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## REGULAR CIVIL SUIT NO. 96 OF 2018

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Common Order below applications at Exhs. 29 & 30 :-

By way of filing the present application, the applicants have prayed to condone the delay in preferring the application for bringing the heirs and legal representatives of deceased plaintiff – Rabiya Bashir Malek and for setting the abatement.

Read this application, plaint and other related papers on record. Heard Mr. A.P. Shah, learned advocate appearing for the applicants - the proposed heirs of the deceased plaintiff and Mr. M.S.Kanungo, learned advocate & Mr. I.M. Sardar, learned advocate appearing for the defendants.

Having heard the learned advocates appearing for the respective parties and on perusal of the entire record, it appears that the plaintiff has filed the present suit for Administration of the properties of deceased Rasul Murad Malek as per the Muslim law and also for permanent injunction against the defendants. However, during the pendency of the present suit, the sole plaintiff – Rabiya Bashir Malek expired on 19<sup>th</sup> June, 2019 at Village : Nani Naroli, Taluka : Mangrol, District : Surat and the applicants are the heirs and legal representatives of deceased plaintiff – Rabiya Bashir Malek. It is submitted that the applicants have no legal knowledge and in such circumstances, they could not joined themselves as the heirs and legal representatives of deceased plaintiff within the stipulated time. However, there is delay of about 1 year

8 months and 3 days in bringing the heirs and legal representatives of the deceased plaintiff – Rabiya Bashir Malek on the record of the present suit. It is submitted that as such since the heirs of the deceased plaintiff – Rabiya Bashir Malek have not been brought on the record of the suit within the time prescribed, the present suit was automatically abated and, as such there is delay of about 1 years 8 months and 3 days in filing the application for setting aside the abatement. It is further submitted that the applicants, being the heirs and legal representatives of the deceased plaintiff, are proper and necessary parties in the present suit and if they are brought on record of the present suit, it would not prejudice in any manner to the rest of the parties and, on the other hand, if they are not brought on record, the filing of the present suit by the deceased plaintiff would be frustrated and, therefore, the applicants have prayed to set aside the abatement and condone the delay in preferring the application for bringing the heirs of the deceased plaintiff – Rabiya Bashir Malek, on the record of the present suit.

On the other hand, the learned advocates appearing for the respective defendants have fairly admitted that the plaintiff of the present suit deceased plaintiff – Rabiya Bashir Malek expired and the applicants are the heirs and legal representatives of deceased plaintiff – Rabiya Bashir Malek. They have also submitted that as such there are three such suits of the same parties are pending before this court being Regular Civil Suit Nos. 96/2018, 141/2018 and Special Civil Suit No.49 of 2021. It is submitted that the suit properties

are almost common in all the aforesaid suits, while the plaintiffs and defendants are alternate in the suits and the basis of their rights are different. It is submitted that so far as the present suit is concerned, the plaintiff – Rabiya Bashir Malek expired on 19<sup>th</sup> June, 2019 and since no heirs of the deceased plaintiff was brought on the record of the present suit within stipulated time, the present suit is abated and there is delay of about 1 year 8 months and 3 days in filing the application for setting aside the abatement and bringing the heirs of the deceased plaintiff on the record of the present suit, however, they have fairly submitted to pass an appropriate order in the present application.

On perusal of the record, it appears that the applicants have produced the death certificate of deceased plaintiff at Mark 26/1 as well as her pedigree at Mark 26/2. It transpires from the said documentary evidence that the plaintiff – Rabiya Bashir Malek expired on 19<sup>th</sup> June, 2019 during the pendency of the present suit and the applicants are the heirs and legal representatives of deceased plaintiff and now the applicants have filed the present application for condoning the delay in preferring the application for bringing the heirs and legal representatives of deceased plaintiff on the record of the present suit. As such the heirs and legal representatives of the deceased plaintiff are required to be brought on record of the present suit within the period of 90 days as per the provisions of Art.120 of the Limitation Act. It appears from the record that the applicants have no legal knowledge and they are financial weak and in such

circumstances, the applicants could not joined themselves as the heirs of the deceased plaintiff on the record of the suit within the time prescribed which caused delay of about 1 year 8 months and 3 months for bringing the heirs and legal representatives of deceased plaintiff – Rabiya Bashir Malek on the record of the present suit.

It transpires from the record that on 14<sup>th</sup> October, 2019, the applicants had filed such application for joining them as parties in the present suit, however, it appears that one of the applicants have made an endorsement on the said application and withdrawn the said application with liberty to file fresh such application. It seems that till the date no order has been passed on the said application and, therefore, today, I have passed appropriate order on the said application at Exh.23 filed by the applicants at that time.

In case of Union of India vs. Ram Charan, reported in AIR 1964 SC 215, the Hon'ble Supreme Court has held that the legal representatives of the deceased party may be substituted within 90 days as per the provisions of Article 120 of the Limitation Act and period of limitation begins to run from the date of death and not from the date of the knowledge.

In case of Bhagwan Swaroop vs. Moolchand, reported in AIR 1983 SC 335, the Hon'ble Supreme Court has held that the laws of procedure are devised for advancing justice and not impeding the same. Code of Procedure is designed to facilitate justice and further

its ends, not a penal enactment for punishment and penalties, not a thing designed to trip people up.

In case of M/s. Mohatta Brothers vs. Sheth Chaturbhai Chimanlal, reported in AIR 1982 Gujarat 96, our Hon'ble High Court has held that the court must take a liberal view and should not be overstrict or highly technical while deciding such application condonation of delay and setting aside the abatement.

In case of Manubhai S. Sejpal vs. Anantbhai Tekchand, reported in 1995(1) GLR 351, our Hon'ble High Court has held that in an application for bringing the legal representatives on record, if averments are made for condonation of delay, there is no need to make separate application for setting aside the abatement. In the instant case, admittedly, the applicants have filed application for condonation of delay vide Exh.29 and for setting aside the abatement vide Exh.30 and considering the facts and the circumstances of the present case, both the said applications are heard and decided together. The applicants have categorically made averments for occurring the delay of 1 year 8 months and 3 days, as they have no legal knowledge and in such circumstances, they could not joined themselves as the heirs and legal representatives of deceased plaintiff within the stipulated time and thereafter, the applicants have filed the present application and it caused delay of about 1 years 8 months and 3 days in preferring the application for bringing the heirs and legal representatives of deceased plaintiff on the record of the present suit. It appears that since the applicants are the heirs and legal representatives of

deceased Plaintiff, they are proper, necessary and interested parties to the present suit and if they are not being joined as party in the present suit, the object of the filing of the present suit by the deceased plaintiff would be frustrated and it would prejudice the rights of the applicants as they are the heirs and legal representatives of the deceased plaintiff.

It is settled law that the court must take a liberal view and should not be over strict or highly technical while deciding such application for condonation of delay and more particularly when the cause survives, no technical objections are required to be considered. It is settled principle that technical objections should not come in doing full and complete substantive justice between the parties.

Looking to the facts and the circumstances of present case and in view of the decisions of our Hon'ble High Court, I am of the view that by adopting a liberal and pragmatic approach, the present application is required to be allowed by condoning the delay by setting aside the abatement qua the plaintiff and, therefore, in the interest of justice, I hereby pass the following order :-

**O R D E R**

These applications at Exh.29 & Exh.30 are hereby ALLOWED.

The delay of 1 year 8 months and 3 days in preferring the application for bringing heirs of the deceased plaintiff – Rabiya Bashir Malek is hereby

condoned and the abatement qua the sole plaintiff is hereby set aside under the provisions of Order 22 Rule 9 of the Code of Civil Procedure.

Copy of this order be kept along with both these applications.

No order as to costs.

Pronounced in the open Court on this 15<sup>th</sup> day of September, 2023.

Date: 15<sup>th</sup> September, 2023. (Rajendra Ghanshyambhai Barot)  
Principal Senior Civil Judge  
Mangrol, District : Surat  
Judge Code : GJ00572