

**HIGH COURT OF GUJARAT (D.B.)**

**SUBHADRA VISHNUPRASAD NAIK**

*Versus*

**DIRECTOR OF MUNICIPALITIES**

**Date of Decision:** 26 June 2007

**Citation:** 2007 LawSuit(Guj) 1376

**Hon'ble Judges:** [A M Kapadia](#), [H N Devani](#)

**Case Type:** Letters Patent Appeal; Civil Miscellaneous Application; Special Civil Application; Civil Application; Letters Patent Appeal

**Case No:** 175 of 2007; 2737 of 2006; 14023 of 2004; 2527 of 2007; 175 of 2007

**Final Decision:** Application disposed

**Advocates:** [R C Jani](#), [Asmita Patel](#), [Sanjay M Amin](#)

**A M KAPADIA, J**

**[1]** Admit.

**[2]** Ms. Asmita Patel, learned AGP appears and waives service of notice of admission on behalf of respondents nos. 1 and 3, whereas Mr. Sanjay Amin, learned advocate appears and waives service of notice of admission on behalf of respondents no. 2.

**[3]** Since the issue involved in this appeal runs in narrow compass with regard to restoration of Special Civil Application No.14023/2004 which has been dismissed for non prosecution as the learned advocate for the appellant remained absent, by consent of learned advocates appearing for the parties, the matter is taken up for final hearing today itself.

**[4]** By this intra-Court appeal filed under clause 15 of the Letters Patent, the appellant original- petitioner has prayed to quash and set aside the order dated 1st December, 2006 rendered in Misc. Civil Application for review No.2737/2006 in Special Civil Application No.14023/2004 by learned Single Judge by which application seeking review of the order dismissing the petition for default and further prayed to restore the main petition i.e. Special Civil Application No.14023/2004 to its original file, has been dismissed.

**[5]** Heard Mr. R.C. Jani, learned advocate for the appellant, Ms. Asmita Patel, learned AGP for respondents nos. 1 and 3 and Mr. Sanjay Amin, learned advocate for respondent no.2.

**[6]** Having perused the averments made in the appeal memo and the impugned order and also the averments made in the application for review, and without entering into the merits or demerits of the submissions advanced by the learned advocates appearing for the parties, according to us, no matter should be thrown overboard without hearing the litigants who approach the Court for redressal of their grievances to get justice. It is further seen that Special Civil Application NO. 14023/2004 was dismissed for default and, thereafter, the applicants had also filed review application to recall the order which also came to be dismissed. Therefore, according to us, in the larger interest of justice, if the order dated 1st December, 2006 as well as order dated 3rd February, 2006 are recalled and original Special Civil Application is restored to original file, same would meet the ends of justice.

**[7]** In the above context, the appeal deserves to be allowed by recalling both the orders which are impugned in this appeal.

**[8]** For the forgoing reasons, the appeal succeeds and accordingly it is allowed. Order dated 1st December, 2006 passed in Misc. Civil Application for review No.2737/2006 in Special Civil Application No.14023/2004 as well as order dated 3rd February, 2006 passed in Special Civil Application No. 14023/2004 dismissing the petition for default, are hereby quashed and set aside, the result of which is that Special Civil Application No. 14023/2004 is restored to its original file.

**[9]** Registry is directed to place Special Civil Application No.14023/2004 for admission hearing before appropriate Court taking up service matters as per the present Roaster.

**[10]** In view of the order passed in Letters Patent Appeal, no order is required to be passed in Civil Application. Hence, the same is accordingly disposed of.