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Duration : Y 00 M 10 D29



**In the Court of Additional Senior Civil
Judge,
At. Vanthli (Dist. Junagadh)**

Civil Misc. Application No. 5 of 2025

Exhibit : ____

Applicants	Legal heirs of Late Maganlal Hirabhai Chhatrala (1) Vanitaben Maganlal Chhatrala, Age: 69 years, Occup: Household/Agriculture, R/o. Zhapodad, Tal: Vanthali. (2) Nitaben Maganlal Chhatrala, Age: 51 years, R/o. Moviya, Tal: Gondal (3) Daxaben Maganlal Chhatrala, Age: 46 years, R/o. Zhapodad, Tal: Vanthali (4) Rasmitaben Maganlal Chhatrala, Age: 46 years, R/o. Zhapodad, Tal: Vanthali
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	(5) Bharatbhai Maganlal Chhatrala, Age: 41 years, R/o. Zhapodad, Tal: Vanthali. (6) Pareshbhai Maganlal Chhatrala, Age: 35 years, Occup: Agriculture, R/o. Zhapodad, Taluka: Vanthali, Appearing for himself and as Power of Attorney holder for Applicant Nos. 1 to 5
Defendants	(1) Jaysukhbhai Gopalbhai Kaneriya, Adult, Occup: Agriculture, R/o. Zhapodad, Taluka: Vanthali (2) The Mamlatdar, Mamlatdar Office, Vanthali (3) The Prant Officer & Deputy Collector, Office of the Prant Officer, Vanthali (4) Dhirajlal Jethabhai Chaniyara, R/o. Rayjinagar, Street No. 11, Motibaug Road, Junagadh.
Appearance	Ld. Adv. Mr. C.K.Shangani for applicants Opponents - Ex-parte.
Subject	An application for restoration of suit under Order 9, R. 4, Order 9 Rule 9 and Section 151 of the Civil Procedure Code.

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

1. The summarized facts giving rise to the plaintiff's suit are as under:-

(1.1.) The present application is filed by the applicants under Order IX Rule 4, Rule 9 and Section 151 of the Code of Civil Procedure for restoration of

Regular Civil Suit No. 22 of 2022, which came to be dismissed for default on 14/08/2025.

(1.2.) It is the case of the applicants that they had instituted Regular Civil Suit No. 22 of 2022 for declaration and permanent injunction against the opponents. The said suit was pending before the Court of Learned Senior Civil Judge, and was fixed on 14/08/2025 for filing affidavit of examination-in-chief.

(1.3.) It is further contended that the applicants and their advocate remained absent on the said date as they were under a bona fide impression that the matter was before the Court of learned Judge Shri Pandey Saheb, who was reported to be on leave. It is also stated that the applicants were not aware about the transfer of the suit to this Court and no notice of transfer was served upon them. Hence, due to such circumstances, they could not remain present and the suit came to be dismissed for default.

2. Though served, none appears on behalf of the opponents. The matter is therefore proceeded ex-parte against the opponents by passing order below exh. 1.

3. Following issues have been framed by this Court vide Ex.9 for determination of the suit :-

- ૧) શં અરજદાર પુરવાર કરે છે કે કાબુ બહારના સંજોગો ના કારણસર તેઓ નામદાર કોર્ટમા હાજર રહેલ નહીં?
- (૨) શું અરજદાર માંગ્યા મુજબ ની દાદ મેળવવા હુકમદાર છે?
- (૩) શું હુકમ ?

4. My answer to the above issues are as under :-

1. In the affirmative.
2. In the affirmative.
3. As per final order.

5. In support of the application, the applicant has produced following evidence

Oral Evidence of Applicant

Sr. no.	Particulars	Exh
1.	Chief Examination of Pareshbhai Maganlal	11

The applicant has thereafter not filed any evidence and filed his closing pursis vide Exh. 13

The opponent has not produced any evidence and his right to produced evidence was closed by passing an order below Exh. 1

-:: R E A S O N S :-

Issue Nos. 1 to 3 :-

5. In support of their application, applicant no.6 has filed his examination-in-chief in form of

affidavit vide exh. 11 which remained unchallenged. Thus the fact that applicant was not aware regarding the transfer of case from Shri Pandey Saheb to this Court and not notice qua transfer being served remains un-disputed. That the opponent has not produced any evidence to show that applicant was aware and has deliberately not appeared before the Hon'ble Court to conduct the matter. Thus when matter is transferred from one Court to another Court, then absence in the transferee Court without any intimation to the applicant can be said to be malafide on the part of the applicant. Thus the reason of transfer of case from another Court to this Court is certainly beyond the reach of the applicant and hence in absence of any evidence on the part of the opponent, the issues no. 1, 2 and 3 are required to be answered in affirmative and accordingly answered in affirmative.

Moreover, I have heard the learned advocate for the applicants and perused the record. That, in my view, the reasons stated in the application appear to be bona fide and sufficient. It is settled principle of law that matters should be decided on merits rather than on technical grounds. If the application is not allowed, the applicants would suffer irreparable loss, whereas no serious prejudice would be caused to the opponents if the suit is restored.

6. Considering the facts and circumstances of the case, this Court is of the opinion that sufficient cause is shown by the applicants for their absence on 14/08/2025. Hence, the following order is passed in the interest of justice:-

ORDER

1. The present application is hereby allowed.
2. The order dated 14/08/2025 passed in Regular Civil Suit No. 22 of 2022 dismissing the suit for default is hereby quashed and set aside.
3. Regular Civil Suit No. 22 of 2022 is restored to its original file.
4. The applicants shall proceed with the suit in accordance with law.
5. No order as to costs.

Pronounced in the open Court at Vanthli on dtd.
30th July, 2026.

Date : 30/07/2026
Place: Vanthali

(L. I. Ingale)
Additional Senior Civil Judge,
Vanthali.
(Code -GJ01372)

