

(2021) 06 GUJ CK 0005

In the Gujarat High Court

Case No : R/Civil Revision Application No. 134 Of 2021

Tulsidas Madhavdas Aggravat

APPELLANT

Vs

Hirabhai Jivandas Aggravat & 2 Other(S)

RESPONDENT

Date of Decision : 01-06-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 7 Rule 11

Citation : (2021) 06 GUJ CK 0005

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Vaibhav A Vyas

Judgement

Biren Vaishnav, J

1. Heard Mr.Vaibhav Vyas learned advocate for the applicant. Under challenge in this application is the order passed by the Trial Court below

Application Exh.9. By the order under challenge, the defendant's application under Order VII, Rule XI has been rejected. Aggrieved, the applicant has filed the present Revision Application.

2. The contention of the applicant is that in an earlier round, the respondent original plaintiff's father has filed Special Civil Suit No.7 of 1970 pertaining to the same subject matter and the suit has been dismissed on 11.11.1971. The Trial Court did not find favour with this contention and has rejected application under Order VII, Rule XI.

3. Mr.Vyas states that the suit was initially listed for hearing on 15.06.2021, however, the date was preponed to 18.05.2021. A mention for circulation for the present Revision Application was made before the vacation bench on 17.05.2021, on which date, Shri Vyas informs this Court that, the request

was not entertained on the ground that he should make an application to the Trial Court to adjourn the hearing since the Revision was filed. The Trial

Court adjourned the hearing of the suit to 24.05.2021, on which date, the Court was on leave. The matter was then listed on 25.05.2021, 26.05.2021

and 27.05.2021. On all these dates, the applicant requested the Court not to proceed with the suit and for Exh.5 hearing since the Civil Revision

Application was pending and the High Court was on vacation. Despite this, the learned Trial Judge proceeded to hear Application Exh-5 and reserved

it for orders for pronouncement on 02.06.2021 i.e. tomorrow.

4. In normal circumstances since the order rejecting the application under Order VII, Rule XI is of 23.03.2021, the Court would have heard the

petition challenging the order, but restricted hearing over the past two months including the vacation made it difficult for the applicant to move the Civil

Revision Application and it appears that the learned Trial Judge, despite having adjourned the suit on 15.06.2021, proceeded to hear the Exh.5

Application by preponing the hearing on the date mentioned herein above.

5. There is no reason to disbelieve the statement made by the learned counsel for the petitioner that a request was made to the learned Trial Judge to

stay his hands from proceeding with the suit with Exh.5 hearing as though a request was made before the vacation bench for listing the Civil Revision

Application, it was not entertained earlier.

6. Issue NOTICE to the respondents returnable on 15.06.2021. In the meantime, there shall be ad-interim relief in terms of para 6B.

7. Direct service today is permitted. In addition to that, Registry to communicate the order through E-mail. Registry shall also communicate this order

through E-mail to the concerned Trial Court.