

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO.14129 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE HARSHA DEVANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment?
  - 2 To be referred to the Reporter or not?
  - 3 Whether their Lordships wish to see the fair copy of the judgment?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
  - 5 Whether it is to be circulated to the civil judge?

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PRADYUMANSINH BHUPATSINH JADEJA & 17....Petitioner(s)  
Versus  
UMESHBHAI KESHAVBHAI MALANI & 4....Respondent(s)

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**Appearance:**

MR VIMAL M PATEL, ADVOCATE for the Petitioner(s) No.1 - 18  
MR SIRAJ GORI, ADVOCATE for MR AMAR D MITHANI, ADVOCATE for the Respondent(s) No.2  
NOTICE NOT RECD BACK for the Respondent(s) No.4  
NOTICE SERVED for the Respondent(s) No.1 , 3 , 5

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**CORAM: HONOURABLE MS. JUSTICE HARSHA DEVANI**

**Date : 28/11/2014**

**ORAL JUDGMENT**

1. **Rule.** Mr. Siraj Gori, learned advocate for Mr. Amar Mithani, learned advocate waives service of notice of rule on

behalf of the respondent No.2 who is one of the contesting respondents.

2. Having regard to the controversy involved in the present case which lies in a very narrow compass and with the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

3. This petition under Article 227 of the Constitution of India is directed against the order dated 17<sup>th</sup> September, 2014 passed by the learned 5<sup>th</sup> Additional District Judge, Rajkot below Exhibit-37 in Civil Miscellaneous Application No.20/2014.

4. The facts stated briefly are that the respondents No.1 to 3 herein filed Civil Miscellaneous Application No.20/2014 in January, 2014 *inter alia* praying for grant of leave to appeal against the judgment dated 26<sup>th</sup> March, 2013 passed by the learned 11<sup>th</sup> Additional Senior Civil Judge, Rajkot in Civil Miscellaneous Application No.1361/2012 granting revocation of heirship certificate issued in Civil Miscellaneous Application No.191/1998. Alongwith the said application, the respondents No.1 to 3 also filed an application seeking condonation of delay in preferring the appeal challenging the above referred judgment. In the said proceedings, the petitioners herein moved the above referred application (Exhibit-37) requesting the lower appellate court to decide the application seeking leave to appeal before deciding the application seeking condonation of delay. By the impugned order dated 17<sup>th</sup> September, 2014, the application has been rejected and it has been ordered that the application for condonation of delay shall be decided first. Being aggrieved,

the petitioners have filed the present petition.

5. At the outset, Mr. Siraj Gori, learned advocate for Mr. Amar Mithani, learned advocate for the respondent No.2, under instructions, states that the second respondent has no objection if the impugned order is set aside and the application (Exhibit-37) is allowed by holding that the application for leave to appeal be decided prior to the hearing of the application for condonation of delay but within such time as may be stipulated by this court.

6. In the light of the statement made by the learned advocate for the second respondent who is one of the main contesting parties and is one of the parties who have moved the application for leave to appeal as well as the application for condonation of delay before the lower appellate court, the court is of the view that the application is required to be allowed in terms of the above statement.

7. In the aforesaid premises, the petition succeeds and is accordingly allowed. The impugned order dated 17<sup>th</sup> September, 2014 passed by the learned 5<sup>th</sup> Additional District Judge, Rajkot below Exh.37 in Civil Miscellaneous Application No.20/2014 is hereby quashed and set aside. The application (Exhibit-37) made by the petitioners is hereby allowed. Accordingly, the lower appellate court shall first decide the application for leave to appeal filed by the respondents No.1 to 3 within a period of four weeks from the date of receipt of a copy of this order. The hearing of the application for condonation of delay would depend upon the outcome of the order passed in the application for grant of leave to appeal,

subject to the rights of the parties to challenge any order that may be passed thereon. Rule is made absolute accordingly with no order as to costs.

Direct Service is permitted.

**( Harsha Devani, J. )**

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