

ORDER BELOW RESTORATION APPLICATION

1. Heard Ld. Advocate for the plaintiff. Present application has been filed by the plaintiff for restoration of Regular Civil Suit No.3/2024 in which the plaintiff produced his examination-in-chief and was pending at the stage of cross-examination of the plaintiff. The present applicant is the owner of the suit property and the opponent is the owner of the suit property and is trying to dispossess the applicant from the suit property. The injunction application in the suit was allowed and the plaintiff was directed to pay the rent amount in the Court but the plaintiff was unable to deposit the amount and to remain present before the Court due to the illness due to diabetes and gangrene. Meanwhile, the defendant produced GPS camera map photographs of some other person and misled the Court and therefore, on 28.04.2026, the suit of the plaintiff was dismissed for want of prosecution and the order of injunction was also vacated. The order of dismissal of suit has been passed without hearing the plaintiff. The plaintiff does not have any other source of income and is likely to be prejudiced in the eventuality of rejection of the present application.
2. The opponent was duly served with the process and has filed reply to the present application vide Exh.-10. The defendant has submitted that the suit has been dismissed due to the gross negligence of the plaintiff himself. The relief of restoration is a discretionary relief and not a mandatory relief. The restoration can only be allowed when there is a cogent and bonafide reason for restoration of the suit. The plaintiff has not produced any medical papers in support of alleged illness of the plaintiff. On the contrary, the plaintiff himself has failed to remain present before the Court despite proper opportunities being given to him. The plaintiff has also not explained the day-to-day delay in filing the present application. The defendant is unable to gain income from his own shop till the date as the plaintiff is restricting the defendant from entering the shop. The plaintiff has not come with clean hands before the Court. The Ld. advocate for the opponent has relied upon the judgment of Rafiq&Anr. V. Munshilal&Anr., Balwant Singh v. Jagdish Singh, Basawaraj v. Special Land Acquisition Officer, Salil Dutta v. T.M. & M.C. Pvt. Ltd.

3. Ld. Advocate for the plaintiff has relied upon the submissions as mentioned in the application. Moreover, the Ld. advocate for the plaintiff has submitted that it has been observed by the Hon'ble Court in the order itself that the plaintiff's advocate and nephew were present before the Court. Under such circumstances, it cannot be inferred that the plaintiff was not interested in the proceedings of the suit. The plaintiff is handicapped and is unable to walk without support of any other person. The plaintiff has also shown the medical files to the Court at the relevant time. Even today, the plaintiff is present before the Court. On the contrary, the defendant's advocate has not regularly remained present before the Court. The plaintiff would remain present before the Court as and when required by the Court. The suit of the plaintiff shall not be dismissed due to technical reasons. The suit must be restored for fair and just decision of the issue between the parties. Hence, prayed for allowing the present application.
4. Ld. advocate for the opponent has submitted that the applicant has not mentioned any other reason than the illness of the applicant. The applicant was given a total four last dates as per the record of the suit. The applicant is able to remain present in his shop which is situated at a distance of 700 mtr. from the Court but is unable to remain present in the Court. It is also doubtful that although being unable to walk, the plaintiff is running the shop. The evidence produced by the applicant is forged as it does not contain any signature of the owner. The applicant cannot claim any right, title or interest on the basis of a forged document. Hence, prayed for rejection of the present application.
5. Considering the application as well as arguments made by both the parties, it transpires that the suit of the plaintiff has been dismissed for default as the plaintiff did not remain present before the Court on the date fixed for cross-examination of the plaintiff. Whether the plaintiff has any right, title or interest in the suit property is an issue to be decided only after taking evidence. Furthermore, as per the submission of the applicant, the suit is pending at the stage of cross-examination of the plaintiff. Therefore, it transpires that the rights of the parties for just and fair trial is likely to be prejudiced in the eventuality of rejection of the

present application. Under such circumstances, I do hereby pass the following order in the interest of justice :

ORDER

1. Present application is hereby allowed and the suit bearing registration number RCS/3/2024 is hereby ordered to be restored.
2. The proceedings of the suit to be initiated from the stage at which it was.
3. Registrar, Civil Court to take necessary action for restoration of the suit bearing registration number RCS/3/2024.
4. Necessary entries to be made in the concerned register.
5. Parties to bear their own costs.

Date: 13/07/2026

Place : Upleta

(P. P. Kala)

Principal Civil Judge, Upleta