

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

CIVIL APPLICATION NO.1013/2015
IN
SECOND APPEAL NO.1030/2012

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. Aniket Ransubhe i/b. Ajay Basutkar for the Applicant

CORAM : K. K. TATED, J.
DATE : SEPTEMBER 22, 2015

P.C.:

1. Heard. The learned counsel for the Applicant submits that the Respondents are duly served by private notice. He filed Affidavit of service dated 22/09/2015. Same is taken on record.

2. This Application is for restoration of the Second Appeal which was dismissed for default vide order dated 23/01/2014. The learned counsel for the Applicant submits that on 23/01/2014 the matter was assigned to a junior advocate who lost sight of the matter and did not appear when the matter was called out. Hence, the Second Appeal stood dismissed in default.

3. The learned counsel for the Applicant further submits that the junior advocate did not inform the Advocate for the Applicant about the dismissal of the Second Appeal and thus inadvertently he lost track of the matter and recently when the Applicants enquired with them whether the appeal is admitted, the Advocate for the Applicant checked the case status on computer and found that the above order is passed in the Second Appeal. As such, there is delay of 1 year and 9 months in making the Civil Application for restoration of the Second Appeal. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and the matter be heard on merits. In support of his contention, the learned counsel for the Applicant relies on paragraph 2 and 3 of the Civil Application.

4. Heard the learned counsel for the Applicant at length. In the present proceedings earlier the Second Appeal stood dismissed on 12/02/2013 by order of this court (Coram : R. Y. Ganoo, J.). When the matter was on board on 04/02/2013, the court passed the following order:

“1. The matter was adjourned from time to time. At the request of learned Advocate for the appellant it was adjourned to 21.1.2013 by way of last chance. It is true that the matter was adjourned on two

occasions i.e. on 21.1.2013 and 28.1.2013 for paucity of time.

2. Today, when the matter was called out, nobody is present on behalf of the appellant. As last chance, adjourned to 11.2.13, first on board.”

5. As none appeared for the Applicant on 12/02/2013, the matter stood dismissed for want of prosecution. Thereafter the Applicant made Civil Application No.733/2013 for restoration of Second Appeal and for condonation of delay of 29 days in filing the Civil Application which was allowed by this court (Coram : R. M. Savant, J.) on 08/08/2013.

6. Thereafter the matter appeared on board on 23/01/2014. On that day also, none appeared for the Applicant. Hence, the Second Appeal stood dismissed for want of prosecution.

7. The present Civil Application filed by the Applicant on 03/03/2015 i.e. beyond 1 year and 9 months. There is no explanation in the Civil Application for inordinate delay of more than 1 year.

8. Considering the fact that earlier also the matter stood dismissed and there is delay of more than 1 year in making the Civil Application for restoration of the appeal, I do not find any reason

to entertain the Civil Application. Same stands rejected.

JUDGE

CERTIFICATE

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