

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE ,
AT : JAMNAGAR**

Regular Civil Appeal No.77/2014

:-: Common Order Below Exhibit Nos.,1, 9,10 and 11 :-:

(1) The Exhibit No.9 application has been preferred for joining legal heirs of respondent, Exhibit 10- application is filed for setting aside abatement and Exhibit-11 is filed for condonation of delay in presenting application for joining legal heirs.

(2) I have heard learned counsels for both the parties. Learned counsel for the applicants submitted that the respondent Dawood Umar Chavda has expired. Hence, legal heirs of deceased is required to be joined within a period of thirty days, but due to inadvertent and bonafide mistake, such application has not been made by the applicants. The respondent has died leaving behind his wife, sons and daughters as his legal representatives. It is further submitted that the delay in preferring the present application has occasioned as the applicants were unaware about the death of respondent as he has not been informed about the death of respondent by his learned counsel, hence, the delay is liable to be condoned and abatement is liable to set aside, and legal representatives of the deceased respondent be permitted to be taken on record. Thus, considering this fact, the present application deserves to be allowed.

(3) On the other hand, learned counsel for the other side has taken objection by filing reply at Exh.17 by stating that there is no cogent reasons shown in application, hence prayed to dismiss application. Learned advocate for proposed parties has submitted that there is delay of five years in filing these applications for joining legal heirs and no reasons are given for that.

(4) I have considered submissions of learned counsel for the applicants as well as Opponent and perused the record. Perusal of record transpires that respondent Dawood Umar has expired about five years ago and same is reflected from pursis filed by learned counsel of the respondent at Exh.7, which is filed in proceeding of appeal on 23/03/2021, and learned advocate for applicants has signed as 'seen'.

(5) It is settled preposition of law that delay of any length can be condoned if it is properly explained. It is also settled preposition of law that to condone the delay is discretionary power of the Court, and the Court can exercise this discretion only when the delay is properly explained. It may be noted that in present case defence of ignorance of the death of a respondent is not available to appellant, specially when, learned advocate for respondent has made declaration in the year 2021 by filing pursis at Exh.7 and advocate for appellant has signed it as 'seen it'. Thereafter, on 15/12/2025, all these above stated applications at Exh.9, Exh.10 and Exh.11 are filed without citing any reasons for delay.

(6) It is required to note that present applications have been moved by applicant/appellant after a lapse of period of four years from date of knowledge without submitting any satisfactorily and reasonable cause of delay in filing such applications. It may be noted that learned advocate for respondent has as per provision of Order 22 Rule 10/A of the Code of Civil Procedure declared that respondent has died, and that is declared on 23/03/2021, thereafter applications to join legal heirs are filed vide Exh.9, Exh.10 and Exh.11 on 15/12/2025, without giving any reasons for delay. That is nothing but carelessness and reckless approach on the part of appellant and his advocate. Further, here the appellant has filed suit for protecting his right over common passage being used by original plaintiff and defendant. There is no stay in this appeal and it has been pending since 2014, as 'Targeted case'. Present appeal has been abated in the year 2021,

but somehow, the matter has not been disposed. The applications for joining legal heirs are filed only in the year 2025. The law assist the litigants who are vigilant and not those who sleep over their rights. “Vigilantibus non dormientibus jura subveniunt”. Hence, absence of any explanation for delay of four years in filing applications for joining legal heirs. Therefore, present applications at Exh.9, Exh.10 and Exh.11 are required to be rejected.

(7) It may be noted that, as the sole respondent has died and no legal heirs are joined, hence consequently, the present Regular Civil Appeal No.77 of 2014 stands abated and hence required to be dismissed accordingly.

ORDER

1. The application at Exh.9, Exh.10 and Exh.11 are hereby rejected.
2. Hence, consequently Exh.1, Regular Civil Appeal No.77 of 2014 is also stands dismissed as abated.
3. True Copy of this order be placed below Exh.10, Exh.10 and Exh.1 accordingly.
4. No order as to costs.

The order is pronounced in the open Court on this 16th day of April-2026 under my hand and seal.

Date: -16/04/2026
Place: - Jamnagar.
A J RAVAL/PS

(Nehalkumar Rajeshbhai Joshi)
Principal District Judge, Jamnagar
Code No.: GJ01318