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**IN THE COURT OF
PRINCIPAL DISTRICT & SESSIONS JUDGE
AHMEDABAD (RURAL) @ AHMEDABAD.**

MISC. CIVIL APPEAL NO. 3 OF 2026

APPELLANTS -

(Original Applicants)

1. Satish Babubhai Barot
Add: Municipal Post, Veda, Maansan, Gandhinagar
2. Sarojben Babulal Barot
Add: c/o Hardik Barot B/303, Arjunvilla Flat,
Shankar Hill, Anand Party plot road, New ranip
Ahmedabad.
3. Pravinbhai Babulal Barot
Add: Barotvaas, Veda, Maansan, Gandhinagar.
4. Jitendrakumar Vishnuprasad Barot
Add: 34, Chandralok society, Subhaschowk,
Memnagar, Ahmedabad 380052.
5. Jayendrakumar Vishnuprasad Barot
Add: 34, Chandralok society, Subhaschowk,
Memnagar, Ahmedabad 380052.
6. Mukeshkumar Vishnuprasad Barot
Add: 34, Chandralok society, Subhaschowk,
Memnagar, Ahmedabad 380052.
7. Prakashkumar Vishnuprasad Barot
Add: Barotvaas, Veda, Maansan, Gandhinagar.
8. Vijaykumar Vishnuprasad Barot
Add: 9, Shayona city, V2, Opp Visat city 1
RC Technical road, Ghatlodiya, Ahmedabad.
9. Mitaben Vishnuprasad Barot
Add: f/801, Shub Pioneer, b/h Nandanvan society,
Koba, Gandhinagar 382007.
10. Rohitkumar Vishnuprasad Barot
Add: Shivshanti society, village Ratanpura,
Vastral, Ahmedabad 382418.
11. Niketankumar Bhailalbhai Barot

Add: 2nd floor, Krishnaram Apartment,
Bopal, Ghatlodiya, Ahmedabad.

12. Vikaskumar Bhailalbhai Barot
Add: 2nd floor, Krishnaram Apartment,
Bopal, Ghatlodiya, Ahmedabad

V E R S U S

RESPONDENTS

(Original Opponents)

1. Kamlaben d/o Umiyaben Pochabhai and
w/o Vishnuprasad Barot
Add: Veda, Maansan, Gandhinagar.
2. Chanchalben D/o Umiyaben Pochabhai and
w/ Bhailalbhai Barot
Add: Suvaej Flats, Memnagr, Ahmedabad.
3. Saranga Co.Op.Ho. Society Ltd.
through its chairman/secretary
Add: Cellar, Shanti Chamber, Opp. Dinesh Hall
Ashram Road, Ahmedabad.
Also at 15, Pratima society, Dadasaheb na Pagla
University road, Ahmedabad.
4. Sandhya Co.Op. Ho. So. Ltd.
through its chairman/secretary,
Add: 10th floor, Astrontek park,
Fun Republic, Sarkhej-Gandhinagar highway,
Satellite, Ahmedabad.
5. Raman Bholidas Patel
Add: 15, Pratima society, Dadasaheb na Pagla
University road, Ahmedabad.
6. Ravjibhai Nagardas
Add: 9th floor, Milestone building,
Beside drive in cinema, Opp Durdharshan Kendra,
Thaltej road, Ahmedabad.
7. Vallabhbhai Ratnabhai Borad
8. Maganbhai Laljibhai
9. Balabhai Raghavbhai Borad
10. Nathabhai Kurjibhai Ribadiya
11. Kalyanbhai Narsinhbhai Malviya
12. Chhaganbhai Narsinhbhai Malviya
No.7 to 12 Add: 10th floor, Astrontek Park,
Fun Republic, sarkhej-gandhinagar highway,
Satellite, Ahmedabad.

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Subject : *Appeal under Order 43 Rule 1(c) r/w Sec.104 of the Code of Civil Procedure, 1908.*

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APPEARANCE:

Ld. Adv. Mr.Tapasvi C Barot for the Appellants
Opponent/Respondents: Absent

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JUDGMENT

1. Challenge by way of this appeal under Order 43 Rule 1(c) r/w Sec. 104 of CPC is made against the order dated 9/12/2025 recorded below Civil Misc. Application SC No.140/2025 passed by Ld. 6th Addl. Sr. Civil Judge, Ahmedabad (Rural). By the said order Ld. Trial Court has rejected delay condonation application filed u/s 5 of Limitation Act in preferring restoration application with delay of 5 years, 4 months and 25 days. Being aggrieved and dissatisfied with the impugned order rejecting delay condonation application, the applicants-original plaintiffs are before this Court by way of this appeal.

1.1 The appellants are the original applicants/ plaintiffs and the respondents are the original opponents/defendants before the Ld. trial Court. For the sake of convenience the parties shall be referred herein as per their original status before the Ld. trial Court.

2. Ld. Advocate Mr. T.C. Barot for the appellants-original plaintiffs who had filed Special Civil Suit No.11 of 2008 seeking partition, declaration, cancellation of documents and permanent injunction with regard to the subject matter of the suit property.

It is stated that the original plaintiffs before the trial Court had filed suit by executing power of attorney in favor of one Shankarlal Chimanlal Barot (in short POA Holder) to conduct the suit on behalf of the original plaintiffs who were residing outside Ahmedabad and some of them residing abroad. The suit was conducted by POA Holder Shankarlal Chimanlal Barot. After filing of the suit, the learned trial Court framed issues on 9/8/2018 and the suit was listed at the stage of plaintiff's evidence. As the POA Holder of original plaintiffs/appellants did not remain present the learned trial Court had issued notice to the plaintiffs on 7/9/2019 wherein all the notices were served upon the POH holder's address. Those notices on the POA holder was returned back with endorsement that POA holder has died. This fact was within the knowledge of the learned trial Court, however, learned trial Court proceeded further to dismiss the suit vide order dated 21/10/2019 on the ground of non prosecution by the plaintiffs. It is vehemently submitted that after issuance of notice to POA holder on behalf of the plaintiffs, which came to be returned with endorsement that POA holder has passed away, it was duty of the learned trial Court to issue notice to all the plaintiffs and without issuance of such notices, dismissal of the suit is illegal and arbitrary.

2.1 It is submitted that as the plaintiffs were under impression that the suit is conducted by POA holder and they were not aware about death of POA holder & and were under bonafide belief that their suit was being conducted by said POA holder. The plaintiffs came to about dismissal of the suit after they received notice from Hon'ble Supreme Court of India in SLP

(Civil) No.29456/2024. On receiving the said notices the appellants-plaintiffs had inquired about the suit filed by them through POA holder and at that time in the year 2025 the plaintiffs came to know that suit is dismissed by learned trial Court as no one were representing the suit as the POA holder had passed away.

2.2 It is further submitted that under these circumstances, the appellants/ orig. applicants had filed application seeking restoration of the suit on the file under the provision of O.9 R.4 r/w R.9 of CPC. As there was delay in preferring restoration application, an application being CMA SC No.140/2025 seeking condonation of delay of 5 years, 4 months and 25 days was also filed u/s 5 of Limitation Act to condone delay in preferring restoration application. It is submitted that learned trial Court has dismiss delay condonation application without considering the factual and legal aspect with regard to condonation of delay. Learned trial Court committed error in not considering the fact that once the POA holder, who was representing the case has passed away, the relation between principal and agent gets terminated and therefore, learned trial Court should have issued notices on every plaintiffs before dismissing the suit and it is this error apparent on the fact of the record of the case and therefore, this Court should interfere in the impugned order and further be pleased to allow delay condonation application condoning delay of 5 years, 4 months and 25 days in filing restoration application.

2.3 It is further submitted that one of defendants / respondents i.e. Ramanbhai Bholidas Patel had executed forged and

fraudulent POH of the appellant's mother and executed registered sale deed dated 18/9/1991 and once the suit property has been fraudulently transferred or done away, then the learned trial Court ought to have condoned the delay in filing restoration application, so that the suit be tried on merits, as it seriously prejudice the right of the appellants-original plaintiffs in the suit property. It is further submitted that the impugned order passed by learned trial Court is erroneous, without jurisdiction and contrary to the law and facts on the record of the case and therefore, the said order is required to be quashed and set aside by this Court. It is accordingly urged to quash and set aside the order dated 9/12/2025 passed by learned trial Court and further be pleased to condone delay of 5 years, 4 months and 25 days occurred in preferring restoration application.

3. Notices were issued to the respondents by way of publishing public notice. None has appeared before the Court.

4. Heard Ld. Advocate for the appellants. This Court has gone through the impugned order passed by the Ld. Trial Court and record of the case. It is clarified that the observation made by this Court are prima-facie and confined for the decision of this appeal from order. Following facts are taken into consideration while deciding this appeal:

4.1 The suit being Special Civil Suit No.11 of 2008 was filed by the appellants-original plaintiffs through their POH Holder Shankarlal Chimanlal Barot seeking partition, declaration, cancellation of documents and permanent injunction. In the said suit learned trial Court framed issues on 9/8/2018 and the suit

was listed at the stage of plaintiff's evidence. There is nothing on record that during this period from 2008 to 2018, appellants/plaintiffs took any pain to proceed with the suit filed by them. Learned trial Court had issued notice to the original plaintiffs on 7/9/2019 as their POA Holder did not remain present, wherein all the notices were served upon the POH holder's address and those notices on the POA holder was returned back with endorsement that POA holder has died. Learned trial Court dismissed the suit for want of prosecution by the plaintiffs on 21/10/2019. The applicants thereafter filed restoration application to restore the suit in the year 2025 alongwith application being CMA SC No.140/2025 seeking condonation of delay of 5 years, 4 months and 25 days u/s 5 of Limitation Act in preferring restoration application. Learned trial Court rejected the said application vide order dated 9/12/2025 relying on the case law laid down by **Hon'ble Supreme Court in the case of Ajay Dabra vs Prare Ram, 2023(0) AIJEL SC 70336.**

4.2 It is evident that the suit was filed in the year 2008 and till 2018 plaintiffs have not taken care to know the position/status of their suit filed through POA holder. There are about 12 plaintiffs and nothing appears that they obtained any information / status about the case from POA holder and though their suit was represented by their learned Advocate, there is nothing on record that from the year 2008 to 2025 he was contacted by any of the plaintiffs to take information about the case.

4.3 Contention was taken by appellants-plaintiffs that they had

filed the suit through their POA holder and after framing of issues in the year 2018 when notice was issued on POA holder and which was received with endorsement that their POA holder has expired, the trial Court ought to have issued notices to the original plaintiffs. The said contention cannot be accepted on the ground that the original plaintiffs had filed the suit through POA holder and all agreed to execute POA in favour of Shankarlal Chimanlal Barot to conduct the suit and therefore, it was duty of the original plaintiffs to at least inquire about the status of the suit from their POA holder and/or from Ld. Advocate who was appearing in the trial Court. It is unbelievable that out of 12 original plaintiffs, after filing of the suit in the year 2008, would have never inquired about the status of the suit either from their POA holder or their learned Advocate. Nor anything reveals from the delay condonation application before the learned trial Court as to what prevented the plaintiffs from inquiring about the status of the suit for such long period. In the present case there is huge delay of 5 years, 4 months and 25 days in preferring restoration application.

4.4 The Hon'ble High Court of Gujarat in the case of **Babubhai Mohammed Shekh vs Iqbal Husain Shekh, 2019 (4) GLR 2703** held that " *while considering delay condonation application liberal approach should be adopted, however, the said principle will not mechanically apply specially when there is a huge delay of years. Law does not permit any equity being claimed by litigant, who is completely at negligence and inactive in tracking the matter. Law of limitation has its own object and significance behind prescribing any period and*

while considering huge delay condonation application, the Court should satisfy itself whether explanation forwarded is reasonable and sufficient explanation or not."

The Hon'ble Supreme Court in the case of **Basawaraj & Anr vs Spl.Laq Officer, AIR 2014 SC 746** has held as under:

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the Court has no choice but to enforce it giving full effect to the same. The legal maxim "*dura lex sed lex*" which means "*the law is hard but it is the law*", stands attracted in such a situation. It has consistently been held that, "*inconvenience is not*" a decisive factor to be considered while interpreting a statute.

13. The Statute of Limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale.

In the decision of **M/s. Bharat Barrel & Drum MFG. Co Vs. the Employees State Insurance Corporation [1971 (2) SCC 860]**, Hon'ble Supreme Court held as under:

"The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a Court of law. The principle which forms the basis of this rule is expressed in the maxim *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore, the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims."

4.4 Thus, considering above stated facts in light of the aforesaid settled position of law, this Court is of the considered opinion that the order passed by learned trial Court rejecting application for condonation of delay of 5 years, 4 months and 25 days occurred in filing restoration application, is just, legal and proper and order is passed after considering the facts on the record of the case. This Court do not find any gross error or perversity in the order passed by the learned trial Court so as to interfere and accordingly, this appeal is devoid of merits and is liable rejected. Accordingly, following order is passed in the interest of justice.

:- FINAL ORDER :-

1. Miscellaneous Civil Appeal is **rejected**.
2. Order dated 9/12/2025 recorded below CMA SC No.140/2025 passed by Ld. 6th Addl. Sr. Civil Judge, Ahmedabad (Rural) is hereby confirmed.
3. The parties to bear their own costs.
4. Copy of this judgment be sent to the concerned Trial Court.

Pronounced and signed in the open court today.

Date: **10/7/2026**

(Kamal M. Sojitra)
Principal District & Sessions Judge
Ahmedabad (Rural)
U.I.Code No.GJ01494

vsb