

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/FIRST APPEAL NO. 5031 of 2023****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2023****In R/FIRST APPEAL NO. 5031 of 2023****With****CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2026****In R/FIRST APPEAL NO. 5031 of 2023****With****CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 6 of 2024****In R/FIRST APPEAL NO. 5031 of 2023****With****CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 7 of 2024****In CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 6 of 2024****In R/FIRST APPEAL NO. 5031 of 2023**

=====

**LH OF SHANTIBHAI KANJIBHAI PATEL D/O RANCHHODBHAI
GOPALBHAI PATEL & ORS.**

Versus**MOHANBHAI GOSAIBHAI PATEL & ORS.****Appearance:****MR DEVEN PARIKH, SR. ADVOCATE WITH MR KK TRIVEDI(934) for the
Appellant(s) No. 1****DELETED for the Defendant(s) No. 11,12,3****MR KALPESH N SHASTRI(1739) for the Defendant(s) No. 22,23****MR SP MAJMUDAR(3456) for the Defendant(s) No. 19****MR. GNANESH G BHATT(10015) for the Defendant(s) No.
12.1,12.3,12.4,12.7****MR. HJ KARATHIYA(7012) for the Defendant(s) No. 19****RULE NOT RECD BACK for the Defendant(s) No. 21****RULE SERVED for the Defendant(s) No.****1,10,12.2,12.5,14,15,16,17,18,4,5,6,8,9****RULE UNSERVED for the Defendant(s) No. 20,7****UNSERVED EXPIRED (R) for the Defendant(s) No. 12.6,13,2****CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA****and****HONOURABLE MR. JUSTICE R. T. VACHHANI****Date : 17/07/2026****COMMON ORAL ORDER****(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)****Order in Civil Application No. 1 of 2026 :**

1. We have heard learned Senior counsel Mr. Deven Parikh, assisted

by Mr. K.K. Trivedi and Mr. H. J. Karathiya for Mr. S.P. Majmudar.

2. Looking to the averments made in the Civil Application, the Civil Application for bringing heirs of petitioner no. 8 i.e. petitioner no. 8.1 is allowed. Necessary amendment be carried out in the cause title.

Order in Civil Application No. 7 of 2024 & Civil Application No. 6 of 2024)

1. We have heard learned Senior counsel Mr. Deven Parikh, assisted by Mr. K.K. Trivedi and Mr. H. J. Karathiya for Mr. S.P. Majmudar.
2. The appellants are the original plaintiffs of the Special Civil Suit No. 72 of 2012. The suit was filed for partition, cancellation of sale deed and declaration and injunction with respect to immovable property situated at Surat. Before the trial Court, there were 20 defendants. The Civil Court at Surat vide its judgment and decree dated 22.08.2023, dismissed the suit. Being aggrieved and dissatisfied with the impugned judgment and decree, the appellants – original plaintiffs have preferred this Appeal.
3. Pending the appeal, the appellants filed two applications on 21.12.2024 namely (i) Civil Application No. 7 of 2024 – an application for condonation of delay in filing the application for bringing legal heirs of deceased respondent No.13 – Naniben @

Neenaben Ramjibhai original defendant no. 13 and (ii) Civil Application No. 6 of 2024 - an application for bringing legal representatives of the deceased no. 13 (Nos. 13.1 to 13.5) and to set aside the abatement. The deceased Naniben @ Neenaben Ramjibhai expired on 13.08.2018.

4. Mr. Deven Parikh, learned senior counsel has submitted that the appellants were not aware about the death of respondent no. 13 and the respondents defendants did not have disclosed the factum of death either before the Civil Court as well as this appellate Court and therefore, based on the endorsement of the listing board and subsequent inquiry, the necessary details having been sought and in order to complete the technical formalities, an application for condoning delay caused in filing application for bringing legal representatives on record is being filed. Thus, in such circumstances, it is submitted that, the appellants could not joined the legal representatives in a reasonable time and in view of sub-rule (5) of Order 22 Rule 4, delay may be condoned and the appellants be permitted to join legal heirs of deceased respondent no.13 – Naniben Ramjibhai.
5. On the other hand, Mr. H.G. Karathiya, learned advocate while reiterating the affidavit-in-reply, has submitted that, the respondent no. 13 passed on 13.08.2018 and impugned judgment and decree passed on 22.08.2023 and therefore, this application before this Court is not maintainable as Appellate Court cannot pass an order in respect of party who died during the pendency of the suit; that,

the parties are related to each other and therefore, the contention cannot be accepted that the appellants have no knowledge about the death; that, during the pendency of appeal, the appellants were directed to file an application before the Civil Court, and accordingly, same was filed before the Court; the Civil Court, did not entertain the application, as after the judgment the court becomes functus officio; the appellants aggrieved with the order of the Civil Court, filed Special Civil Application under Article 227 of the Constitution of India and the said application came to be dismissed for default; thus, after availing the remedy, the appellants now cannot again seek the same remedy before the Appellate Court; the appellants should have to revive the Special Civil Application; that, there is substantial delay and in absence of any convincing explanation for the delay, the application has no substance and same may be dismissed with costs.

6. Having considered the contentions advanced by learned counsel for the respective parties and having regard to the facts of the case, the issue falls for our consideration, as to whether the 'sufficient cause' being made out for condoning delay of 2234 days in preferring an application for bringing the legal representatives?
7. In the facts of the present case, the respondent no. 13 – original defendant – Naniben @ Neenaben Ramjibhai died on 13.08.2018. The Civil Suit came to be dismissed on 22.08.2023. Admittedly, the factum of death was not disclosed before the trial Court as well as this Court. The limitation for filing an application to implead the

legal representatives is 90 days from the date of death and limitation for an application to set aside the abatement of suit, qua deceased is 60 days. Order 22 Rule 4 provides the procedure for bringing legal representatives of the deceased. Sub-rule (5) of Order 22 Rule 4 provides for extension of time to the plaintiff for bringing legal representative of the deceased defending on record, where he was ignorant of death of the defendant. Thus, if an application for bringing legal representatives of the deceased defendant has not been made within prescribed time limit, the suit qua the defendant stands abated. The remedy available to the plaintiff in such cases is to apply for setting aside abatement. If the applicant establishes that he was prevented by 'sufficient cause', the court will set aside the abatement. The Sub-rule (5) gives an opportunity to the plaintiff to claim extension of time substituting legal representatives of the deceased defendant, if he is able to establish 'sufficient cause' within the meaning of Section 5 of the Limitation Act, 1963. In such circumstances, the Court has to decide whether the appellants were in fact ignorant of the death of respondent and such ignorance constituted 'sufficient cause' for delay in making the application.

8. In view of the statutory provision and applying the same to the facts of the present case, in our opinion, it is established that the appellants were in fact ignorant of the death of the defendant no. 13. Admittedly, before the trial Court as well as this Court, the respondents failed to disclose the factum of death, as provided under Order 22 Rule 10(A) of the CPC. This provision is intended

to avoid delay in making an application for bringing legal representatives of parties on record. It seeks to mitigate the hardship arising from the fact that party to a suit may not come to know about the death of other side during the pendency of the suit.

9. In such circumstances, in our opinion, the plaintiffs – appellants were ignorant of the death of deceased defendant and could not for that reason make an application for the substitution of legal representatives within period of limitation and thereafter, they applied for condonation of delay for filing an application bringing legal representatives on record on the ground that they had by reason of such ignorance, which has caused the delay. Thus, considering the Sub-rule (5) of Rule 4 of Order 22, the appellants having ‘sufficient cause’ for not making an application within the period and having regard to the non-compliance of Section 10A of Order 22, the delay caused in filing an application for bringing legal representatives on record, is hereby condoned. We are not impressed with the contentions raised by the respondents that, the petition before this Court is not maintainable mainly on the ground that, the deceased has expired before pronouncement of the judgment. It is relevant to note that the Appeal is in continuation of suit and the Appellate Court having powers as provided under Section 107 of the CPC to add or substitute the parties. Section 107(2) provides that, the Appellate Court shall have the same powers and shall perform as nearly as may be same duties, as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein. The other

contention with regard to filing of Special Civil Application on the same subject, cannot be acceptable, because, the Special Civil Application was dismissed for default and the matter was not decided on merits. Therefore, the issue of joining the legal heirs was not decided by the Civil Court and in that view of the matter, the only remedy available to the parties is to approach the Court.

10. For the reasons aforementioned, the delay caused in filing an application for bringing legal representatives of the deceased respondent no. 13 – original defendant no. 13 is hereby condoned. The abatement qua respondent no. 13 is set aside. The application for joining legal heirs of respondent no. 13 is hereby allowed. Necessary amendment may be carried out henceforth. The appellants shall supply the amended Appeal memo within 4 weeks.
11. With these observations, both the Civil Applications are allowed. There shall be no order as to costs.

(ILESH J. VORA,J)

(R. T. VACHHANI, J)

P.S. JOSHI/21.07/ch,