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 Duration : YY MM DD
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Exh. :

**IN THE HON'BLE COURT OF
 PRINCIPAL DISTRICT JUDGE,
 JUNAGADH.**

Civil Review No. 2 / 2026

<u>Applicant (Original Appellant/Plaintiff) :</u>			
Power of Attorney holder of: Vaja Shardaben Chimanlal Chavda: Chimanlal Durlabhaji Chavada	67	Business	Behind Government Godown, Gandhigram, Junagadh
<u>V E R S U S</u>			
<u>Opponents (Original Respondents/Defendants) :</u>			
Heirs of deceased Babubhai Girdharbhai Raval:			Samval Complex, Opp. A.G. School, B/1, Talav Darwaja, Junagadh
1 Hiteshbhai Babubhai Raval	—	—	
2 Ajaybhai Babubhai Raval	—	—	

Appearance :-

LA Mr. M. R. Makvana for applicant.

LA Mr. K. B. Sanghavi for opponents.

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

(1) The facts of the present review petition:

1. The petitioner has filed the present review application seeking review of the judgment and decree dated 12.12.2023 passed in Regular Civil Appeal Nos. 4/2023 and 5/2023.
2. The petitioner has averred that he had instituted Regular Civil Suit No. 271/2017 seeking vacant possession of the house. The said suit came to be dismissed by the Trial Court. Being aggrieved by the said judgment and decree, the petitioner preferred Regular Civil Appeal No. 5/2023.
3. The petitioner has further averred that he had also instituted Regular Civil Suit No. 272/2017 seeking vacant possession of the shop. The said suit also came to be dismissed by the Trial Court. Being aggrieved by the said judgment and decree, the petitioner preferred Regular Civil Appeal No. 4/2023.
4. The petitioner has further averred that he intended to withdraw Regular Civil Appeal No. 5/2023, which pertains to the house property, whereas he intended to file written arguments in Regular Civil Appeal No. 4/2023, which pertains to the shop property. However, due to a bona fide mistake, the petitioner filed the written arguments in Regular Civil Appeal No. 5/2023, which thereafter came to be decided by judgment. Simultaneously, the petitioner filed a withdrawal purshis in Regular Civil Appeal No. 4/2023, and

accordingly, the said appeal came to be disposed of by an order passed below Exh. 1.

5. It is further averred that no appeal or revision has been preferred against either of the aforesaid judgments and orders till date.
6. It is further averred that the review petition ought to have been filed within 30 days as prescribed under Article 124 of the Limitation Act. However, since there was a delay in filing the review petition, the petitioner has also preferred a separate application for condonation of delay.
7. Thus, the petitioner has sought the reliefs prayed for in paragraph 6 of the petition and has requested that the written arguments filed at Exh. 10 in Regular Civil Appeal No. 5/2023 be treated as having been filed in Regular Civil Appeal No. 4/2023. The petitioner has further prayed that the withdrawal purshis filed in Regular Civil Appeal No. 4/2023 be treated as having been filed in Regular Civil Appeal No. 5/2023. The petitioner has also prayed for such other and further reliefs as this Court may deem fit and proper.

(2) Defence cum arguments of the opponents:

1. The opponents have appeared through their Ld. Advocate but have failed to resist the present application by way of their written objections.

(3) Points for determination : -

This Court has framed following points :-

1. Whether applicant is entitled to have relief as prayed for?

2. What is final order?

(4) Reply of points :-

1. Partly In Affirmative, as discussed.
2. As per final order.

(5) Arguments of the applicants:

1. The learned advocate for the petitioner argued the matter by reiterating the facts stated in the review application.
2. It is further argued that the parties had arrived at a compromise in respect of the dispute relating to the house, and accordingly, the tenant handed over vacant possession of the house to the landlord. Consequently, a purshis was filed before the Court. Thus, the dispute pertaining to the house stood amicably resolved between the parties. However, due to an inadvertent and bona fide mistake, the said purshis came to be filed in the appeal relating to the shop property, whereas the written arguments intended to be filed in the appeal relating to the shop property were inadvertently filed in the appeal concerning the house property, in which the compromise had already taken place.
3. It is further argued that the dispute relating to the house had already been settled and only the dispute concerning the shop remained pending. However, owing to the aforesaid inadvertent mistake, the judgment came to be delivered in the appeal

pertaining to the house property instead of the shop property. It is therefore submitted that the mistake is purely technical in nature and has resulted in the continued existence of a judgment in a matter that had already been amicably settled between the parties.

4. Thus, prayed to allow the review application.

(6) Arguments of the opponents:

1. The opponents have submitted that this was a bona fide mistake and that, in fact, no compromise has been arrived at between the parties. Therefore, they have no objection if the present review petition is allowed.

-:: REASONS ::-

- (7)** The Order 47 of the Code of Civil Procedure 1908 is required to be reproduced over here, which says that;

ORDER XLVII- REVIEW

1 . Application for review of judgment— (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may

apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

2 . [To whom applications for review may be made.] Rep. by the Code of Civil Procedure (Amendment) Act, 1956 (66 of 1956), s. 14.

3 . Form of applications for review— The provisions as to the form of preferring appeals shall apply mutatis mutandis, to applications for review.

4 . Application where rejected— (1) Where it appear to the Court that there is not sufficient ground for a review, it shall reject the application.

(2) Application where granted—Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that— (a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for; and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

5 . Application for review in Court consisting of two or more judges— Where the Judge or Judges, or any one of the judges, who passed the decree or made the order a review of which is applied for, continues or continued attached to the Court at the time when the application for a review is presented, and is not or not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

6 . Application where rejected— (1) Where the application for a review is heard by more than one judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority.

7 . Order of rejection not appealable. Objections to order granting application— [(1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.]

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

8. Registry of application granted, and order for re-hearing— When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

9. Bar of certain application— No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

- (8) Herein, it is an undisputed fact that the suit filed by the appellant came to be dismissed by the learned Trial Court. Thereafter, the appellant preferred Regular Civil Appeal No. 4 of 2023, wherein the appellant filed the following pursis at Exh. 11:

“સદર કામમા વાદગ્રસ્ત જગ્યા મહાનગરપાલીકા દ્વારા વષો”
જુની મીલકત અને જુનવાણી હોય જેથી સદર મીલકત જુનાગઢ મહાનગરપાલીકા દ્વારા ડીમોલીશન થઈ ગયેલ હોય જમીન દોષ કરેલ હોય જેથી સદર વાદગ્રસ્ત જગ્યાએ કોઈ મીલકત

આવેલ ન હોય જેથી હાલ અપીલ અમોએ ચલાવવાની ન હોય જેથી સદર પુરશીસ આજરોજ સદર કામ વિદ્રો કરીએ છીએ’

- (9) Therefore, in view of the aforesaid pursis at Exh. 11, my learned predecessor in office passed the following order:

“આ કામના એપેલેન્ટ ના વિ.વકીલશ્રીની આંક-૧૧ ની પુરશીસ ધ્યાને લેતા આ અપીલ વિથદ્રો થી ફેસલ કરવાનો હુકમ કરવામાં આવે છે.”

- (10) Accordingly, the appeal came to be disposed of as withdrawn.

- (11) Herein, the petitioner has specifically averred in Paragraph 2 of the Review Petition as under:

“(૨) જેમાં મકાનની અપીલ નં. ૫/૨૦૨૩ વિથદ્રો કરવાની હતી જ્યારે દુકાનની અપીલ નં. ૪/૨૦૨૩ માં દલીલ આપવાની હતી પરંતુ શુદ્ધબુદ્ધિ પુર્વકની ભુલના કારણે મકાનની અપીલ નં. ૫/૨૦૨૩ માં દુકાનની દલીલ અપાયેલ છે અને દુકાનની અપીલ નં. ૪/૨૦૨૩ માં વિથ દ્રો પુરશીશ આપેલ છે તે માત્ર શુદ્ધબુદ્ધિ પુર્વકની ટેકનીકલ ભુલ થતાં નામદાર કોર્ટએ પણ રે.દિ.અ.નં.-૫/૨૩ માં આંક-૧૧ થી જજમેન્ટ આપેલ છે અને રે.દિ.અપીલ નં.-૪/૨૩ માં આંક-૧૧ થી વિથ દ્રો પુરશીશ આપેલ છે તેના આધારે આંક-૧ નીચે નામદાર કોર્ટએ વિથ દ્રો પુરશીશના આધારે હુકમ કરી ફેસલ થયેલ છે.”

- (12) It is the specific case of the petitioner that the withdrawal pursis was intended to be filed in Regular Civil Appeal No. 5 of 2023. However, due to a bona fide mistake, the said pursis came to be filed in Regular Civil Appeal No. 4 of 2023, and consequently, the said appeal came to be disposed of as withdrawn.

- (13) The respondent has also submitted that the aforesaid mistake was bona fide and has stated that it has no objection if the present Review Petition is allowed.
- (14) At this stage, it would be apposite to refer to the provisions of Order XLVII of the Code of Civil Procedure, 1908, which enumerate the grounds on which a review petition may be maintained. The relevant provision reads as under:
- “(a) discovery of new and important matter or evidence, or
- (b) on account of some mistake or apparat on the face of record, or
- (c) any other sufficient reason. “
- (15) The case of the petitioner does not fall within clauses (a) or (b) of the aforesaid provision.
- (16) However, both the parties have fairly admitted that the filing of the withdrawal pursis in Regular Civil Appeal No. 4 of 2023 instead of Regular Civil Appeal No. 5 of 2023 was a bona fide mistake. Therefore, this Court is of the considered view that the present case falls within clause (c), namely, "any other sufficient reason", and accordingly, the Review Petition deserves to be allowed. It is pertinent to note that, had the appeal been decided on merits by pronouncement of a judgment, such a ground would not ordinarily be available for review. However, in the present case i.e. in Regular Civil Appeal No.4/2023, no judgment on merits was pronounced, and the appeal came to be disposed of merely as withdrawn on account of the inadvertent filing of the withdrawal pursis.

- (17) Therefore, in view of the above Point No.3(1) is answered Partly in Affirmative and for point No.3(2) following order is passed.

-: ORDER :-

1. This review petition is hereby **partly allowed**.
2. The order dated 09.12.2023 passed below Exh.1 in Regular Civil Appeal No.4/2023 is hereby **quashed and set aside** and the appeal is ordered to be **restored** to it's original file.
3. Application/s pending, if any, shall stand disposed of accordingly.
4. No order as to costs.

Signed & pronounced in the open Court
on this 31st day of July, 2026.

Date : 31.07.2026
Junagadh

(B. G. Dave)
Principal District Judge
Junagadh
[GJ00469]