

**COMMON ORDER BELOW EX-23,25A & 26****FACTS OF APPLICATION IN BRIEF.**

**1)** Heard Ld. Advocate for the applicants. The Ld. Advocate for the applicants (Third party) has filed the present application vide Exh. 25A, Exh.26 & 23 for delay condonation, setting aside the abatement and joining of legal heirs of plaintiff viz. Bharvad Satabhai Butabhai respectively.

**2)** The Ld. Advocate for the applicants (Third party) has filed the application vide Exh.25A for condonation of delay on account demise of Plaintiff namely Bharvad Satabhai Butabhai. The Ld. Advocate for the applicant has stated that during the pendency of the suit, the Plaintiff namely Bharvad Satabhai Butabhai has expired on 02.01.2020 at Halvad and due to prevailing situation of COVID-19 Pandemic, there was a delay of 01 year 09 months and 16 days. Therefore, as the present applicants are the legal heirs of the plaintiff and they are the interested parties to the suit hence, prayed this Court to allow the present application vide Exh. 25A, Exh.26 & 23 for delay condonation, setting aside the abatement and joining of legal heirs of plaintiff viz. Bharvad Satabhai Butabhai respectively.

**EVALUATION:**

**3)** Heard the learned Advocate for the applicants and perused

the case record and considered the provision of C.P.C. Order-22 Rule-3, which reflects as under:

**Order-22 - Death, Marriage And Insolvency Of Parties**

**Rule-3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.**

*(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.*

*(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.*

**4)** It is well settled principle of law that basically, it is for the plaintiff in a suit to identify the parties against whom he has any grievance and to implead them as defendants in the suit filed for necessary relief. He cannot be compelled to face litigation with the persons against whom he has no grievance. Where, however, any third party is likely to suffer any grievance, on account of the outcome of the suit, he shall be entitled to get himself impleaded.

The question as to whether an individual is a proper or necessary party to a suit, would depend upon the nature of relief claimed in the suit and the right or interest projected by the persons, who propose to get themselves impleaded. No hard and fast rule can be weighed, that would cover a possible situation in this regard.

**5) Necessary and proper parties to the suit:**

There are two types of persons who may be added as party to the suit. (1) Person who is a necessary party i.e., in the absence of whom relief claimed in the suit cannot be granted. In other words, it means that for the grant of relief claimed in a suit, a person who ought to have joined must be added, (2) the second class of persons consists of those who are proper parties i.e., whose presence may be necessary with a view to fully adjudicate upon the matters involved in the suit.

In ***Kasturi vs., Uyyamperumal and others reported in (2005) 6 SCC 733***, the Hon'ble Apex Court observed that "it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are - (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

**6) Computation of Limitation when a party is added:**

Section 21 of Limitation Act provides that wherever on institution of a suit a new plaintiff or defendant is substituted or added, the suit shall, as regard him, be deemed to have been instituted when he is so made a party. However, if court is satisfied that omission to include a new plaintiff or defendant was due to mistake made in good faith, it may direct that the suit as regards to such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

**CONCLUSION.**

7) I have perused the case papers and it appears from the record that plaintiff namely Bharvad Satabhai Butabhai expired on 02.01.2020 during the pendency of the suit and due to prevailing situation of COVID-19 Pandemic out of human control, there was a delay of 01 year 09 months and 16 days hence, the submission made by the Ld. Advocate for the applicant seems to be genuine and therefore, could not filed application within time limit. Further in case of ***"Mssrs. Mohhatta Brothers Vs. Sheth Chaturbhaidas Chimanlal & Ors., reported in AIR 1982 Gujarat (1982) 1 GLR 585"*** where the Hon'ble High Court has held that, the Court must take a liberal view and should not be over strict or highly technical while deciding such application. Therefore,

looking to the facts and circumstances and after perusing the record and proceedings, the present facts are bona-fide and there is no any delay tactics to file this application such delay so occurred does not affect the merits of the case. Moreover, the present applicants are the legal heirs of the deceased plaintiff viz. Bharvad Satabhai Butabhai and they are interested parties of the suit property hence, they are necessary parties to the suit.

**8)** Under this circumstances, looking to the nature of the suit and relief sought in the present application vide Exh. 25A, Exh.26 & 23 respectively, it would be just, proper and reasonable to allow the present applications for condonation of delay without cost as the prevailing situation of COVID-19 pandemic was out of human control so that multiplicity of proceedings can be avoided. Hence, looking to the nature of the suit and relief sought in the present applications and in the interest of justice, the following final order is passed:

**: O R D E R :**

**(1)** The present applications vide Exh. 25A, Exh.26 & 23 are hereby allowed and condonation of delay is hereby condoned.

**(2)** It is hereby ordered to set aside the abatement and to join the legal heirs of the plaintiff i.e. proposed as,

1) Naniben W/o Satabhai Bharvad Golatar,

Age: 62 years

2) Chhelabhai S/o Satabhai Bharvad Golatar,

Age: 36 years

3) Rajabhai S/o Satabhai Bharvad Golatar,

Age: 34 years

4) Mafabhai S/o Satabhai Bharvad Golatar,

Age: 31 years

5) Manubhai S/o Satabhai Bharvad Golatar,

Age: 29 years

6) Dineshbhai S/o Satabhai Bharvad Golatar,

Age: 27 years

7) Hamirbhai S/o Satabhai Bharvad Golatar,

Age: 24 years

8) Bhanuben D/o Satabhai Bharvad Golatar,

Age: 32 years

4) Hetalben D/o Satabhai Bharvad Golatar,

Age: 20 years

Sr.No.1 to 7 residing at: Kumbhar para, Ganganagar society,

Halvad, Dist.Morbi.

Sr.No. 8 residing at: Ratanpar, sheri no.8, Mafatiyapara,

Surendranagar

Sr.No.9 residing at: Jesada, Ta.Dhrangadhra,

Dist.Surendranagar

- 3)** The plaint be amended accordingly within 10 days from the passing of this order.

Pronounced in the open Court today, on this 18<sup>th</sup> Day of February, 2026.

Date : 18/02/2026  
Dahod

( Nimisha Gangarambhai Surati )  
Principal Senior Civil Judge,  
Halvad.  
(GJ-00711)