

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

CIVIL APPLICATION NO.578/2014
IN
SECOND APPEAL (ST) NO.4134/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. P. J. Pawar for the Applicant
Ms. Gauri Shah i/b. S. S. Shah for the Respondent
Nos.1B, 1C, 2, 3, 5 and 6.

CORAM : K. K. TATED, J.
DATE : AUGUST 25, 2015

P.C.:

1. Heard. This Application is preferred by the Defendant for condonation of 2 years and 68 days delay in filing the appeal challenging the decree dated 26/08/2011 passed by lower Appellate Court.

2. The learned counsel for the Applicants submits that the Applicants, being illiterate, they have no knowledge about taking any steps to challenge the order passed by the lower Appellate Court. He submits that the Applicants learnt about the decree passed by the lower Appellate Court when they came across the execution proceedings filed by the Respondent Plaintiffs. He submits that during that period the Applicant lost her father-in-

law. Hence, there is delay in preferring the Second Appeal.

3. On the other hand, the learned counsel for the Respondents vehemently opposed the Civil Application.

4. It is to be noted that though the Civil Application was duly served on the contesting Respondents, there is no Affidavit-in-Reply to oppose the Civil Application.

5. The learned counsel for the Respondents submits that the Applicants have not shown sufficient cause for condonation of inordinate delay of more than 2 years. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

6. It is to be noted that the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to

repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against

acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

7. Considering the submissions made by the learned counsel for the Applicants, the reasons mentioned in paragraph 4 and 6 of the Civil Application and the law laid down by the Apex Court, I am of the opinion that the Applicants have made out a case for allowing the Civil Application. At the same time, the Applicants have to pay cost of Rs.7500/- to the contesting Respondents who appeared before this court.

8. Hence, following order is passed:

- a. Delay in preferring the Civil Application is condoned.
- b. The Applicant to pay cost of Rs.7500/- either to the contesting Respondents or their Advocate or deposit in the Registry of this court within 6 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. Civil application stands disposed off accordingly.

JUDGE