

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

**CIVIL APPLICATION NO. 2577 OF 2014
IN
FIRST APPEAL NO. 1696 OF 2007**

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. Nilesh Masurkar for the applicant.

Mrs. M.R. Bhoir for the respondent/Corporation.

CORAM : K. K. TATED, J.

DATED : 11/06/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff for condonation of 488 days delay in preferring the Civil Application for setting aside the order dated 16.10.2012 passed by this court dismissing Civil Application no. 2753 of 2012 and Civil Application no. 2752 of 2012 for default.

3 The learned Counsel for the applicant submits that the previous Advocate of the applicant failed and neglected to take appropriate steps in the First Appeal. Hence, the same was dismissed. Thereafter, the applicant preferred Civil Application no. 2753 of 2012 for condonation of 185 days delay for setting aside the order dated 18.08.2009 passed by the

learned Registrar, by which the First Appeal stands dismissed. He submits that the applicant also preferred Civil Application no. 2752 of 2012 for setting aside the order dated 18.08.2009 passed by the learned Registrar and for restoration of First Appeal no. 1696 of 2007. He submits that both the Civil Applications on board on 16.10.2012. At that time, no one appeared on behalf of applicant. Hence, both applications were dismissed for default.

4 The learned Counsel for the applicant submits that as soon as applicant learnt about the dismissal of earlier Civil Application, he immediately contacted his earlier Advocate to take appropriate steps. As the earlier Advocate failed and neglected to take appropriate steps, the applicant engaged another Advocate and preferred the present Civil Application.

5 The learned Counsel for the applicant submits that because of the mistake on the part of the earlier Advocate, the applicant should not be suffered. He submits that applicant has good chance of success in the present proceeding. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay of 488 days in preferring Civil Application and set aside the order dated 16.10.2012 and restore the Civil Application nos. 2752 of 2012 and 2753 of 2012 on board for

hearing on its own merits. He further submits that if the present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

6 On the other hand, the learned Counsel Mrs. Bhoir for the respondent corporation vehemently opposed the present Civil Application. She submits that applicant has not shown sufficient cause for condonation of more than 1 year in preferring the present Civil Application. She submits that when the First Appeal was dismissed by order dated 18.08.2009, the applicant preferred Civil Application no. 2752 of 2012 for setting aside the said order. That application was also filed by the applicant after 185 days delay. She submits that the applicant in paragraph 3 of the Civil Application no. 2752 of 2012 specifically stated that the Officer of the respondent corporation on 05.12.2009 demolished the suit structure. She further submits that in view of subsequent development, nothing survives in the present proceeding and therefore, there is no question of allowing the present Civil Application.

7 I heard both the sides at length. It is to be noted that in the present Civil Application, there is delay of more than one year. The same is not explained by the applicant. Not only that, when the First Appeal was dismissed by order dated

18.08.2009, the applicant preferred Civil Application no. 2752 of 2012 after more than 185 days delay. This itself shows that the applicant was not seriously prosecuting the said matter.

8 As the applicant failed to disclose the sufficient cause for condonation of delay, I do not find any reason to entertain the present application.

9 Hence, the same is rejected.

(K.K.TATED, J.)