite of there being a direction issued by this Court, the concerned Judicial Officers who handled the matter have ignored the direction so issued by this Court. Hence, before proceeding to pass any orders, we deem it proper to issue show-cause notice to the following 9 Judicial Officers:-*

<b>Sr. No.</b>	<b>Name of the Officers</b>	<b>Present Posting</b>
1.	Ms. P. P. Mokashi	Additional Senior Civil Judge & ACJM, Jagadhia, Bharuch
2.	Mr. D. J. Parmar	Metropolitan Magistrate, Ahmedabad
3.	Mr. B. B. Jadav	11 <sup>th</sup> Additional District Judge, Rajkot
4.	Mr. Sunil Choudhary	Principal Civil Judge & JMFC, Lakhtar, Surendranagar
5.	Mr. P. J. Chaudhary	Principal Senior Civil Judge, Dhoraji, Rajkot
6.	Ms. M. S. Soni	2 <sup>nd</sup> Additional District Judge, Rajula, Amreli
7.	Ms. J. R. Dodiya	Principal Senior Civil Judge, Vadodara
8.	Mr. S. A. Pathan	Additional Senior Civil Judge, Gandevi, Navsari
9.	Mr. N. G. Parmar	Principla Senior Civil Judge, Ananad

*[9] This Court calls upon the aforesaid nine (9) Judicial Officers to show-cause as to why contempt proceedings should not be initiated against them for willfully disobeying the order and*

*direction passed / issued by this Court on 25.11.2004 in First Appeal No.815/1985. The reply affidavit, if any, shall be filed on or before 20.01.2023 for which limited purpose this matter be listed by the Registry on the said date. If the aforesaid officers intend to see or peruse the record and proceedings of Regular Civil Suit No.400/2005 (Old Special Civil Suit No.182/1977) they would be at liberty to examine them in the presence of Chief Administrator or Sheristadar of said Court.”*

2.4 This Court also observed that for ensuring such incidents do not recur in future, the Registrar General was directed to issue a Circular specifying thereunder that where a direction has been issued by the High Court for disposing of the matter in a time frame, or where there has been stay of further proceedings before trial Court in respect of matter pending before High Court, the registry of the trial Court should ensure that not only such orders / directions are entered in the record and proceedings of the trial Court as a one time measure but such entry should continue to be reflected in the record and proceedings on every date of hearing till the matter is disposed of or till the direction so issued is modified or varied. It was also directed that wherever the directions have been issued and same could not be complied for whatsoever reason, in such circumstances, the Presiding Officers of the respective Courts were required to forward a requisition letter to this Court through proper channel. It has been brought to the notice of this Court that a Circular No. A.2625/2022 has since been issued on 03.01.2023 on the

administrative side as directed by this Court.

3. The notices issued to the 12 Judicial Officers who were, at the relevant point of time, discharging their duties as the Presiding Officers of the Principal Senior Civil Judge, Anand, have filed their replies. It is universally stated by all the Judicial Officers expressing a deep sense of repentance and they have tendered unconditional apology. The Judicial Officers have also stated that they would ensure that such incidents would not recur in future and have assured this Court that they will take due care and caution in future. This Court has, on many occasions, held that when remorse is expressed, it should come from heart and not from pen and in the instance case, we have noticed that remorse which has been expressed by Judicial Officers seems to have come from heart and the respective learned Senior Advocates / Advocates representing the Judicial Officers would reiterate this fact.

4. Having regard to the fact that Judicial Officers have expressed remorse and truth cannot be a defence to stave off their liability namely inability to peruse the record and proceedings of their Court and yet there being unconditional apology tendered and an assurance is given to this Court that in future they would ensure such incidents would not recur and



giving a strong caution to these officers, at least, henceforth, they should be careful, cautious and should peruse the record and proceedings of the case whenever the matter is taken up, which would be not only in their interest but also in the interest of the members of the bar as well as the litigant public for whom the services are being rendered, we accept the apology tendered by them and drop further proceedings and direct the registry to intimate this order to respective Judicial Officers.

5. With aforesaid observations, this application stands disposed of and also in view of the fact that direction issued has now been complied.

[ Aravind Kumar, C.J. ]

THE HIGH COURT  
OF GUJARAT  
[ Ashutosh Shastri, J. ]

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