

ORDER BELOW EXHIBIT-1 IN RCA NO. 183 OF 2019

The present application is preferred under Order 43 Rule 96 of C.P.C. challenging order dated 30-03-2019, passed by 3rd Addl. Sr. Civil Judge, Nadiad, in Regular Civil Suit No. 44 of 2010.

The present application is taken up for hearing and in spite of calling out the matter neither Ld. Counsel for the applicant is present nor any application for seeking adjournment is submitted. This Court has perused the Rojkam and it transpires that Ld. Counsel for applicant has consistently not remained present since last several occasions, till date, it seems that the applicant is not interested in conducting the present application.

Hon'ble the Apex Court, in the case of *Prabodh Ch. Das & Anr. Vs. Smt. Mahamaya Das & Ors.*, reported in AIR 2020 SC 178, has, after considering, *Order 41 Rule 17(1) of C.P.C.*, read with its Explanation, held that, *the Court cannot dismiss the Appeal on merits, where, the Appellant remains absent on the date, fixed for hearing. In other words, if the appellant does not appear, the Court may if it deems fit dismiss the Appeal for default of appearance but it does not have the power to dismiss the Appeal on merits.*

In light of aforesaid observation, made by the *Hon'ble Apex Court* in the case of *Prabodh(supra)* and the fact that the Applicant and his

respective Advocate are not interested in conducting the matter and, therefore, in absence of Ld. Counsel for Applicant or any application seeking adjournment, this Court has no any other option but to dismiss the matter for default.

ORDER

The matter stands **DISMISSED FOR DEFAULT.**

Date: 05/08/2021
Place: Nadiad.

(Pranav Sharad Dave)
4th Additional District Judge,
Kheda at Nadiad.
GJ 01544

Adesh