

**COMMON ORDER BELOW APPLICATION EXH.12 &  
EXH.13 IN REGULAR CIVIL APPEAL No.110 Of 2019**

- 1] The appellant has filed the application Exh.12 & Exh.13 for condonation of delay in bringing the legal heirs of deceased respondent No.1 who has expired on 25.04.2025 during pendency of the appeal and also for setting aside the abatement.
- 2] The legal heirs of the deceased respondent No.1 have filed their reply to both the applications vide Exh.16.
- 3] Heard learned advocates for the respective parties.
- 4] On perusal of the record, it appears that the respondent No.1 has expired on 25.04.2025. The appellant was required to bring the legal heirs of deceased respondent No.1 on record within the period of limitation of 90 days. However, the appellant has filed the application on 19.11.2025 beyond the period of limitation.
- 6] The appellant has specifically stated that the appellant were not aware about the death of the respondent No.1 and the respondent's advocate though duty bound to declare the death of respondent No.1 did not declared the same timely and said fact about the death of respondent No.1 was declared on 25.06.2025 without any intimation to the appellant. The appellant came to the know about the death of the respondent No.1 when the matter was listed on the

last date of hearing on 04.11.2025 and hence, filed the application. There is nothing to show that the delay was malafide or intention in filing the application for impleading the legal heirs of deceased respondent No.1. It is settled position of law that parties should not suffer for the mistake of their advocate. A litigant should not be penalized for the fault of his counsel. Condonation of delay is a matter of discretion of the Court. It is settled position that " length of delay is no matter, acceptability of the explanation is the only criterion. Some times delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory." In the present case as noted above, the delay occurred and the same is found satisfactorily explained. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. Thus, to do substantial justice to the party and not defeat the right of the party, the application filed by the appellant for condonation of delay occurred in filling of the application for impleading the legal heirs of deceased respondent No.1 and for setting aside the abatement deserves to be granted. Hence, in the interest of justice, I pass following order:

:: ORDER ::

- The applications Exh.12 and Exh.13 are allowed as prayed for.
- The delay if any occurred in filing the application for bringing the legal heirs of respondent No.1 and setting aside the abatement is hereby condoned.

Order accordingly.

Signed and pronounced today i.e. on this 20<sup>th</sup> day of April, 2026.

Date:20.04.2026

**(Shakuntala Nareshkumar Solanki)**

Additional District Judge,

Vadodara.

Place: Vadodara.

[Code No. GJ00623]

BBNAI (PA)