

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 2441 of 2024**

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BHARATJI RUMALJI BARAIYA & ORS.

Versus

KISHORBHAI BHAILALBHAI SHELDIYA & ANR.

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Appearance:

SR. ADV. MR. MEHUL SHAH assisted by MR AJAY S
JAGIRDAR(2688) for the Appellant(s) No. 1,2,3,4,5,6,7,8,9SR. ADV. MR. ASIM PANDYA assisted by MR SHYAM M
SHAH(11348) for the Defendant(s) No. 1,2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 03/08/2026****ORDER**

1. Heard learned Senior Counsel Mr. Mehul Shah assisted by learned advocate Mr. Ajay S. Jagirdar for the appellants and learned Senior Counsel Mr. Asim Pandya assisted by learned advocate Mr. Shyam M. Shah.

2. Learned Senior Counsel Mr. Mehul Shah submits that the appellant No.1 – Bharatji Rumalji Baraiya, appellant No.2 – Himmatji Bachuji Bariya and appellant No.7 – Jayanti Rumalji Baraiya are personally present before this Court and under instructions, seeks permission to withdraw this appeal with the liberty to approach the learned trial Court under Order IX Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as ‘the Code’) for setting aside the *ex-parte* decree.

3. He further request that in view of Section 14 of the Limitation Act, the time spent in filing this appeal may be

exempted from filing the application under Order IX Rule 13 of 'the Code'.

4. Learned Senior Counsel Mr. Asim Pandya, on his limited objection, raised the contention that the filing of first appeal is not a filing of litigation before the wrong forum, and therefore this Court may keep the issue open that whether this appeal was filed in a wrong forum or not.

5. In view of above submission, the permission as prayed for is granted. The appeal stands disposed of as withdrawn.

6. Interim-relief, if any, granted earlier is discontinued.

7. Registry to send the Record and Proceedings, if any, to the concerned Court forthwith.

8. The appellants, on their own wisdom, can file the application under Order IX Rule 13 of 'the Code' before the learned trial Court.

9. All the issues are kept open, including the issues raised in the additional affidavit. The learned trial Court shall not be influenced by withdrawal of this appeal, but shall decide the application on its own merit.

10. It is reiterated that this Court has not examined any issue, including the issue of Limitation.

(J.C. DOSHI, J.)

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