(2025) 12 GUJ CK 0070

Gujarat High Court

Case No: R/Civil Revision Application No. 566 Of 2025

Haresh Ramchandra Balwani & Anr	APPELLANT
Vs	
Dineshbhai Madubhai Mali & Ors	RESPONDENT

Date of Decision: Dec. 3, 2025

Acts Referred:

- Code Of Civil Procedure, 1908- Order 9 Rule 4

Hon'ble Judges: Sanjeev J.Thaker, J

Bench: Single Bench

Advocate: Sunil S Joshi, Urja B Dave

Final Decision: Dismissed

Judgement

Sanjeev J.Thaker, J

1. The Present Civil Revision Application is filed challenging the Order passed in Civil Miscellaneous Application No. 10 of 2018, whereby the 2nd Additional Senior Civil Judge, Dahod, by an Order dated 06.04.2022, dismissed the said Civil Miscellaneous Application.

2. For the sake of brevity, the parties are referred to as per their original status in the Suit.

3. The brief facts arising out of the present Revision Application are that the Original Plaintiffs Nos. 6 and 7 filed an Application for the restoration of Special Civil Suit No. 52 of 2005, which had been dismissed for default.

An application was subsequently filed by Plaintiff Nos. 6 and 7 to restore the said suit under the provisions of Order IX Rule 4 of the Code of Civil Procedure, 1908. The rejection of the said application led to the filing of the present Revision Application.

4. The learned Advocate for the Petitioner (Original Plaintiffs Nos. 6 and 7) has mainly argued that although sufficient cause was shown by the Plaintiff in preferring the application to restore the

suit, the Trial Court erred in not allowing the said application. It was contended that the Trial Court could not have rejected the application filed under the provisions of Order IX Rule 4, and therefore, the Present Revision Application is required to be allowed.

5. It has been argued by the learned Advocate for the Plaintiff that the Trial Court erred in holding that from 01.02.2007 to

9. 12.2009 (almost three years), the matter was kept for the Plaintiffs' Evidence, yet no evidence was produced by the Plaintiffs. A similar finding was recorded for the periods commencing from 19. 04.2010 to 02.08.2010, and from 12.09.2011 to 08.12.2011.

6. It has been argued by the learned Advocate for the Plaintiff that the Trial Court erred in concluding that the Rojkam reflects that on multiple occasions, adjournment applications as well as oral requests for adjournments were made by the Plaintiffs.

7. It has been argued by the learned Advocate for the Plaintiff that the Trial Court ought to have appreciated that the Rojkam was not properly drawn, and therefore, the question of dismissing the suit for default would not arise.

8. It has also been argued by the learned Advocate for the Plaintiff that though sufficient cause for non-appearance of the Plaintiffs was shown and reasonable grounds for the restoration of the suit were canvassed before the Trial Court, the said request was turned down. It was submitted that the Trial Court could not have dismissed the said application when sufficient reasons were stated by the Plaintiff to restore the suit; hence, the present Application is required to be allowed.

9. Having heard the learned Advocate for the Plaintiff, this Court, taking into consideration the facts stated in the Application for restoration filed under the provisions of Order IX Rule 4, finds that no valid and sufficient cause has been stated by the Petitioner for non-appearance on the day the matter was dismissed for default. A review of the entire Application indicates that it primarily provides details of the Rojkam. Crucially, at Paragraph 6, the Applicant stated that they were advised not to remain present in the court until the application for joining parties was decided. Moreover, it was also stated in Paragraph 6 of the Application that the Plaintiff's Advocate had not informed him of the fact to remain present before the court. Consequently, on the day when the matter was called out, the Plaintiffs were not present, and the matter was dismissed for default.

10. In the present case, on consideration of the entire Application and the Rojkam of the Civil Suit reveals no justification is given by the Plaintiff for not remaining present on the day the matter was dismissed for default. Though a liberal construction has to be taken of the expression "sufficient cause," in the present case, there was complete inaction on the part of the Plaintiff in not remaining present, and no satisfactory cause was stated by the Plaintiff for not remaining present when the matter was dismissed for default.

11. If the facts of the present case are taken into consideration, the suit was filed in the year 2005, and the issues were framed on 1. 02.2007, from 01.02.2007 till 09.12.2009, the said matter was

kept for the Plaintiffs' Evidence; however, the Plaintiff had not produced any evidence. Thereafter, from 19.04.2010 to 02.08.2010, the matter was again kept for the Plaintiffs' evidence, however, the Plaintiff had not produced any evidence. The same scenario was repeated from 12.09.2011 to 08.12.2011, and in between, applications were produced and disposed of.

12. If the application filed vide Exh. 1 i.e. Civil Misc. Application is taken into consideration, it has been stated in the said application that the Plaintiffs were present in the court and ready to give evidence; however, as the court was busy with other matters, the matter was adjourned, though no application for adjournment was given by the Plaintiffs, however, even on the perusal of the Rojkam, it can be clearly stated that on multiple occasions, adjournment applications and oral submissions for adjournments have been filed by the Plaintiff, and therefore, the contention of the Plaintiff that they were ready with the oral and/or documentary evidence is inconsistent with the Rojkam.

13. In the present case, no sufficient cause has been stated by the Plaintiff for not remaining present when the matter was called out, and the entire blame for non-appearance has been placed on the Advocate when the matter was dismissed for default.

14. In view of the above-referred facts, this Court finds that the Plaintiff has been negligent and there is inaction on the part of the Plaintiff, and that no sufficient cause has been stated by the Plaintiff to restore the suit No. 52 of 2005.

15. In view of the same facts, this Court does not find any merit in the Civil Revision Application, and the present Civil Revision Application is required to be dismissed and is accordingly dismissed.