

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**CIVIL APPLICATION NO. 1502 OF 2015
IN
SECOND APPEAL (St) NO. 12366 OF 2015**

Mr. Vasant Maruti Mane & Ors.	... Applicants
V/s.	
Gunda Sudam Yadav & Ors.	... Respondents.

Mr. P. G. Sarda for the applicant.

**CORAM : K. K. TATED, J.
DATED : 28/09/2015.**

PC.:

. Heard learned Counsel for the applicant.

2 This application is preferred by plaintiffs for condonation of 3 years and 271 days delay in filing Second Appeal challenging the Judgment and Decree dated 30.04.2011 passed by the Appellate Court in Civil Appeal No. 133 of 2008.

3 The learned Counsel for the applicants submits that applicant nos. 1, 2 and 3 are Senior Citizens. He further submits that all applicants are residing in remote area. Hence, they could not able to contact their Advocate immediately for filing second appeal in this Court. He submits that as soon as the applicants learnt about the order passed by the Appellate Court, they immediately applied for certified copy on 18.03.2015 and thereafter, filed present second appeal on 28.04.2015. In support of this contention, the learned Counsel for the

applicant relies on paragraph 2 and 3 of the civil application, which reads thus:

“2 The applicants state that they are laymen and not having legal knowledge about law. After passing impugned judgment by the Ld. District Judge the Applicants were under bonafide impression that they were not having any remedy to challenge the said impugned judgment. However recently they met the present advocate and during course of discussion it is decided to challenge the said impugned Judgment and Order in this Hon'ble Court. Thereafter, he immediately sent papers to the present advocate and thereafter filing the present application for condonation of delay.

3 That the applicants agriculturists and housewives and are residing in a remote area and hence could not contact the concerned Advocate who has conducted the Appeal before the District Court and also they never ever approached the said Advocate as they were under bonafide impression that the Advocate would call them if necessary and hence they could not get the knowledge about the dismissal of the Appeal.”

4 The learned Counsel for the applicants submits that applicants have good chance of success in the present proceedings. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicants. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and hear the matter on its own merits.

5 I heard learned Counsel for the applicants at length. In the present proceeding, the applicants plaintiffs challenges the concurrent findings of facts recorded by both the Courts below. In the present proceeding, the Trial Court dismissed the applicants' Regular Civil Suit No. 2 of 2000 by Judgment and Decree dated 31.07.2008. Thereafter, the applicants preferred Civil Appeal No. 133 of 2008 on 19.09.2008 in

the District Court at Pandharpur. It is to be noted that as soon as the Trial Court passed decree on 31.07.2008, the applicants preferred Appeal immediately within limitation. That itself shows that they have knowledge about their rights to challenge the order if goes against them.

6 There is no explanation in the civil application why the applicants took more than three years for applying the certified copy of judgment and decree passed by the Appellate Court. Even there is no explanation in the civil application, when they learnt about the order passed by the Appellate Court.

7 Hence, the reasons given by the applicants in paragraphs 2 and 3 of civil application does not disclose the sufficient cause for condonation of inordinate delay of more than three years.

8 The Apex Court in the matter of **Pundlik Jalam Patil Vs. Ex.Engg. Jalgaon Medium Project and Ors, 2008(6) BCR 513** held that unless and until sufficient cause is shown, inordinate delay should not be condoned.

9 The Apex Court in the matter of **Oriental Aroma Chemical Industries Limited Vs. Gujarat Industrial Development Corporation reported in 2010 (5) SCC 459**, held that in the absence of sufficient cause, Court should not condone the delay.

10 The Apex Court in the case of **B. Madhuri Gaud Vs. B. Damodar**

Reddy, 2012 (12) SCC 693 held that if sufficient cause is not shown, delay should not be condoned.

11 Considering the submissions made by the learned Counsel for the applicant, averments made in civil application and law laid down by the Apex Court, I am of the opinion that applicants failed to make out sufficient cause for condonation of more than three years delay in filing second appeal.

12 Hence, civil application stands rejected.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the
original signed order.