

GJNV010027372024



Presented on :29.04.2024
Registered on :29.04.2024
Decided on :27.02.2026
Duration :YY, MM, DD
01--09--24

IN THE COURT OF 2nd ADDITIONAL DISTRICT
JUDGE OF NAVSARI, AT NAVSARI.
(Presided by Mr.C.G.Mehta)

CMA (Restoration) No.54/2024:-
Exh. _22

- Appellants:-** (1) **Ranjanben D/o.Chhotubhai Vashi & wife of Madhukant Ranchhodji Desai,**
Ori.Plaintiffs Aged 85 years, Occ.Household work,
Resi.at.17102, Kemyol Kemyoh Drive,
Unit-13, Tustin California-9278- U.S.A.
- (2) **Bhadraaben D/o.Chhotubhai Naranji Vashi & w/o.Jaiprakash Vashi,**
Aged 78 years, Occ.Household work,
Resi.at.136, South Virvil Avenue, 113
Apartment Los Angeles, 90004, U.S.A.
and at present resi.at.Rehana Heights,
Behind Akbar Ali, Chappel Lane Shantacruz,
West Mumbai-54.
- (3) **Maltiben D/o.Chhotubhai Naranji Vashi and w/o.Ramchandra I.Desai,**
Aged 71 years, Occ.Businedd, Resi.at.1775,
N.Paris Beelvidi, Paris, California-93571,
U.S.A.
- (4) **Ritaben D/o.Chhotubhai Naranji Vashi & w/o.Rohitbhai Mangubhai Vashi,**
Aged 68 years, Occ.Household work,
Resi.at.136, South Vilvil Avenue, 113-
Apartment Los Angeles, 90004, U.S.A.
- (5) **Kokilaben D/o.Chhotubhai Naranji Vashi and w/o.Bhupendrabhai Desai,**
Aged 74 years, Occ.Household work,
Resi.at.48, Shri Darshan Society, Jamna nagar,
Surat.

VERSUS

- Respondents :-**(1) **Kalpesh Anilbhai Vashi (son),**
Ori.Defts. Aged about adult, Occ.Business,
Resi.at.908, Emrole Auks Court, Ureka
Misuri-63025, United States of America.
- (2) **Manish Anilbhai Vashi (son),**
Aged about adult, Occ.Business,
Resi.at.15008, Elmbrooke Driver, La Mirada
-90638, California, United States of America.
- (3) **Shetalkumar Bhimbhai Desai,**
Aged 65 years, Occ.Agriculture,
Resi.at.Desaiwad, At.Pipalgabhan,
Tal.Chikhli, Dist.Navasari.

Ld. Adv. Mr.P.D.Desai, for the Appellants.
Ld.Adv.Mr.B.M.Desai, for the Respondents.

// J U D G M E N T //

1. This is an application under Order 41 Rule 19 of the Code of Civil Procedure Code, filed by the appellants for restoration of Regular Civil Appeal No.23 of 2019, which came to be dismissed for default on 29.03.2024.
2. Brief facts leading to the application are that the appellants have filed the above appeal in the year 2019. The appellants had already submitted written arguments and thereafter the matter was pending for arguments of the respondents. During the pendency of the appeal, respondent No.1, who is the real brother of the appellants, expired. The learned advocate for the respondent filed a pursis regarding the death of respondent No.1 on 11.08.2023.
3. It appears from the record that thereafter the matter was adjourned on several occasions. As the legal heirs of deceased respondent No.1 were not brought on record and

the appellant remained absent, the appeal came to be dismissed for default on 29.03.2024 by the Ld.Predecessor of this Court.

4. It is the case of the applicant–appellants that, since the matter was pending for respondent’s arguments, he was under the bona fide impression that no immediate steps were required to bring the legal heirs of respondent No.1 on record. It is further stated that appellant No.5, who is holding power of attorney of appellant Nos.1 to 4, was suffering from illness at the relevant time and therefore could not remain present or take necessary steps. On these grounds, restoration of the appeal is prayed for.
5. It is also stated that the dismissal order was passed on 29.03.2024 and the present application is filed on 29.04.2024 and therefore the application is within limitation.
6. The notice of this application was served upon the legal heirs of deceased respondent No.1. The learned advocate for the respondent has filed a written reply at Exhibit-21 opposing the application. It is contended that the appellant had full knowledge of the death of respondent No.1. That, sufficient opportunities were granted to bring the legal heirs on record, and that no medical documents are produced in support of the plea of illness. It is therefore prayed to reject the application.
7. I have heard the learned advocates for both sides and perused the record. It is an admitted position that the appellants had already filed written arguments in the appeal.

This circumstance clearly indicates the willingness of the appellants to prosecute the appeal on merits. The appeal was not at an initial stage, but was pending for respondent's arguments.

It is also true that respondent No.1 was a real brother of the appellants and the appellants were aware of his death. However, the explanation given by the appellants that they were under an impression that no further steps were immediately required, though not strictly legal, cannot be said to be wholly mala fide. The purpose of procedural law is to advance the cause of justice and not to defeat substantive rights on technical grounds.

The dismissal of the appeal has resulted in non-adjudication of the dispute on merits. It is well settled that, as far as possible, matters should be decided on merits rather than on technical defaults, unless the conduct of the party is deliberate or contumacious. In the present case, the earlier conduct of filing written arguments supports the bona fide intention of the appellants to pursue the appeal.

8. At the same time, the negligence on the part of the appellants in not taking timely steps to bring the legal heirs of deceased-respondent, cannot be ignored. Therefore, the ends of justice would be met by restoring the appeal subject to payment of reasonable costs.
9. Considering all the facts and circumstances of the case, this Court is of the view that the application deserves to be allowed, subject to appropriate conditions.

ORDER

- (1) The application under Order XLI Rule 19 of the Code of Civil Procedure is allowed.
- (2) Regular Civil Appeal No. 23 of 2019 is hereby restored to its original file and number, subject to the following condition:
 - (a) The appellant shall deposit an amount of Rs.5,000/- (Rupees Five Thousand only) with the District Legal Services Authority, Navsari, within 15 days from the date of this order.
- (3) Upon deposit of the said amount, the appeal shall stand restored automatically.
- (4) The appellant shall take necessary steps to bring the legal heirs of deceased respondent No.1 on record in accordance with law, within the time permitted by this Court.
- (5) If the above condition is not complied with within the stipulated time, this order shall stand recalled automatically without further reference to the Court.
- (6) The application stands disposed of accordingly.

Pronounced and signed in the open Court today on this 27th day of February, 2026.

Date : 27.02.2026
Place: Navsari.

[**Chinmay Ghanshyambhai Mehta**]
2nd Additional District Judge,
Navsari.
UID. No.GJ 00534

jas/-