

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

CIVIL APPLICATION NO.396 OF 2015
IN
CIVIL APPLICATION NO.4582 OF 2009
IN
FIRST APPEAL (ST) NO.27764 OF 2009

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. Niketan Nakhwa i/b. A. M. Gokhale for the Applicant

Mr. D. R. Mahadik i/b. S. R. Singh for the Respondent.

CORAM : K. K. TATED, J.
DATE : APRIL 17, 2015

P.C.:

1. Heard. None for the Respondent Insurance Co. though duly served.

2. This Application is preferred by the claimant for restoration of the Civil Application No.4582/2009 with the present First Appeal which was dismissed in view of conditional order dated 13/01/2010 for non payment of bhatta charges. The learned counsel for the Applicant submits that earlier Mr. M. D. Kotak was appearing in the matter for the Applicant. He submits that said Mr. Kotak was not keeping well for 3 years before his demise

in July 2013 and therefore, bhatta charges could not be paid within stipulated time. He submits that the Applicant has good chance of success in the matter. In the interest of justice, this Hon'ble Court be pleased to allow the Civil Application and restored the aforesaid Civil Application No.4582/2009 and the present First Appeal.

3. The Applicant, in paragraph 4, stated that 3-4 years before demise, the earlier Advocate was not keeping well. That cannot be a reason because, on 13/01/2010 when the order was passed by this court, the earlier Advocate appeared in the present matter. In any case, because of the mistake on the part of the advocate, the claimant should not suffer.

4. Considering this fact, I am of the opinion that the Civil Application preferred by the Applicant is required to be allowed. At the same time, the Applicant to pay cost of Rs.5000/-. Cost to be paid in the office of the Maharashtra State Legal Services Authority, High Court, Bombay within 4 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

5. Hence, the following order:

a. Civil Application allowed in terms of prayer clauses (a) and (b) which read thus:

a. Delay of 3 years and 153 days caused in filing the present Civil Application be condoned.

b. The conditional order dated 23/09/2010 be recalled and Civil Application No.4582/2009 in First Appeal (ST) No.27764/2009 for condonation of delay be restored back to file.

b. The Applicant to pay cost of Rs.5000/-. Cost to be paid in the office of the Maharashtra State Legal Services Authority, High Court, Bombay within 4 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