IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 15436 of 2020

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KESHUBHAI SAMAT KARAVADRA

Versus

MALIBEN SAMAT KARAVADRA (MALIBEN KESHUBHAI KESHWALA) & 2 other(s)

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Appearance:
HCLS COMMITTEE(4998) for the Petitioner(s) No. 1
MR PV PATADIYA(5924) for the Petitioner(s) No. 1
for the Respondent(s) No. 1,2,3

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CORAM:**HONOURABLE MR. JUSTICE ASHUTOSH J. SHASTRI**

Date : 11/12/2020

ORAL ORDER

1. Heard Mr.P.V. Patadiya, learned advocate for the petitioner.

2. The present petition under Article 227 of the Constitution of India is filed, challenging the legality and validity of an order dated 31.8.2020, whereby the Special Civil Suit No.69 of 2011 which came to be dismissed for default on 8.5.2015, is restored to the file on payment of cost of Rs.3000/-.

3. Mr.Patadiya, learned advocate, has submitted that the suit of 2011 which went in dismissed for non-prosecution in 2015, the learned Judge ought not to have restored the same after enormous delay and as such, the order which has been passed is erroneous. On the contrary, if the litigant is not vigilant about his right to prosecute the proceedings, then according to Mr.Patadiya, learned advocate, he must thank himself and, therefore, the restoration could not have been made.

4. Mr.Patadiya, learned advocate, has candidly submitted that however, the suit got dismissed for default on 8.5.2015, wherein the application for seeking restoration was given well within time i.e. on 16.6.2015 reflecting on page-16 of the petition compilation and thereafter, has left it to the discretion of the Court.

5. Having heard the learned advocate appearing on behalf of the petitioner and having gone through the material on record, it seems that the suit has been dismissed for default on 8.5.2015. However, immediately within a period of limitation, an application seeking restoration has been submitted. The reason which has been assigned in the application is that the concerned Advocate has not been able to communicate to the respondent – original plaintiff. As a result of that, the proceedings could not be attended and as such, what is culled out from the proceeding is that it is on account of the Advocate having not properly conducted the proceedings, the suit got dismissed for default. It is settled position of law that for the fault on the part of learned Advocate representing the litigant, the litigant may not be allowed to suffer and apart from that, while restoring the suit proceedings, valid reasons have been assigned and to strike the balance, even the cost has also been imposed by way of order impugned in the petition. The order impugned appears to be a well reasoned order and in the absence of any perversity or material irregularity, this Court is not inclined to exercise extraordinary jurisdiction under Article 227 of the Constitution of India.

6. It is in this view of the matter, the petition being meritless, deserves to be dismissed and the same is dismissed accordingly,

with no order as to costs.

(ASHUTOSH J. SHASTRI, J)

NAIR SMITA V.