

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 531 of 1986****With****CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2025****In****R/FIRST APPEAL NO. 531 of 1986****With****CIVIL APPLICATION (FOR AMENDMENT) NO. 2 of 2025****In****R/FIRST APPEAL NO. 531 of 1986****With****R/FIRST APPEAL NO. 1093 of 1987**

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HOUSE OF DUBARY & ORS.**Versus****THE OFFICER LIQUIDATOR OF HANSPA KNIT (P) LTD., & ORS.**

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Appearance:**MR C B UPADHYAYA(3508) for the Appellant(s) No. 3,4****MR ND NANAVATI(507) for the Appellant(s) No. 1****NIYANT R BHIMANI(8000) for the Appellant(s) No. 2****MR ABHIJIT P JOSHI(1330) for the Defendant(s) No. 1****MR PRANAV G DESAI(290) for the Defendant(s) No. 6****MR SH SANJANWALA(729) for the Defendant(s) No. 7****MS PJ DAVAWALA(240) for the Defendant(s) No. 1****NOTICE NOT RECD BACK for the Defendant(s) No. 2,3****NOTICE SERVED for the Defendant(s) No. 4,5,8**

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA**and****HONOURABLE MR. JUSTICE L. S. PIRZADA****Date : 07/04/2026****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1. Heard learned advocate Mr.C.B. Upadhyaya for the respective appellants/

applicants and learned advocate Mr. Abhijit Joshi for the respective respondent.

2. These matters are pending since 1986-87 and no adjournment is required to be granted in view of the following directions issued by the Hon'ble Apex Court, which read as under :

"The Committee for Model Case Flow Management Rules for Trial Courts, District Appellate Courts, and High Courts, and to suggest a plan for Reduction of Arrears in the High Courts and District Courts" of the Hon'ble Supreme Court has observed and shown grave concern over the trending increase in pendency of almost all the High Courts in India, especially of those cases which are pending for over two or three decades, and thus has formulated a Model Action Plan for Reduction of Arrears in High Courts to serve as a lighthouse for every High Court in formulating its own Action Plan.

In furtherance thereof, the SCMS and Arrears Committee of this High Court proposed Action Plan for Arrears Reduction in the High Court of Gujarat under the Resolutions dated 03.03.2025 and 04.03.2025 at Point Nos.5 & 8 and in

view of Paragraph 3 of the Order dated 08.05.2025 passed by the Hon'ble Supreme Court of India in Suo Moto Writ Petition (Criminal) No.4 of 2021, which was considered and approved by the Standing Committee on 31.07.2025.

As per the said Action Plan at Point No.2 of PHASE-II:- Implementation Phase July 2025-June 2026, the matters which are more than 30 years old shall be heard and decided and no adjournment shall be allowed. The proposal is to bring more than 30 years old pending cases to 'Zero' by June 2026."

3. Accordingly, these Appeals are classified as "Most Critically Old (more than 30 years)" and are required to be expedited and disposed of in order to meet the deadline so as to deliver justice. Therefore, these matters were listed at Sr.No.1 on top of the Board in today's cause-list.

4. Learned advocate Mr.C.B.Upadhyaya appearing for the appellants in First

Appeal No.531 of 1986, through his colleague, requested for passover in the mentioning, however, the request was turned down and when the matter was called out, learned advocate Mr.Abhijit Joshi appearing for the appellant in First Appeal No.1093 of 1987 made his submissions by reading the written submissions, which were submitted earlier on behalf of the appellant in the said Appeal as well as on behalf of the respondent, in the First Appeal No.531 of 1986.

5. Thereafter, the colleague of learned advocate Mr.C.B.Upadhyaya appearing for the appellants in the First Appeal No.531 of 1986 read the submissions given by the appellants earlier and thereafter, he has proceeded to read the impugned Judgemnt

and Order, which continued upto 01:30 PM when learned advocate Mr.C.B.Upadhyaya again requested for passover, however, the request was turned down and learned advocate Mr.C.B.Upadhyaya continued to read the impugned Judgment and Order till 01:45 PM.

6. At 02:30 PM, learned advocate Mr.C.B.Upadhyaya appearing for the appellants in the First Appeal No.531 of 1986 again prayed for time to adjourn the matters on the ground that these matters were earlier being heard finally for three times and today, these matters have been listed after two and half years and requested that since the matters are pending since 1986, time of one week may be granted in the interest of justice, to get prepared with the matter and argue the

same finally, which would not prejudice either of the parties.

7. We have considered the above submissions made by learned advocate Mr.C.B.Upadhyaya for the appellants in the First Appeal No.531 of 1986 and by respondents in First Appeal No.1093 of 1987.

8. It would be relevant to peruse the Court proceedings available on the website as well as orders passed by the coordinate Bench earlier which shows that the matters were heard regularly.

1) On 06.06.2022, this Court (Coram: Hon'ble the Chief Justice Mr. Justice Aravind Kumar and Hon'ble Mr. Justice Ashutosh J. Shastri) passed the following

order:

"1. This matter was being heard regularly and after hearing Mr.C.B.Upadhyaya, learned counsel appearing in First Appeal No.531 of 1986 for appellants on 04.05.2022, we had passed the following order :

"2. We make it clear that no further adjournment/ accommodation would be granted since the suit is of the year 1979 and the appeal is of the year 1986/1987, which has been languishing before this Court for the past 35 years. As such, we are of the considered view that the appeal has to be disposed of expeditiously and arguments are being heard from 9.4.2022 till date and as such, grant of any further time in this matter would only be a mockery of the justice. As such, we refuse to entertain any request from either of the parties for grant of adjournment."

2. Having passed the aforesaid order, the matter was again taken up for hearing on 04.05.2022 and the matter was heard and adjourned to 05.05.2022. Knowing fully well that it is a part-heard matter and it was specifically ordered to be taken up on that day and the list/board having been notified the previous day, yet the counsels appearing for the appellants in First Appeal No.531 of 1986 namely Mr.C.B.Upadhyaya and Mr.Kirtan Mistri had remained absent. Hence, we passed

the following order :

"2. Learned counsel for the appellant in First Appeal No. 1093 of 1987 who is also counsel representing respondent Nos. 2 and 3 in First Appeal No. 531 of 1986 Mr. Abhijeet Joshi is present. Mr. C.B. Upadhyaya and Mr. Kirtan Mistry, learned advocates who had appeared and argued the matter and had sought time yesterday, which was declined, have remained absent.

3. In spite of making it very clear yesterday that no further adjournment would be granted, learned advocates namely Mr. C.B. Upadhyaya and Mr. Kirtan Mistry have remained absent which conduct requires to be highly deprecated and we do so and direct these matters to be listed on the re-opening day i.e. on 06.06.2022."

3. Resultantly, we adjourned the matter to today. Today though there was one more part-heard matter for final hearing, First Appeal No.3517 of 2000 and connected matters, yet we have given precedence for these two appeals as it is old matter and accordingly, during the post lunch session, these appeals have been heard from 2:35 p.m. to 4:44 p.m. Since the learned counsel appearing for the appellants in First Appeal No.531 of 1986 has not concluded the arguments, a specific question was posed as to still how much time was required to

conclude the arguments. Mr.C.B.Upadhyaya, learned counsel appearing for the appellants has submitted that he requires still two more days which we are not inclined to grant inasmuch as the mere reading of the judgment, paragraph after paragraph would not suffice and the argument has to be concise, precise and in support of the grounds urged in the appeal memorandum.

4. Hence, making it explicitly clear that the oral argument if any has to be concluded on or before 07.06.2022 and also making it clear that post lunch session from 2.30 p.m. to 4.30 p.m. tomorrow would be exclusively reserved for Shri C.B.Upadhyaya to advance his arguments and in the event of oral arguments are not being concluded, liberty is granted to file written synopsis. We adjourn these matters to 07.06.2022 for further hearing."

2) Thereafter the matter was heard on 07.06.2022 by this Court (Coram: Hon'ble the Chief Justice Mr. Justice Aravind Kumar and Hon'ble Mr. Justice Ashutosh J. Shastri) and following order was passed:

"Heard Shri C.B. Upadhyay, learned

counsel appearing for the appellants in First Appeal 531 of 1986 and who is appearing for respondents 1 to 4 in First Appeal 1093 of 1987. For reply arguments, re-list this matter on 09.06.2022 at 2:30 PM."

3) On 09.06.2022 at the request of learned advocate Mr. C.B. Upadhyay, matter was adjourned to 16.06.2022 by this Court (Coram: Hon'ble the Chief Justice Mr. Justice Aravind Kumar and Hon'ble Mr. Justice Ashutosh J. Shastri) by passing the following order:

"Heard Shri C. B. Upadhyaya, learned counsel appearing for the appellants in First Appeal No.531 of 1986 and respondents No.1 to 4 in First Appeal No.1093 of 1987.

In reply arguments, Shri Abhijit P. Joshi, learned counsel appearing for the appellant in First Appeal No.1093 of 1987 and first respondent in First Appeal No.531 of 1986 would draw the attention of the Court to the OLR dated 05.12.2018 at paragraph No.9 to contend that the appellant (original plaintiff) would seek

for payment of the amount as decreed by the trial court so as to enable the appellant to pay the dues of workmen and secured creditors, etc.

At the request of Shri C. B. Upadhyaya, learned counsel, re-list these matters on 16.06.2022."

4) Meanwhile due to change of Roster, matter was again listed before the Bench which heard the matters substantially vide order dated 23.06.2022.

5) On 14.12.2022, this Court (Coram: Hon'ble the Chief Justice Mr. Justice Aravind Kumar and Hon'ble Mr. Justice Ashutosh J. Shastri) passed the following order:

"Learned advocate Mr. C.B. Upadhyaya appearing for appellants submits that since he has already addressed oral arguments, he would furnish written brief synopsis with chronology of date and events by next date of hearing, and he requests the matter to be adjourned to 22.12.2022.

At his request, re-list these matters on 22.12.2022."

6) On 22.12.2022, matters were ordered to be re-listed at the request of counsel for the appellant on 05.01.2023.

7) On 05.01.2023, this Court (Coram: Hon'ble the Chief Justice Mr. Justice Aravind Kumar and Hon'ble Mr. Justice Ashutosh J. Shastri) passed the following order :

"Learned advocate Mr. Kirtan Mistry appearing on behalf of learned advocate Mr. C.B. Upadhyaya for appellants undertakes to file written synopsis in the Registry on or before 07.01.2023.

Placing his submission on record, we direct these matters to be listed on 10.01.2023."

8) On 10.01.2023, this Court (Coram: Hon'ble the Chief Justice Mr. Justice Aravind Kumar and Hon'ble Mr. Justice

Ashutosh J. Shastri) passed the following order:

"Mr. C.B. Upadhyaya, learned counsel has filed written submission on behalf of appellants in First Appeal No. 531 of 1986. Same is taken on record. Re-list on 19.01.2023."

9) Thereafter matter was adjourned to 21.02.2023 due to Sick Note filed by learned advocate Mr. R.D. Dave.

10) On 03.03.2023, this Court (Coram : Hon'ble Mr. Justice Ashutosh Shastri and Hon'ble Ms. Justice Nisha M. Thakore) adjourned the matter at the request of learned advocate Mr. C.B. Upadhyaya.

11) On 17.04.2023, this Court (Coram : Hon'ble Mr. Justice A.S. Supehia and Hon'ble Mr. Justice Divyesh A. Joshi) passed the following order:

"It is very unfortunate that even after a period of 37 years, time is sought by the learned advocate Mr. C.B. Upadhyaya appearing for the appellants on the ground of his ill-health.

At his request, the matters are adjourned to 26.04.2023."

12) Thereafter the matter was also adjourned at the request of learned advocate Mr. Metaliya vide order dated 29.04.2023 passed by this Court (Coram : Hon'ble Mr. Justice Ashutosh Shastri and Hon'ble Mr. Justice J.C. Doshi).

13) On 11.07.2023, this Court (Coram : Hon'ble Mr. Justice Ashutosh Shastri and Hon'ble Mr. Justice Divyesh A. Joshi) passed the following order:

"In view of sick-note of learned advocate, Mr.C.B.Upadhyaya, re-list these matters on 12.07.2023."

14) On 28.11.2023, this Court (Coram :

Hon'ble Mr. Justice Ashutosh Shastri and
Hon'ble Mr. Justice Hemant M. Prachchhak)
passed the following order:

"When matters are taken up for hearing, learned advocate Mr. C.B. Upadhyaya is not present. In the interest of justice, re- list on 17.1.2024."

15) On 12.06.2024, this Court (Coram Hon'ble Mr. Justice Biren Vaishnav and Hon'ble Ms. Justice Nisha M. Thakore) passed the following order:

"This appeal is of the year 1986 and listed in regular final hearing board. Registry to notify this appeal along with First Appeal No. 1093 of 1987 on the cause list of Wednesday the 26.06.2024 at serial No.1 in the cause list of old appeals that are to be taken up at 2:30 p.m."

16) On 10.07.2024, this Court (Coram Hon'ble Mr. Justice Biren Vaishnav and Hon'ble Ms. Justice Nisha M. Thakore) passed the following order:

"A copy of the written submissions in advance shall be supplied to Mr.Abhijit Joshi by 18.07.2024.

Stand over to 24.07.2024."

17) On 04.09.2024, this Court (Coram Hon'ble Mr. Justice Biren Vaishnav and Hon'ble Ms. Justice Nisha M. Thakore) passed the following order:

"Mr. Aman Mir, learned counsel appearing for appellant no. 2 has been requesting for time to file an application for setting aside the abatement in light of the fact that the appellant no. 2 is still alive though it was the submission made that appellant no. 2 had expired.

It is made clear that appropriate application shall be filed and circulated before 25.09.2024 after giving copy to the other side. List on 25.09.2024."

18)Thereafter following order was passed by this Court (Coram : Hon'ble Ms. Justice Sangeeta K. Vishen and Hon'ble Mr. Justice Sanjeev J. Thakker) on 20.12.2024:

"Order in Misc. Civil Application Nos.2233 of 2024 with Misc. Civil Application no.2232 of 2024:

1. Mr Aman Mir, learned advocate submitted that the captioned application has been necessitated seeking setting aside of the abatement as recorded in the order dated 19.04.2022. It is submitted that a statement was made before this Court that the applicant - original appellant no.2 has passed away. Steps were to be taken for the purpose of bringing the heirs of the applicant - original appellant no.2 on the record. It is submitted that vide order dated 19.04.2022, the Hon'ble Division Bench, was pleased to pass an order stating that the appellant no.2 in First Appeal no.531 of 1986 having expired and the legal heirs having not been brought on the record as well as the First Appeal no.1093 of 1987 wherein the appellant no.2 was the second respondent, are abated. It is submitted that in fact, the applicant - appellant no.2, is still alive and is residing at United Kingdom who, is also personally present before this Court.

2. As has been stated by Mr Aman Mir, learned advocate before this Court that the applicant - original appellant no.2 Shankar

Darbari is personally present before this Court. Even the original driving license of Mr Shankar Darbari is placed on record. Mr Aman Mir, learned advocate has also provided the copy of the British Passport of Mr Shankar Darbari.

3. Mr Param Dave, learned advocate for Mr C. B. Upadhyaya, learned advocate submitted that as the instructions were received from the real brother of the applicant - original appellant no.2 that the statement was made before this Court. Mr Param Dave, learned advocate urges for some time so as to file appropriate reply in the application.

4. Acceding to the request, list the matter on 08.01.2025."

19) Ultimately this Court (Coram : Hon'ble Ms. Justice Sangeeta K. Vishen and Coram : Hon'ble Mr. Justice Mool Chand Tyagi) passed the order dated 09.07.2025 recalling the order dated 19.04.2022 read with order dated 26.11.2019 as under:

"1. By this application, the applicant, has prayed for recall

of the orders dated 19.04.2022 read with order dated 26.11.2019.

2. Mr. Aman Mir, learned advocate, submitted that it appears inadvertently, statement is made about the demise of the appellant no.2. Attention is invited to the driving licence (Annexure "B Colly") as well as the passport issued by the United Kingdom of Great Britain and Northern Ireland. It is urged that the appellant no.2, is surviving and hence, the orders passed for bringing the heirs of the appellant no.2, would not be necessitated.

3. Mr. Chitrajeet Upadhyaya, learned advocate with Mr. Kirtan Mistry, learned advocate, states that the said statement, was under the bona fide belief and upon the instruction received by the remaining appellants. It is submitted that the mistake is regretted.

4. Mr. Abhijeet Joshi, learned advocate, has no objection if the application is allowed except the fact that application is not accompanied by the application seeking condonation of delay.

5. Heard the learned advocates appearing for the respective parties.

6. The application, as stated, is seeking recall of the order dated 19.04.2022 as well as 26.11.2019. The order dated 26.11.2019, records the statement of the learned advocate about the demise of the appellant no.2 and steps to be taken in furtherance thereof. Further, the order dated 19.04.2022, has allowed further time to the appellants, to take steps.

7. From the documents placed on record, the appellant no.2 is very much surviving which has led to the filing of the present application. In view thereof, the present application, is allowed. The orders dated 26.11.2019 and 19.04.2022, allowing the appellants to take steps for bringing the heirs of the appellant no.2, are hereby recalled. Civil Application is allowed. No order as to costs."

20) Thereafter on 20.07.2025, this Court (Coram : Hon'ble Ms. Justice Sangeeta K. Vishen and Coram : Hon'ble Mr. Justice Mool Chand Tyagi) passed the following order:

"Mr.CB Upadhyaya, learned Advocate

appearing for appellant nos.3 and 4 has filed sick note and Mr.Pranav Desai, learned Advocate appearing for defendant no. 6 has filed leave note.

List the matter on 13.08.2025."

21) On 20.08.2025, this Court (Coram : Hon'ble Ms. Justice Sangeeta K. Vishen and Coram : Hon'ble Mr. Justice Mool Chand Tyagi) passed the following order:

"1. Mr C. B. Upadhyaya, learned advocate submitted that civil application no.1 of 2025 seeking amendment is under office objections. It is submitted that the Registry is insisting for seal of the company which, is now difficult. So far as other objections i.e. no objection of the learned advocate and cause title of the civil application are concerned, necessary steps shall be taken. Request is made for some time so as to take steps in furtherance of removal of office objections in civil application (for Amendment) no.1 of 2025.

2. On the other hand, Mr Aman Mir, learned advocate states that he would like to file the reply to civil application no.1 of 2025. It

is submitted that as the client is residing abroad, some longer time be granted so as to enable him to file the reply.

3. List the matter on 03.09.2025."

22) On 01.10.2025, this Court (Coram : Hon'ble Mr. Justice A.Y. Kogje and Hon'ble Mr. Justice J.L. Odedra) passed the following order:

"It is submitted that two separate applications have been filed with the Registry in these proceedings, however, the same are under objections. Considering the fact that the Appeal is of the Year-1986, the application be listed along with the Appeal on 08.10.2025, with objections."

23) Thereafter, the matters were adjourned to 08.10.2025, 15.10.2025, 12.11.2025, 19.11.2025, 26.11.2025, 03.12.2025, 10.12.2025, 17.12.2025, 24.12.2025, 07.01.2026, 21.01.2026, 28.01.2026, 04.02.2026, 11.02.2026, 18.02.2026,

25.02.2026 and lastly on 11.03.2026.

24) On 11.03.2026, time was sought by learned advocate Mr. Kirtan H. Mistry on behalf of learned advocate Mr. C.B. Upadhyaya stating that Sick Note is filed by learned advocate Mr. C.B. Upadhyaya though same is not reflected in the Board. It was submitted by learned advocate Mr. Mistry that written submissions were in concise form and therefore, he requested the Court to permit further hearing. However, in view of the fact that both the sides have been heard extensively by the Court, this Court had permitted the learned advocate Mr. Kirtan Mistry to file further written submissions, if any, by the next date of hearing and this Court in no uncertain terms specified that on the next date of hearing, the Court would pass

the order/judgment and if any query is there, the Court will raise the same on the next date of hearing. Request was also made to adjourn the matters as objections were also raised that Official Liquidator has no locus standi to appear in the matter. It was also submitted that Civil Applications for deleting Official Liquidator as well as appellant no.2 is pending for consideration and therefore, two weeks' time was sought and accordingly the matter was adjourned to 25.03.2026.

25) It appears that thereafter a note was preferred by learned advocate Mr. Niyant Bhimani dated 17.03.2026 for withdrawal of his appearance as under:

"Subject: Withdrawal of appearance on behalf of the client in the matter being First Appeal No. 531 of 1986 and First Appeal No. 1093 of 1987

Respected Sir,

1, the undersigned Advocate, most respectfully submit that I have been appearing on behalf of Mr. Shankar Darbari in First Appeal No. 531 of 1986 and First Appeal No. 1093 of 1987, pending before the Hon'ble High Court of Gujarat.

I came to be engaged as an Advocate on Record by one Advocate Mr. Aman Rehan Khan from Delhi.

Due to certain circumstances and professional reasons, it has become difficult for me to continue representing the said party in the above matter.

It is further submitted that the professional relationship between the Advocate and the client has ceased, and therefore the undersigned seeks permission to withdraw appearance from the aforesaid matter.

The client may kindly be directed to make alternative arrangements for legal representation in the interest of justice.

Also, the client as well as the Advocate Mr. Aman Rehan Khan has been informed through a letter dated 16.03.2026.

I therefore humbly request that the office may kindly take note of the withdrawal of my appearance in the above-mentioned matter and the cause title be updated accordingly.

Kindly take the same on record.

Enclosed herewith is the copy of the letter dated 16.03.2026 along with RPAD slips."

26) Office thereafter placed the matter before the Registrar Judicial who passed the following order on 23.03.2026:

"1. Perused the withdrawal of appearance note dated 17.03.2026 filed by learned advocate Niyant R. Bhimani addressed to the office and perused the office note dated 18.03.2026 pertaining to the same.

2. The learned advocate for respective party has filed the withdrawal of appearance note for deleting his name from the cause title of the captioned matter/s. The aforesaid withdrawal of appearance note is annexed with a copy of communication dated 11.03.2026 addressed to respective party along with postal slip and a copy of online status report of postal department. Those documents, prima facie, show that the learned Advocate has duly intimated to the respective party.

3. In view of the aforesaid averments and on perusal of the record, the withdrawal of

appearance note filed by learned advocate Niyant R. Bhimani dated 17.03.2026 and the office note dated 18.03.2026 pertaining to the same are accepted herewith and disposed of accordingly. The office is directed to remove the name of learned advocate Niyant R. Bhimani as an advocate of respective party from the cause title of the captioned matter/s at the earliest. The office is further directed to issue Advocate Notice to respective party returnable on 04.05.2026"

27) Accordingly the matter was adjourned to 04.05.2026.

28) However, on 02.04.2026, learned advocate Mr.Abhijit P. Joshi for the Official Liquidator mentioned before this Court to list the matter for hearing as it was placed before Registrar Judicial without reference to the Court on account of withdrawal of appearance on behalf of appellant no.2. Accordingly, the Court

Master requested the Registry to list the matter on 07.04.2026 as directed by this Court.

9. The contention raised on behalf of the learned advocate Mr. C.B. Upadhyaya that he was not ready with the matter is not acceptable in view of above orders and facts emerging from the record. It appears that learned advocate Mr. C.B. Upadhyaya was not ready to argue the matter at any point of time since matter was lastly heard in the year 2022 and after submission of the written arguments by him as recorded in various orders reproduced here-in-above.

10. It appears that matters were fully heard and both sides have submitted written submissions which are available on

record.

11. Learned advocate Mr. C.B. Upadhyaya for the appellant has also again submitted comprehensive written submissions during the course of proceedings today which are ordered to be taken on record.

12. Learned advocate Mr.C.B. Upadhyaya submitted that appropriate orders may be passed as he was not ready to proceed with the matter on merits with a request to adjourn the matter to next week.

13. Considering the proceedings of this matter and in view of facts emerging on record as well as considering the exhaustive written submissions filed by both the sides which are available on record and in view of request made by

learned advocate Mr. Upadhyaya to pass appropriate orders, we deem it fit that the matters be treated as heard.

14. However, in the interest of justice, as certain queries required clarification therefore, let the matter be listed on 15th April, 2026.

(BHARGAV D. KARIA, J)

(L. S. PIRZADA, J)

RAGHUNATH R NAIR