

ORER BELOW EXH.27
IN
R.C.A NO.218 OF 2017

1. The present appellant has preferred this appeal being aggrieved by the judgment and decree passed by the Ld. Trial Court in Regular Civil Suit No.829/2011. The appellant has preferred Exh.20 to substitute legal heirs of Respondent No.1/1 – Maganbhai Dayalbhai Vankar and thereafter, he has preferred Delay Condone Application.
2. I have gone through the averments of present application. Heard Ld. Advocate Mr. A.B. Kachiya for the respondents. Heard Ld. Advocate Mr. P.N. Shah for the appellant. Ld. Advocate Mr. Shah has submitted that Maganbhai Dayalbhai is expired on 15/07/2016, but as the original Plaintiff No.1 – Maganbhai is remained present through Power of Attorney, thus, they are not aware about the fact that Maganbhai is expired. When they have applied for certified copy of revenue abstract, the fact is brought to their notice that Maganbhai is expired. So, they have preferred this application to substitute LR of late Maganbhai as party Respondent No.1/1, along with a delay condone application.
3. Ld. Advocate Mr. A.B. Kachiya for the respondents has strongly opposed the present application. He has submitted that Village – Samiyala is too small Village and both the parties are living in the same Village, hence, it is obvious that they are well aware about the death of the respondent – Maganbhai. The delay of 436 days is deliberate, even the delay is not properly explained by the appellant, hence, he has requested the Court to reject the present delay condone application by imposing heavy costs.

4. I have considered the arguments advanced by both the Ld. Advocates. It is undisputed fact that Maganbhai D. Vankar is expired on 15/07/2016, whereas, the present Regular Civil Appeal is preferred on 17/03/2017, so, it clearly emerged the fact that Maganbhai D. Vankar is expired prior to the filing of the present appeal. Thus, as per the judgment of Hon'ble Supreme Court in a case of: **Gurucharan Singh V/s.. Syrhut Singh reported in : 2012 (0) AIJEL-SC 52253**, wherein, it is held that when the respondent was dead before filing of the Appeal, remedy of appellant is not to file an application for substitution of LR, but, to file an application for an amendment of the appeal. It is profitable to refer Para-6 to adjudicate the controversy, hence, it is reproduced herein-after :

“ **Para-6:** Thus the aforesaid Authorities are clear that where a party has been impleaded as respondent in an appeal but such respondent was dead before filing of the appeal, the remedy of the appellant is not to file an application for substitution of legal representatives of such respondent, but to file an application for an amendment of the appeal memorandum and in a case where such application for amendment is filed beyond the limitation prescribed for filing the appeal, the appellant must also file an application under Sec. 5 of the Limitation Act for condonation of delay in filing the application for amendment and if the Court is satisfied with the explanation given by the appellant for the delay, the Court can condone the delay and allow the amendment of the appeal memorandum.”

5. Accordingly, the appellant's case is not falling within the purview of Order-22 of Civil Procedure Code. So, delay condone application is also become infructuous as the remedy available to the appellant is different then what he is prayed for. Thus, following final order :

: ORDER :

- The present delay condone application in relation to the substitution of legal representative of the Respondent No.1/1 is hereby rejected.
- No order as to costs.

Signed and Pronounced in the Open Court on
9th day of February, 2022.

Date: 09/02/2022
Place : Vadodara.

[Hemangkumar Girishkumar Pandya]
13th Additional District Judge,
Vadodara. Code No: GJ-00705.

smp.