

IN THE CITY CIVIL COURT AT AHMEDABAD**CIVIL SUIT NO.259 OF 2019.****ORDER BELOW EXHIBIT- 57 to 59**

1. The present applications have been preferred by L.A for the plaintiff vide Exhibit-57 to 59 alongwith application for condonation of delay caused in impleading the legal heirs of deceased defendant no. 1 namely Haribhai Shankarji Thakor and application for setting aside abatement Order.
2. It is stated by the L.A for the applicant that the defendant no.1 namely Haribhai Shankarji Thakor died on 28-04-2021 during the pendency of the suit. L.A further submitted that since they were not aware of the death of the defendant no.1, neither L.A for the defendant has filed any pursis regarding the death of defendant no.1 after he came to know about his death. L.A for the applicant immediately filed present application Hence it was not brought into the knowledge of the learned Advocate for the plaintiff. L.A further submitted application vide Exhibit-59 for bringing legal heirs of deceased defendant no.1. It is further stated that the delay in filing the application is neither intentional nor willful. Hence, present application is filed for condonation of delay caused in filing the application for impleading the legal heirs of defendant no.1- Haribhai Shankarji Thakor and prayed to allow present applications at Exhibit-57 to 59 accordingly.
3. Notice was issued to the legal heirs of the defendant which was duly served but none appeared nor filed any reply.
4. Heard. Upon perusal of papers and record, it appears that the original defendant no.1 - expired during the pendency of the suit on 28-04-2021 and plaintiff has moved the present application to bring the legal heirs of defendant no.1 on record but could not file the application within prescribed time limit. Hence, there is delay in filing application for impleading the legal heir of

defendant no.2 in the cause title of the suit.

5. At this juncture, it would be profitable to refer the Court, in judgment the Acquisition, case of Anantnag and the Hon'ble Supreme Collector Another Vs. Land Mst. Katiji and Others, reported in AIR 1987 (SC) 1353, wherein the Hon'ble Supreme Court has laid down guidelines regarding the condonation of delay, which are reproduced hereunder:

“Any appeal or any application, other than an application under any of the provisions of O.XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring appeal or making the application within such period.”

1. *Ordinarily a litigant does not stand to benefit by lodging an appeal late.*

2. *Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*

3. *“Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*

4. *When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*

5. *There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*

6. *It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is*

capable of removing injustice and is expected to do so.

6. Thus, having regard to the facts and circumstances of the present case and in view of the guidelines laid down by the Hon'ble Supreme Court in the case of the ***Collector Land Acquisition, Anantnag and Another (supra)***, I am of the view that the delay has been properly explained.
7. It is settled law that procedural law is subservient and is in aid to justice. Thus this is undisputed principle of law that procedural laws are primarily intended to achieve the ends of justice. One one should not be left unheard due to procedural delays. Further, without much dwelling on merits and considering the fact that no meritorious case should be thrown out on technical grounds and the parties should be set at liberty to place their case which in turn requires to be considered and the rights of the parties should be determined in accordance with law. I am of the view that the delay has been properly explained. Delay caused in filing the application is hereby granted and the abatement in the Suit is hereby ordered to be set-aside. Hence application deserves to be allowed. Accordingly, I pass the following order:-

ORDER

- 1) The present applications Exhibit-57 to 59 are ordered to stand allowed. The delay caused in filing the present application is hereby condoned and the abatement in the Suit is hereby ordered to be set-aside.
- 2) Applicants are hereby ordered to be implead the legal heirs- of deceased defendant no.1 as 1/1- Keshiben wd/o Haribhai Shankarji Thakor, 1/2 - Rekhaben Haribhai Thakor, 1/3- Sureshbhai Haribhai Thakor and 1/4- Bhaveshbhai Haribhai Thakor in place of deceased original defendant no.1- Haribhai Shankarji Thakor. Plaint to be amended and the names of the legal heirs are ordered to be impleaded as prayed for and to

serve and submit the amended copies of the plaint upon other side within 14 days of the date of this Order.

3) The present applications are hereby ordered to stand disposed off accordingly. No order as to costs.

Signed and Pronounced in the open Court on **28th day** of **September, 2022** under my hand and seal.

Date: 28-09-2022
Place: Ahmedabad

(PREET KAMAL TIRATH RAM)
Judge, Court No.22,
City Civil & Sessions Court,
Ahmedabad.
(Code No.: GJ01594)

#PPManiar