

Special Civil Suit No. 143 of 2011**Order Below Exh. 158, Exh. 159, Exh.160 and Exh.161**

1. All the four applications are inter-connected to each other, therefore, to avoid repetition, it is necessary to decide all the four applications together.
2. Heard learned advocate for the parties. Reply vide Exh.164, 166, 163 and 165. Perused the record.
3. By way of the present application vide Exh. 158 and Exh. 160, learned advocate Mr. J. B. Nayak for the ld. Mr. K. R. Prajapati submitted that the plaintiffs have filed the suit against the defendants for cancellation of registered sale deed and for declaration and during the pendency of the present suit in question, the plaintiff No. 2/4 was died on 12.12.2014 and defendant No. 3 was died on 25.04.2021 but the said facts were not in the knowledge of the plaintiffs but when the rest of the plaintiffs have informed learned advocate for the plaintiffs regarding the death of plaintiff No. 2/4 and the defendant No. 3, immediately the other plaintiffs were decided to join legal heirs of the deceased plaintiff No. 2/4 and the defendant No. 3. To join legal heirs of deceased plaintiff No. 2/4, there is 7 years, 9 months and 2 days delay and to join legal heirs of deceased defendant No. 3, there is 1 year, 4 months and 18 days delay occurred. Therefore, for condoning the delay as caused and to setting aside the abatement, the plaintiffs have

moved above applications and also moved an application vide Exh. 159 to join the legal heirs of plaintiff No. 2/4 and to join legal heirs of defendant No. 3, moved an application vide Exh. 161. He further submitted that delay as caused to join legal heirs of the deceased plaintiff No. 2/4 and the defendant No. 3, same was occurred due to unawareness of the law and by the bonafide mistake of the plaintiffs, they have no knowledge regarding plaintiff No. 2/4 and defendant No. 3 were died and due to that reasons, plaintiffs were not in position to join their legal heirs within period of limitation as envisaged under Article 120 of the Limitation Act within period of 90 days and not moved an application within the period of 60 days from the date of expiry of filing of the application of the joining the legal heirs and as per Article 121 of the Limitation Act, abatement caused due to not moving application within prescribed period. Therefore, when the plaintiffs came to knowledge, immediately plaintiffs have moved present application for condoning the delay and also moved an application vide Exh. 159 and Exh. 161 to join the legal heirs of the deceased plaintiff No. 2/4 and the deceased defendant No. 3 and to setting aside the abatement as caused after period of expiry of limitation. He further submitted that if the present application will order to be allowed and the delay as caused to join legal heirs of the deceased plaintiff No. 2/4 and defendant No. 3 and abatement as caused will setting aside, then it will not cause any injustice to the right and interest of the defendants. On the contrary, if the delay as caused as ordered to be condoned and abatement due to expiry of limitation, deceased plaintiff No. 2/4 and the defendant No. 3 will order to quash and set aside and the legal heirs of

the deceased be order to brought on record, then the dispute between the parties could be adjudicated effectively and properly and if any future decree will be passed, same could be adjudicated effectively and properly. He further submitted that as per settled principle of law, at the time of adjudicating the delay application to join the legal heirs and quash and set aside and to bring the legal heirs of the deceased, the court should not adopt the hyper technical approach, but, it is expected the court should take liberal approach for doing substantial justice to the parties. He further submitted that the applications as moved by the plaintiffs, ordered to be allowed and the delay as caused will order to be condone and abatement as caused automatically after expiry of period of limitation be quash and setting aside and legal heirs of deceased plaintiff No.2/4 and defendant No.3 bring on record, then, the dispute between the parties will be adjudicated effectively and properly. He submitted that for doing substantial justice to the parties, legal heirs of plaintiff No. 2/4 and defendant No. 3 are must and necessary, because they are necessary and proper parties, to adjudicate if any future decree will pass. Therefore, he prays to allow the above applications and prays to condone the delay as caused and also prays to setting aside automatically after expiry of period of limitation and also prays to join legal heirs of the deceased plaintiff No. 2/4 and defendant No. 3 on record.

4. Learned advocate for the defendants Mr. Choksi by filing reply vide Exh. 164 against application Exh. 158 and while filing reply vide

Exh. 166 against the application Exh. 159 and while filing reply vide Exh. 163 against the application Exh. 160 and while filing reply vide Exh. 165 against the application Exh. 161 submitted that while on plain reading of the four applications as moved by the plaintiffs, it clearly and ostensibly transpires that on the basis of false, frivolous and vexatious averments with malice intention to delay the proceedings of the present suit in question and with knowledge that one of the plaintiff, it means plaintiff No. 2/4 was died then also plaintiffs have not bring the legal heirs of the deceased plaintiff No. 2/4 within period of limitation. On the contrary, it appears that after almost more than 7 years of expiry of period of limitation and after abatement of the suit qua the deceased plaintiff No.2/4, the plaintiffs have moved present application vide Exh. 158 for condoning the delay as caused to join legal heirs of deceased plaintiff No. 2/4 after expiry of more than 7 years and having knowledge that the plaintiff No. 2/4 was died. Not only that though the plaintiffs are having knowledge that defendant No. 3 was died and after death of defendant No. 3 within period of 90 days, plaintiffs have not moved application. On the contrary, it appears that after expiry of 90 days, and after abatement as caused automatically after expiry of 60 days, the plaintiffs on the basis of false, frivolous and vexatious averments to fulfill their own malice intention and to delay the proceedings of the present suit in question, without moving application to setting aside abatement as caused after expiry of 60 days, from expiry of 90 days to bring the legal heirs of deceased plaintiff No. 2/4 and deceased defendant No. 3, moved present application. He further submitted that this is undoubted fact that for condoning

the delay, the court should not take hyper technical approach but should take liberal view, but at the same time, it is require to be taken into consideration that party should not take disadvantage of their own wrong and if the wrong doer will encouraged by the Hon'ble Court by condoning the delay for longer period, then it will cause serious in-justice to the contesting defendants. Therefore, he prays to reject all the four applications by awarding special cost to the defendants.

5. I have gone through the lengthy submissions as advanced by the parties and also gone through the record and proceedings and while considering the entire facts as averred by the plaintiffs in above applications and the submissions as advanced by the learned advocate for the plaintiffs and while considering the facts as averred by the defendants and submissions as advanced by the learned advocate for the defendants, it is undisputed fact on the record that though the plaintiffs have moved an application vide Exh. 158 and Exh. 160 for condoning the delay as caused to bring the legal heirs of the deceased plaintiff No. 2/4 and deceased defendant No. 3 and it appears that both the applications for condoning the delay were moved by the plaintiffs, one after almost 7 years 9 months, to join legal heirs of deceased plaintiff No. 2/4 and to join the legal heirs of the deceased defendant No. 3 moved an application after more than 1 years 4 months and nothing transpires from the record and proceedings that the plaintiffs have moved any application for quashing and setting aside the abatement as cause after expiry of 60 days for not joining or moving application to

join legal heirs of deceased plaintiff No. 2/4 and deceased defendant No. 3 within the period of 90 days as envisaged under Article 120 and 121 of the Limitation Act. Therefore, it appears that without moving application for quashing and setting aside the abatement as caused automatically, the plaintiffs moved the present application after 60 days for condoning the delay to join the legal heir of deceased plaintiff No. 2/4 and deceased and defendant No. 3.

6. Further while considering the facts as pleaded by the plaintiffs in the application Exh. 158 and Exh. 160 for condoning the delay to join the legal heirs of the deceased plaintiff No. 2/4 and deceased defendant No. 3, from the facts as averred from the same, it appears that there is long delay, to move the application for joining the legal heirs of above deceased, therefore, for condonation of delay as caused present applications move by the plaintiffs under Section 5 of the Limitation Act. Further while considering the facts as averred by the plaintiffs in the present applications the reasons shown, to bring the legal heirs of the deceased regarding condoning the delay as caused same doesn't appears to be valid and sufficient cause and reasons for that delay as caused be condoned then also while considering the facts that the plaintiffs were not having knowledge of law but nothing specifically averred any reasons why the ld. advocate for the plaintiffs have not drawn the attention of the plaintiffs to move early application, therefore as discussed reasons as averred is not appropriate and reasonable then also while considering the settled principles of law for

the technical reasons the parties shouldn't be punished.

7. Therefore, while considering the rival submissions of the parties and the provisions as envisaged under Section 5 of the Limitation Act, which is as "**Extension of prescribed period in certain cases** : - Any appeal or any application, other than an application under any of the provisions of XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be permitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation :- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

Therefore, while considering the above provision if the plaintiffs shown the sufficient cause and reason for condoning the delay then the delay as caused is required to be condoned. It means while considering the word "Sufficient cause" is important aspect while deciding the delay condonation application. Further what is the meaning and what connotes "Sufficient cause" there is no specific definition it means sufficient cause required to be gathered from the averments and circumstances. Further while considering the discussion as held above the plaintiffs have shown the reasons for delay same doesn't appears to be reasonable, but, said reasons are falls under the definition of sufficient cause for that I am of the opinion that same is not fall un-

der the definition of sufficient cause and reasons, then also while considering the ratio as laid down by the Hon'ble High Courts as well as Hon'ble Apex Court in the numerous of the judgment that in dealing with such type of application, the Court should adopt liberal view and to see that the Court has to do substantial justice to the parties instead of adopting hyper technical view and condonation of delay in no manner prejudice the opponents. On the other hand, denial of condonation of delay cause great hardship and injustice to the plaintiffs, but since there is some delay and delay has been caused due to gross negligence of the plaintiffs and on perusal of record the plaintiffs have not produced sufficient evidence to show that they were not having knowledge regarding the death of the plaintiff No.2/4 and defendant No. 3 and not produced any evidence showing there is sufficient and proper reasons for causing delay and so far as the application for condonation of delay is concerned, the Court should be lenient in deciding such type of application or should not be much hyper technical for deciding such type of application because ultimate object of the judicial proceedings is nothing but proper adjudication of the justice.

8. Further while considering the facts as averred by the plaintiffs though in support of their said fact, the plaintiffs have not submitted any documentary evidence but while considering the intention of the plaintiffs from that it clearly and ostensibly transpires that the plaintiffs wants to proceed further in the suit and also having intention that the suit should be decide on the merit and though at the time of adjudicating the delay condone application the court should not enter

or discuss the merits of the case but while considering the dispute between the parties in the suit, if the present applications are refused to condone the delay than that it will result in a meritorious matter being thrown out at the very threshold and cause of justice to be defeat. Therefore, considering the above facts and circumstances and the ratio as laid down by the Hon'ble High Court as well as Hon'ble Supreme Court in the numerous judgments, the ratio as laid down are binding to this Court and this Court has no jurisdiction to go against the ratio as laid down in those judgments but I am of the opinion that if the present application for condonation of delay as caused joining the legal heirs of deceased will be ordered to be rejected then it can be said without any hesitation that the plaintiffs will be thrown out on technical ground of delay without giving any opportunity and due to that it can be also said without any hesitation that the right of the legal heirs of the deceased will be frustrated. Therefore, considering the entire facts, it clearly and ostensibly transpires that though the plaintiffs have not shown specific cause, for which delay as cause is require to be condoned, then also, I am of the view that if the delay as caused will order to be condoned in the absence of any separate application for quashing and setting aside abatement as caused after expiry of 60 days from the date of expiry after 90 days for moving application to join legal heirs of deceased plaintiff No. 2/4 and defendant No.3, I am of the view that if the all four applications will order to be allowed with cost and the legal heirs of the deceased plaintiff No. 2/4 and defendant No. 3 will order to be brought on record, then if any future decree will passed, same could be adjudicated effectively and properly.

Therefore, considering above settled principle of law, though delay caused in the present application, plaintiffs have not shown any sufficient reasons as discussed, for doing substantial justice, in the larger interest of justice, I pass following order in all four applications.

ORDER

1. The applications vide Exh. 158 to Exh. 161 are hereby order to be allowed with cost.
2. The delay as caused to join legal heirs of the deceased plaintiff No.2/4 is hereby order to be condoned and the abatement as caused automatically after expiry of 60 days is hereby quashed and set aside and the legal heirs of the deceased plaintiff No. 2/4 are hereby order to be brought on record with condition to pay an amount of Rs. 2,000/- (Rupees Two Thousand Only) towards the cost in TLSC, Kalol within period of 10 days of this order.
3. The delay as caused to join legal heirs of the deceased defendant No. 3 is hereby order to be condoned and the abatement as caused automatically after expiry of 60 days is hereby quashed and set aside and the legal heirs of the deceased defendant No. 3 is hereby order to be brought on record subject to pay cost amount of Rs. 2,000/- (Rupees Two Thousand Only) in TLSC, Kalol within period of 10 days of this order.
4. The learned advocate for the plaintiffs is hereby directed to carry

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out necessary and proper amendment in the plaint within period of 14 days from the date of this order and submit amended plaint within prescribed time.

Pronounced and signed in the open Court today, on this 16th day of January, 2023 at Kalol.

Date : 16/01/2023.

Place : Kalol

(PREM H. SINGH)

PRINCIPAL SENIOR CIVIL JUDGE

KALOL

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