

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 68 OF 2020  
(Arising out of SLP(C) No.19007 of 2017)

THE STATE OF GUJARAT

APPELLANT(S)

VERSUS

VIRVIJAY CONSTRUCTION COMPANY

RESPONDENT(S)

O R D E R

Leave Granted.

The appellant assails the order dated 23.06.2016 by which the High Court after holding that the suit was not barred by limitation has remanded it for fresh decision on merits, but has restrained the trial of the suit with regard to issues decided earlier.

Learned counsel for the appellant makes a short submission that once the High Court remanded the suit for fresh decision on merits, it ought not to have imposed any fetters on the remand order. Because the suit had been dismissed previously, there was no occasion for the appellant to file any appeal with regard to a finding on any issue. The order in its present form will cause serious prejudice to the appellant.

Learned counsel for the respondent submits that the impugned order calls for no interference as the issues were decided earlier on evidence and have rightly been held not to be reopened.

We have heard learned counsel for the parties.

The earlier suit of the respondent was dismissed on grounds of limitation. There was thus no occasion for the appellant to file any appeal and contest any finding that may have been arrived at in the same. The impugned order is incongruous in nature. It directs the suit upon remand to be decided on merits. There was no occasion for a partial remand as the suit itself had been dismissed. The subsequent part of the same order imposing fetters on the trial court simultaneously from deciding the suit on merits, is therefore in our opinion, in the facts of the present case, completely unsustainable. The opportunity to the appellant to raise objections in the fresh trial therefore accrues and could not have been restrained by the High Court.

We, therefore, set aside that part of the order of the High Court only which reads as follows:-

“However, it is made clear that on remand, the learned trial Court is not required to reconsider/re-adjudicate the issues which have already held in favour of the plaintiff as the same has not been challenged by the State Government and it has attained the finality.”

The appeal is allowed to the aforesaid extent.

.....J .  
[NAVIN SINHA]

.....J .  
[KRISHNA MURARI]

NEW DELHI;  
8TH JANUARY, 2020

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

Petition(s) for Special Leave to Appeal (C) No(s). 19007/2017

(Arising out of impugned final judgment and order dated 23.06.2016 in First Appeal No.302/2016 passed by the High Court of Gujarat at Ahmedabad)

THE STATE OF GUJARAT

Petitioner(s)

VERSUS

VIRVIJAY CONSTRUCTION COMPANY

Respondent(s)

(IA No.51582/2017-CONDONATION OF DELAY IN FILING and IA No.51594/2017-EXEMPTION FROM FILING O.T. )

Date : 08-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA  
HON'BLE MR. JUSTICE KRISHNA MURARI

For Appellant(s)      Mr. A.P. Mayee, Adv.  
                                 Mr. A. Rajarajan, Adv.  
                                 Ms. Hemantika Wahi, AOR

For Respondent(s)    Mr. Malak Manish Bhatt, AOR  
                                 Mr. Atreyo Banerjee, Adv.

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

Delay condoned.

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(SWETA DHYANI)  
SENIOR PERSONAL ASSISTANT  
(Signed order is placed on the file)

(DIPTI KHURANA)  
COURT MASTER (NSH)