

ORDER BELOW RESTORATION APPLICATION

1. The present application is filed by the applicants (original plaintiffs) under Order IX Rule 4 of the Code of Civil Procedure, 1908 for restoration of Regular Civil Suit No. 93/2011, which came to be dismissed for default on 11/10/2022. Along with the said application, the applicants have also prayed for condonation of delay of about five months in preferring the restoration application and the delay was condoned.
2. The respondents (original defendants) have opposed the application by filing written objections, contending inter alia that the applicants were negligent, were granted sufficient opportunities ,about 86 adjournments, and that the delay is not properly explained. It is further contended that the dismissal order is legal and proper and the present application deserves to be rejected.
3. I have heard the learned advocates for both sides and perused the record.
4. It is an admitted position that the suit came to be dismissed for default due to absence of the plaintiffs and their advocate. It is also not in dispute that there is a delay of about five months in filing the present application.
5. The law with regard to restoration of suit and condonation of delay is well settled. The Court is required to adopt a liberal approach while considering such applications, so as to advance substantial justice. Unless gross negligence, deliberate inaction or malafide is established, a party should not be denied an opportunity to contest the matter on merits.
6. In the present case, the applicants have explained the delay on the grounds that they were unaware of the dismissal, were residing outside the village, and are not well-versed with legal procedures. Though the respondents have strongly opposed and pointed out earlier conduct of the

plaintiffs, it appears that the dispute between the parties is relating to rights in property and requires adjudication on merits.

7. Even if there was some negligence on the part of the applicants, the same can be compensated by imposing costs. Denial of restoration would result in foreclosing the applicants' right to have the dispute decided on merits, which would cause irreparable loss.
8. Considering the overall facts and in the interest of justice, this Court is of the opinion that the delay deserves to be condoned and the suit deserves to be restored, subject to appropriate costs.

FINAL ORDER

- The present application is allowed.
- The order dismissing Regular Civil Suit No. 93/2011 for default is hereby set aside and the suit is restored to its original file and number.
- The restoration is subject to the condition that the applicants shall deposit costs of Rs. 5,000/- (Rupees Five Thousand only) before the Taluka Legal Services Authority, Vagra within 15 days from the date of this order.
- In case of failure to deposit the said costs within stipulated time, this order shall stand automatically vacated without further reference to the Court.

Date-20-03-2026

Place- Vagra

Additional Civil Judge

Vagra, Bharuch