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Decided on	20	04	2018
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IN THE COURT OF PRINCIPAL CIVIL JUDGE AT DHOLERA

C.M.A.No.2 of 2018
Exh. No.

APPLICANT: -

LEGAL HEIR OF DECEASED SABJALIKASAMALI
RIYAZ SABJALI MARCHANT
R/O KRANTI APPARTMENT, SAINT MARY ROAD,
BANDRA(WEST),
MUMBAI.

Versus

OPPONENTS: -

[1] POPATBHAI CHHAGANBHAI MENDPARA,
R/O BHUTIYA, TAL.SIHOR,
DIST.BHAVNAGAR.

[2] KHIMJIBHAI SHAMJIBHAI PATEL,
R/O SHAHPUR, TAL.BARWALA
DIST.BOTAD.

[3] JAGDISHBHAI JADAVBHAI,
R/O SODHI, TAL.DHOLERA
DIST.AHMEDABAD.

<u>SUBJECT: -</u>	<u>AN APPLICATION FOR THE RESTORATION OF THE SUIT UNDER ORDER-9 RULE-9 OF THE CODE OF CIVIL PROCEDURE, 1908.</u>
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APPEARANCE: -	Mr.J.K.SOMANI LD. ADVOCATE for the Applicant.
	Ex-Parte against Opponent No.1, 2 & 3.

J U D G M E N T

- (1) Heard Mr.J.K.Somani, Ld. Advocate for the applicant. Read the present application.
- (2) That, the applicant (original plaintiff) has filed the present application for restoration of Regular Civil Suit No.106/2010(New Regular Civil Suit No.58/2013) on the ground that they had filed Regular Civil Suit No.106/2010(New Regular Civil Suit No.58/2013) against the defendants for declaration and permanent injunction in respect of the property in dispute. Thereafter the said suit was pending for framing of issues. It is the further say of the applicant that, his Ld. Advocate had said to him that, he will inform him as and when his presence required. Meantime his Ld. Advocate informed him that his case had been transferred to Principal Civil Court, Barwala therefore told me to inform him as when notice serves to him. But he had not received any notice

from Court. Therefore he had not initiated any proceeding in respect of the said suit. Thereafter the said suit was dismissed for default on dated:30/04/2016. That, he came to know about this Order on dated:08/06/2016. Thereafter he had applied for certified copy of the order on dated:27/06/2016 and get the certified copy of the order on dated:01/07/2016. Thereafter the he had filed the present application. That, it is the say of the applicant that if the applicant's suit is not restored, then the right of the applicant would be defeated and the applicant will suffer an immense loss. Hence, it is requested that Regular Civil Suit No.106/2010 (New Regular Civil Suit No.58/2013) filed by him may please be restored on file.

- (3) That, On filing of this application, notice was ordered to be issued upon the opponents. The notices issued upon the opponents were duly served, but despite duly service of notices, Opponents have not remained present before the court to resist this application, and have let

gone the same unchallenged and as such, this application has proceeded ex-parte against the Opponents as per order, passed below the application.

- (4) Perusing the papers produced along with this application, it transpires that the plaintiffs had filed Regular Civil Suit No.106/2010 (New Regular Civil Suit No.58/2013) against the defendants for declaration and permanent injunction with regard to the property in question. It further transpires that the issues were framed in the suit and sufficient opportunities have been given to the applicant to adduce his evidence. However, the applicant and his Ld. Advocate did not turn to this Court for adducing the evidence and remained absent. Ultimately, the suit filed by plaintiff was dismissed on dated:30/04/2016 for non-appearance of plaintiff. According to the say of the applicant that, he has not received any notice issued by the Court regarding the present suit. Hence he was not aware of the status of the suit.

He came to know about the dismissal of the suit when he came to Dhandhuka Court for criminal case.

- (5) It is a well settled law that in the restoration application, the only point to be considered whether there is a sufficient cause for the absence of the plaintiff on the date of dismissal of the suit. While determining this question the Court should adopt liberal approach. In the present case, the suit of plaintiff was dismissed on dated:30/04/2016 on account of non-appearance of plaintiff. That the plaintiff had filed the suit for declaration and permanent injunction in respect of the property in dispute and it was at the stage of adducing the evidence. In this situation, if the present application is refused, the rights of plaintiff in the disputed property would be defeated forever. Not only that, the dispute between the parties is yet to be decided on merits. Thus, I am of the view that at least one opportunity be given to the applicant to establish his case. Hence, in

the interest of justice the present application deserves to be granted and thus following order is passed:

// ORDER //

- The present application is hereby allowed.
- Order of dismissal of the suit is hereby set aside and it is hereby ordered to restore the Original Regular Civil Suit No.106/2010 (New Regular Civil Suit No.58/2013) on file as provided in Order-9 Rule-9 of The Code of Civil Procedure,1908.
- The Applicant (original Plaintiff) is hereby ordered to pay Rs.3500/- Rupees Three Thousand Five Hundred only to the District Legal Service Authority, Ahmedabad(Rural) Cost Fund towards the cost of this application.

Signed and pronounced in open Court today this
20th Day of April, 2018.

Date:20/04/2018
Dholera

[CHAITANYAKUMAR GOPALDAS DESAI]
Principal Civil Judge
Dholera
Code No.GJ01211