

IN THE COURT OF PRINCIPAL CIVIL JUDGE, AMOD

Civil Misc. Application No. 13 of 2025

Applicant : Vijaysinh Amarsinh Solanko

Versus

Opponent : Kashiben Mahijibhai, LR of Mahijibhai

Chaganbhai

ORDER

(Application for setting aside dismissal under O. IX R.4 of CPC)

1. The applicant has filed the present application under Order IX Rule 4 of the Code of Civil Procedure, 1908, for setting aside the dismissal of the Regular Civil Suit 07/2021. The suit was ordered to be dismissed on default on 01/09/2025.

Notice to the opponent was issued which was served but the opponent did not appear. Therefore, matters proceed Ex-parte.

2. The order dismissing the suit is filed vide Mark 3/1. Perusing such it appears that the suit was dismissed because of failure of the plaintiff in production of evidence. Further, it appears that, issued in the suit were framed on dt. 02/09/2022 vide Exh. 17, and since then matter was on Evidence of Plaintiff. The plaintiff did not file evidence till hearing on dt. 01/09/2025 (i.e. almost for 3 years). Therefore, on the same day the defendant filed an application to dismiss suit vide Exh. 28, and allowing such application, the suit was dismissed for default.
3. The applicant has submitted that they had filed an appeal vide Civil Appeal No. 04/2023, against order passed below Exh. 5 in the suit. The said appeal was withdrawn. Further, submits that, on hearing of dt. 01/09/2025 the

applicant were present but their Ld. Adv. was not present due to illness and therefore they could not produce evidence. He further submitted that, he shall not suffer on account of failure by his advocate. Further, submit that if the suit is not restored then there will be huge loss to the plaintiffs.

Further, the applicant side produced and relied upon below judgements :

(1) C.S. Jardosh and Ors. V/s Somabhai Ranchhodbhai (2007 (4) GLR 3088)

(2) Ram Kumar Gupta Ors V/s Har Prasad and Anr (2010 AIR 1159 SC)

4. Heard, perused the entire record. Perused authorities produced by the applicant with respect. It transpires from record that, there was non production of any evidence by plaintiff for three years. The court is of view that the reason stated by the plaintiff is not justifiable. The pleadings remain general and vague. Further, there is no material to show that the applicant was prevented by any sufficient cause from non production of evidence.
5. It is settled law that, to invoke jurisdiction under Order IX of CPC, the applicant must demonstrate “sufficient cause” preventing production of evidence. Mere sympathy or subsequent hardship cannot be a ground to recall an order passed for default when due diligence was lacking. Therefore, in view of the facts and record of the case, this Court is of the considered opinion that the applicant has failed to make out any sufficient cause for non-production of evidence for three years. Hence, following order :

ORDER

The application is hereby rejected.

Pronounced in open court on the **02nd May 2026.**

Date : 02/05/2026

Amod

Ravikumar R. Parmar

Principal Civil Judge,

Amod

Judge Code : GJ01603