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Decided On	07/01/2023		
Duration	Y	M	D
	0	2	28

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE,
AT - VAGRA, BHARUCH

CIVIL MISC. APPLICATION No.-08 / 2022

Exhibit : - 06

Deputy Engineer
Dakshin Gujarat Viz Company Ltd.
Resident of - Nana varachha Road,
Vagra sub-division, Vagra,
District - Bharuch

.....Applicant

V/S

Khiljibhai Banuben Gulambhai
Muslim, adult,
Resident of - House no.21, Patel society,
near Adarsh Hospital, Jambusar,
District - Bharuch, 392150

.....Opponent

Ld. Advocate for the applicant	Mr. B. G. Modi
Ld. Advocate for the opponent	Ex-parte

Application for restoration of Regular Civil Suit

No.09 of 2022

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

1. The brief facts of the present application are that the present applicant - original plaintiff had filed the Regular Civil Suit No.09/2022 in the Court of Principal Senior Civil Judge, Vagra for the recovery of due electricity bill amounting to Rs.79,625.88/- against the opponent of the present application who is defendant in the above mentioned suit. It is further stated that the summons of the said suit were issued but were not served upon the defendant and was at the stage of clarification of defendant's address and it was to be done on 17/09/2022 before the Hon'ble Court, but on the said date, the advocates of the district and talukas had to go to Surat for the document verification regarding notary appointment public notice issued by the Government of India and the advocate appearing on behalf of the plaintiff and his associates also went to Surat and hence the plaintiff side could not appear before the Hon'ble Court for the clarification of the defendant's address on 17/09/2022 as well as could not produce any application seeking time or adjournment, and on the said date, the Hon'ble Court ordered the suit to be dismissed for default due to non clarification of the defendant's address as per Order 9 of C.P.C. The applicant has stated that the ld. advocate or the institution did not deliberately absent before the Hon'ble Court and hence, due to above mentioned reasons, they have filed the present application for the restoration of the Regular Civil Suit No.09/2022. The applicant side has further pleaded that if the said suit is not

restored, then the applicant side will have to bear a huge loss which cannot be compensated through money as the applicant is an institution which works for the public and the recovery of the due amount could not be done.

2. The summons/notice of the present application was served upon the present opponent, but the said opponent did not appear before the Court either in person or through advocate and neither filed any application seeking time or adjournment nor filed any objections against the present application and therefore the proceedings of the present application was ordered to be tried ex-parte.
3. Heard Learned Advocate for the applicant. In support of his say, the applicant has filed his affidavit, in which he has reiterated the same facts on oath. Now, considering the facts and circumstances of the present application, it appears that on 17/09/2022, the advocate for the present applicant was out of station and hence, could not remain present before the Court. Therefore, the said suit was dismissed for default due to non-clarification of defendant's address in the Court. Therefore, in my view, there is reasonable and genuine reason to restore the Regular Civil Suit No.09/2022.
4. Moreover, in case of Dulal Chandra Ojha V/s. Bnomati Guchait and Ors. Reported in AIR 1989, Cal-91, the Hon'ble H.C. relying on a judgment reported in AIR, 1987 S.C., 1353 has held that in the restoration application, the only point to be considered whether there is sufficient cause for the absence of the plaintiff on the date

of dismissal of the suit. While determining this question the Court should adopt liberal approach.

5. Therefore, in view of the above facts and circumstances of the case and in view of the above mentioned position, it appears that there is sufficient ground to restore the suit. Hence, in the interest of justice, I pass the following order.

- :: O R D E R :: -

1. The present application for the restoration is hereby allowed under Order-9, rule-4 of C.P.C.
2. Order for dismissal of the R.C.S. No.09 of 2022 is set aside and the R.C.S. No.09 of 2022 is hereby ordered to be restored with its original number and necessary entry regarding the same be made in the relevant registers.
3. No order as to the cost.

Pronounced and signed today in the open Court on 07th day of January, 2023.

Date : 07/01/2023
Place : Vagra

Sonal B. Mehta
Principal Senior Civil Judge
Vagra
UIC No. GJ 00737