

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SECOND APPEAL NO. 35 of 2007**

With

**CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2023
In R/SECOND APPEAL NO. 35 of 2007**

With

**CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2 of 2023
In CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2023
In R/SECOND APPEAL NO. 35 of 2007**

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PATEL RAMABHAI KEVALBHAI

Versus

PATE LAKHUBEN WD/O HARIBHAI KEVALBHAI PATEL, DIED & ORS.

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Appearance:

MR HENIL M SHAH(10677) for the Appellant(s) No. 1

MR MEHUL SHARAD SHAH(773) for the Respondent(s) No. 3

RULE SERVED for the Respondent(s) No. 4.1,4.2,4.3,4.4

UNSERVED EXPIRED (R) for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE DEVAN M. DESAI

Date : 25/03/2026

ORAL ORDER

Order in Civil application No. 2 of 2023

1. The present application is filed under Section 5 of the Limitation Act, 1963, seeking condonation of delay of 3434 days, 695 days, and 927 days in filing an application for bringing the legal heirs of deceased respondent Nos. 2, 4.1, and 4.2 respectively.

2. Heard learned advocate Mr. Henil M Shah for the applicant and learned advocate Mr. Ketul Patel on behalf of learned advocate Mr. Mehul Sharad Shah for the respondent

No. 3.

3. Learned advocate for the applicant contended that pending the Second Appeal, respondent No. 2 namely Patel Jamnaben Amthabhai has expired on 16.11.2011 leaving behind respondent Nos. 2.1 to 2.4, as legal heirs and representatives of deceased respondent No. 2. Respondent No. 4.1 namely Patel Meniben Amthalal has expired on 17.05.2019 leaving behind her heirs and representatives being respondent Nos. 4.1.1 to 4.1.5. Respondent No. 4.2, Ratanben Amthabhai has expired on 27.09.2018 leaving behind her heirs and representatives being respondent Nos. 4.2.1 to 4.2.3. It is submitted that the right to sue still survives so far as heirs of deceased respondents are concerned. The Suit, being the suit for partition, the right to sue survives, as the presence of legal heirs of deceased respondents are necessary. It is submitted that the applicant is aged about 79 years of age and due to lack of legal knowledge, the application could not be filed within the period of limitation.

4. *Per Contra*, learned advocate for the respondent submitted that the deceased respondents were family members of the appellant and lack of knowledge is not the believable explanation.

5. Considering the averments made in the application and the submissions canvassed by learned advocates for the parties, it appears that the suit is for partition of the suit properties pending the Second Appeal, being respondent Nos. 2, 4.1, and 4.2 have expired.

6. Considering the nature of litigation, it is required to bring the legal heirs of deceased respondents on record. However, to meet the equity, the application cannot be allowed without imposing the cost.

7. In view of this, the present application for condonation of delay is allowed subject to cost of Rs. 15,000/- to be deposited by applicant before the Gujarat State Legal Services

Authority within four weeks of receipt of this order. Therefore, the delay is condoned. The present application is allowed accordingly.

Order is Civil Application No. 1 of 2023.

1. The present civil application is filed for bringing legal heirs of the deceased respondent Nos. 2, 4.1, and 4.2 respectively. A copy of death certificate of deceased respondents is also placed on record.

2. Considering the averments made in the application, application deserves to be allowed and the same is allowed accordingly. Necessary amendment to be carried out forthwith.

(D. M. DESAI,J)

SHIVANI SHUKLA