

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

**CIVIL APPLICATION NO. 665 OF 2014
IN
SECOND APPEAL (ST.) NO. 10242 OF 2014**

Sau. Nilja Padmakar Shirke	... Applicant
V/s.	
Shri. Narayan Satu Modak & Ors.	... Respondents

Mr. U. B. Nighot for the applicant.
Mr. Amey Tamhane for respondent no.1.
Mr. Bhushan Walimbe i/b Preeti Walimbe for respondent nos. 3 to 5.

**CORAM : K. K. TATED, J.
DATED : 12/10/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is for condonation of 2 years and 132 days delay in filing Second Appeal challenging the decree dated 06.07.2011 passed by learned District Judge, Raigad at Alibaug in Civil Appeal No. 108 of 2004.

3 The learned Counsel for the applicant submits that as soon as the decree passed by the Appellate Court, they immediately filed Review Application No. 82 of 2011 on 03.08.2011 for Review of impugned decree. He submits that that review application was pending before the Appellate Court. He submits that the review petition was decided by the Appellate Court on 29.01.2014. Thereafter, applicant

immediately applied for certified copy on 31.01.2014. Same were ready and collected by the applicant on 15.03.2014 and filed the present Second Appeal in this Court on 08.04.2014.

4 The learned Counsel for the applicant submits that the delay caused was not intentional or deliberate. He submits that delay caused due to the pendency of Review Application no.84 of 2011. He submits that as soon as Review Application was decided by the Appellate Court, he immediately applied for certified copy and filed the present Second Appeal in this Court.

5 The learned Counsel for the applicant submits that in view of Section 14 of Limitation Act this Hon'ble Court be pleased to condone the delay which occurred during the pursuing the Civil Review Application No. 84 of 2011. He submits that applicant has good chance of success in the present proceeding. He submits that if delay is not condoned, irreparable loss or injury will be caused to the applicant. Hence, in the interest of justice, this Hon'ble Court be pleased to condone the delay and decide the matter on its own merits.

6 On the other hand, the learned Counsel for the respondent no.1 vehemently opposed the present application. They filed their affidavit-in-reply. The learned Counsel for the respondent no.1 submits that applicant has not shown sufficient cause for condonation of more than 2 years delay in filing Second Appeal. Hence, there is no substance in the Civil Application and same to be dismissed with costs.

7 The learned Counsel for the respondent nos. 3 to 5 vehemently

opposed the present Civil Application. Though, Civil Application is duly served on these respondents, there is no affidavit-in-reply filed by them to oppose the present Civil Application. The learned Counsel for these respondents submits that applicant has not shown sufficient cause for condonation of more than 2 years delay in filing Second Appeal. He submits that the applicant has not made any averments in the Civil Application to attract the provision of Section 14 of the Limitation Act. Hence, the applicant is not entitled for the benefit of Section 14 of the Limitation Act for condonation of delay. Hence, there is no substance in the present Civil Application and same to be dismissed with cost.

8 I heard both the sides at length. It is to be noted that in the present proceeding as soon as the Judgment and Decree passed by the Appellate Court on 06.07.2011, the defendant no.7 filed Civil Review Application no. 84 of 2011 on 03.08.2011. The same was decided by the Appellate Court on 29.01.2014. This itself shows that more than two years, the review petition was pending before the Appellate Court. As soon as the Review Petition was decided by the Appellate Court, Advocate for the defendant no.7 applied for certified copy and same were collected on 15.03.2014 and filed the present Second Appeal on 08.04.2014. This itself shows that the delay caused in filing the Second Appeal is only because of the pendency of Review Petition before the Appellate Court. As per Section 14 of the Limitation Act, applicant has made out case for condonation of delay during the pendency of the Civil Review Application no. 84 of 2011 for hearing and final disposal on its own merits. To that effect, applicant has made averments in paragraph 4 of the Civil Application. The reasons given by the

applicant in paragraph 4 shows the sufficient cause for condonation of delay.

9 Considering the submissions made by learned counsel for the applicant, averments made in civil application and the reasons disclosed by the applicant particularly in paragraph 4, I am satisfied that applicant has made out the case for allowing the civil application.

10 Hence, following order:

a) Delay of 2 years and 132 days in filing Second Appeal is condoned.

b) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)