

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 12711 of 2021****With****CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2025****In R/SPECIAL CIVIL APPLICATION NO. 12711 of 2021****With****CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2 of 2025****In CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2025****In R/SPECIAL CIVIL APPLICATION NO. 12711 of 2021**=====
**ZUBEDABIBI WD/O ABBASKHA PATHAN & ORS.****Versus****MAHHAMAD HANIF AHEMADBHAI SHAIKH & ORS.**
=====

Appearance:

SINGHI &amp; CO(2725) for the Petitioner(s) No. 1,2,3,4.1,4.2,4.3,5,6,7,8

MS.AKSHITABA SOLANKI(6782) for the Respondent(s) No. 1,2,3,4,5

NOTICE SERVED for the Respondent(s) No.

10,11,12,13,14,15,16,17,18,19,20,21,22,6,7,8,9

SHANTILAL G PANDYA(6637) for the Respondent(s) No. 1,2,3,4,5

**CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT****Date : 22/04/2025****ORAL ORDER****ORDER IN CIVIL APPLICATION (FOR CONDONATION OF DELAY) NO. 2 of 2025**

1. Rule returnable forthwith. Learned advocate Mr.Shantilal G. Pandya waives service of Rule on behalf of the opponent nos.1 to 5.

2. Heard learned advocate Mr.Ishan Joshi for Singhi and Co. appearing for the petitioners and learned advocate Mr.Shantilal G. Pandya appearing for the opponent nos.1 to 5.

3. The present application is filed seeking condonation of delay of 487 days in bringing legal heirs of original petitioner no.3, who died on 01.07.2023, during the pendency of the present application.

4. Considering the averments made and after going through the averments made in the application and hearing learned advocates appearing for the respective parties, I am of the view that sufficient cause is made out, whereby, delay in filing an application to bring the legal heirs on record is hereby allowed in terms of Para 7(B). Rule is made absolute.

**ORDER IN CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2025**

1. Rule returnable forthwith. Learned advocate Mr.Shantilal G. Pandya waives service of Rule on behalf of the opponent nos.1 to 5.

2. Heard learned advocate Mr.Ishan Joshi for Singhi and Co. appearing for the petitioners and learned advocate Mr.Shantilal G. Pandya appearing for the opponent nos.1 to 5.

3. The present application is filed to bring legal heirs of

original petitioner no.3 on record, who died on 01.07.2023, during the pendency of the present application. As the caused survive in favour of original petitioner no.3, therefore, the application for bringing legal heirs on record is required to be allowed, which is hereby allowed in terms of Para 7. Rule is made absolute.

4. Necessary amendment in the cause title of the petition to be carried out forthwith.

**ORDER IN SPECIAL CIVIL APPLICATION NO. 12711 of 2021**

1. Heard learned advocate Mr.Ishan Joshi for Singhi and Co. appearing for the petitioners and learned advocate Mr.Shantilal G. Pandya appearing for the opponent nos.1 to 5.

2. Learned advocate Mr.Joshi would submit that during the pendency of the present writ application, there are some development which has taken place, thereby, the executing Court vide its order dated 12.12.2024 passed an order, thereby, main execution petition has been disposed of. Whereas, the present writ application is filed challenging the

order dated 12.08.2021, whereby, the Executing Court has rejected the objection of the petitioners filed below Exh.30 and an application below Exh.37 for witness summons to carry out the measurement by the DILR.

2.1 So in view of the subsequent development taken place during the pendency of the present writ application, the learned advocate, Mr.Joshi, under the instructions of his clients, would not press the present petition, at this stage, seeking liberty of this Court to challenge the aforesaid order dated 12.12.2024 passed by the Executing Court, in accordance with law in appropriate proceedings and so also reserving the liberty from this Court to appropriately challenge the order impugned in the present writ application in such proceedings, if it is permissible in law, and if it is not, petitioners may be permitted to file substantive petition challenging the order impugned in the present petition.

3. Per contra, learned advocate Mr.Pandya would submit that as such, the Execution Petition is already over now vide order dated 12.12.2024 and nothing survives in the matter and

thereby, this Court may not entertain the request made by the learned advocate appearing for the petitioners.

4. After hearing the learned advocates appearing for the respective parties, it appears that the subsequent event has already taken place, after filing of the present writ application, thereby, the Executing Court has finally disposed of the execution petition vide its order dated 12.12.2024 and in view of that matter, it would be always open for the petitioners to challenge such final order passed by the Executing Court in accordance with law in appropriate proceedings before challenging such order before the appropriate Court.

5. At the same time, this Court is also of the view that when Execution petition is disposed of, the order impugned in the present writ application, thereby, objections raised by the petitioners in the execution and so also the request to appoint DILR by way of filing an application below Exh.37 may not be gone into by this Court, at this stage.

6. Nonetheless, liberty is reserved in favour of the petitioners to challenge the order impugned in the present writ

application while questioning the legality and validity of the order dated 12.12.2024 passed by the Executing Court by filing appropriate proceedings before appropriate Court and if so required, reserving liberty in favour of the petitioner to file substantive petition challenging the order impugned in the present writ application as well.

7. It is made clear that this Court has neither gone into nor examined the merits of the matter.

8. With the aforesaid observation, discussion and reserving the liberty in favour of the petitioners to challenge the order dated 12.12.2024 passed by the Executing Court by way of an appropriate proceedings as well as order impugned in the present writ application along with such challenge, the present petition is disposed of as not pressed by the petitioners, at this stage. No order as to costs. Notice discharged.

**(MAULIK J.SHELAT,J)**

MOHD MONIS

Original copy of this order has been signed by the Hon'ble Judge.  
Digitally signed by: MOHD MONIS(HC01900), PRIVATE SECRETARY, at High Court of Gujarat on 23/04/2025 14:24:52