

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL REVISION APPLICATION No. 179 of 2008****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge?

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JAYDEVI MINERALS - Applicant(s)**Versus****ADITYA METAL & ALOIEDS PVT LTD - Opponent(s)**

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Appearance :

MR AB GATESHANIYA for Applicant(s) : 1,
NOTICE SERVED BY DS for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 28/11/2008****ORAL JUDGMENT**

1. Present Civil Revision Application is filed by the petitioners – original plaintiff challenging the order passed by the learned Additional Civil Judge and JMFC, Surendranagar dated 31.07.2007 passed below Exh.11 in Civil Misc.Application No.1 of 2005, by which the learned trial Court has dismissed the

application submitted by the petitioner – plaintiff to restore the Suit which came to be dismissed for non-prosecution and as the learned Advocate for the petitioners who was suffering from typhoid did not remain present on 09.12.2004.

2. Though served nobody appears on behalf of the respondents. Vide order dated 09.12.2004, Regular Civil Suit No.11 of 2000 came to be dismissed for non-prosecution by the learned trial Court as neither the learned Advocate for the petitioner nor the petitioner remained present. Subsequently the petitioner submitted application being Civil Misc.Application No. 1 of 2005 before the learned trial Court for restoring the said Suit by submitting that the learned Advocate for the petitioner was suffering from typhoid and therefore, she could not remain present nor she could inform the petitioner about the date of hearing. The learned trial Court dismissed the said application by holding that the petitioner- plaintiff has not filed any supporting affidavit with respect to sickness of the learned Advocate. It appears that being aggrieved and dissatisfied with the order passed by the learned trial Court on 31.07.2007 passed in Civil Misc.Application No.1 of 2005, the petitioner by mistake preferred Appeal from Order before the learned District Judge, Surat which came to be dismissed by the learned Additional District Judge, Fast Track Court No.1, Surendranagar vide order dated 14.08.2008 on the ground that same is not

maintainable, hence, the petitioner has preferred present Civil Revision Application mainly challenging the order passed by the learned trial Court passed below Civil Misc.Application No.1 of 2005 by which the learned trial Court has not restored the suit to file. Considering the impugned order passed by the learned trial Court in Civil Misc.Application and the cause shown that the learned advocate for the petitioner was suffering from typhoid and therefore, she could not remain present on 09.12.2004 the date on which hearing of the suit was fixed and considering above, the learned trial Court ought to have restored the suit to file and ought to have proceeded further with the hearing of the suit on merits. It appears that the learned trial Court has taken too technical view in considering the restoration application. It is required to be noted that it is not finding of the learned trial Court that the petitioner and their Advocate has deliberately with a view to delay the proceedings did not remain present. In view of above, the learned trial Court ought to have allowed the restoration application and ought to have restored the suit to file.

3. Under the circumstances and for the reasons stated above, impugned order dated 31.07.2007 passed below Exh.11 in Civil Misc.Application No.1 of 2005 passed by the learned trial Court is hereby quashed and set aside and Regular Civil Suit No.11 of 2000 is restored to file. Now the learned trial court to

decide and dispose of the suit in accordance with law and on merits. Mr.Gateshaniya, learned Advocate for the petitioner has submitted that the petitioner will give fullest cooperation to the learned trial Court for early disposal of the suit and they will not ask for unnecessary adjournment. Rule is made absolute. No order as to costs.

[M.R.Shah,J.]

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