

GJGS020000532019

Presented on : 04-01-2019

Registered on : 04-01-2019

Decided on : 11-03- 2020

Duration : 01 Y, 02 M, 07 D



**IN THE COURT OF
ADDI CIVIL JUDGE & J.M.F.C AT ,VERAVAL GIRSOMANTH
Presided Over by P.K.Dave**

C.M.A. NO. 1/19

Applicant:

HEIRS OF LT. SURESHCHANDRA DEVKARANBHAI MAHETA

Age: 56

Occupation :

Address: AT VERAVAL, REYON HOUSING SOCIETY

1.1: INDUMATIBEN SURESHCHANDRA MAHETA

Age:

Occupation :

AT VERAVAL

REYON HOUSING SOCIETY

1.2: PIYUSH SURESHCHANDRA MAHETA

Age:

Occupation :

AT VERAVAL

REYON HOUSING SOCIETY

1.3: PRATIXA SURESHCHANDRA MAHETA

Age:

Occupation :

**AT VERAVAL
REYON HOUSING SOCIET**

VERSUS

Opponent:
KOLANBAI RANIBEN UKABHAI
Age: 0
Occupation :
Address: AT DARI, TA. VERAVAL

2: JIKANI VALIBHAI CHANDBHAI
Age: 0
Occupation :
AT DARI
TA. VERAVAL

**APPLICATION FOR CONDONING DELAY IN PREFERRING
RESTORATION APPLICATION AS WELL AS TO RESTORE THE SUIT
U/O-9, R-9 OF CPC**

Appearance :-

Learned Advocate : Mr. H. D. Lakhani for the applicant.

Learned Advocate : Mr. P. D. Dholiya for the opponent no.1.

-:: J U D G M E N T ::-

1. It is the case of the applicant that he has instituted the suit being RCS/305/2002. Said suit was dismissed for the absence of the applicant-plaintiff. So the applicant-plaintiff has preferred the application praying to restore the above suit along with the application praying for condonation of delay.
2. Notices were issued to the opponents, which were duly served to them. Consequently, opponent no. 1 appeared before this court through his Ld.

Advocate and sought time to file written statement. In spite of granting sufficient time, opponent no.1 failed to produce the written statement as well as the opponent no. 2 did not turn up.

3. In the application for condonation of delay, It is submitted that their advocate did not inform them about the dismissal of the suit and were under the impression that the suit is pending. And upon enquiring, they came to know that the suit is dismissed. It is further submitted that unfortunately, their suit came to be dismissed for default on 10/03/2017 for non-appearance of the applicant-plaintiff. It is further submitted that there was no ill-intention in non-appearance of the applicant and further submitted that if the suit is not restored the applicant-plaintiff would have to face dire financial consequence. Hence, applicant is constrained to file application for condonation of delay and praying for restoration of suit being Reg. Civil Suit No. 305/2002.
4. The opponent no. 1 has filed to file his reply, hence right to file reply is closed.
5. Looking to the legal position of O-9, R-9 of the Civil Procedure Code, it is a desirable that court should adopt liberal view in granting restoration application when sufficient cause is shown by the applicant so as to advance substantial justice rather than to allow the suit to be dismissed for default on technical ground. Restoration of suit dismissed for default should not ordinarily be denied unless the applicant found guilty of contumacious negligence or willful default. It is required to note here that, in the present case, as such there are no allegations that deliberately and with a malafide intention the applicant remained absent. Beside that,

looking to the provision of Article-122 of Limitation Act, the restoration application must be filed within 30 days from the order of the dismissal. The RCS no. 305/2002 was dismissed on 10-03-17 and the present application is filed on 04-01-2019, but the plaintiff sufficiently shows the reasons for delay.

6. Hence, looking to the facts of the case, it appears to be proper and necessary to allow the applications to decide the suit on merits. Further allowing this application would not cause prejudice or injustice to the opponent. And in such circumstances, it deems fit and proper to condon the delay by imposing necessary cost and to restore the suit bearing RCS no. 305/2002 to its original file. Hence following order is passed:

:: ORDER ::-

Present application is hereby allowed.

Delay of 664 days is condoned.

Suit bearing RCS/305/2002 is ordered to be restored on its original file.

Applicant – plaintiff is directed to pay cost of Rs. 2000/- with DLSA, Varaval.

Pronounced in the open Court on 11th day of March, 2020.

(Ms. P K Dave)
Addl. Civil Judge,
VERAVAL GIRSOMANTH
Code: GJ 0 1244