

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

CIVIL APPLICATION NO.2547 OF 2014
IN
FIRST APPEAL (ST) NO.13169 OF 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. D. S. Sawant i/b. J. R. Vakil & Associate for the Applicant
Mrs. Geetanjali Dutta for the Respondent.

CORAM : K. K. TATED, J.
DATE : APRIL 24, 2015

P.C.:

1. Heard. This Application is for condonation of 64 days delay in filing the First Appeal challenging the judgment and decree dated 7/8/9 January 2014 passed by the Bombay City Civil Court, Mumbai in S.C.Suit No.918/2007.

2. The learned counsel for the Applicant submits that there is delay in filing the First Appeal because the papers were misplaced at the time of shifting the office of their Advocate from one place to another. He submits that the Applicant was under an impression that a limitation for filing the First Appeal against the impugned judgment and decree is 90 days. He submits that they have good

chance of success in the matter. He submits that if delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. He relies on the Apex Court judgment in the matter of ***State of Bihar Vs. Pukhan Mahto (2011) 15 SCC 225*** holding that the High Court ought to have condoned the delay if sufficient cause is shown and heard the appeal on merits. He also relies on the judgment of the Apex Court in the matter of ***S. Ganesharaju (dead) Through Lrs. and Anr. Vs. Narsamma (dead) Through Lrs. and Ors. (2013) 11 SCC 341***, wherein the Apex Court held that the court may take liberal view at the time of condoning the delay. On the basis of this submission and the law declared by the Apex Court, the learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to allow the Civil Application and the matter be heard on merits.

3. On the other hand, the learned counsel for the Respondent Plaintiff vehemently opposed the Civil Application. She submits that the reasons disclosed by the Applicant in paragraph 6 cannot be construed as sufficient cause for condonation of delay. She submits that the Advocate who appeared for the Applicant in the Trial Court, same

advocate has filed the present appeal. Hence, it is very difficult to accept the reasons that in shifting the Advocate's office, they misplaced the papers. She further submits that the Applicant in paragraph 6 of the Civil Application submitted that the Applicant was under an impression that a limitation for filing the First Appeal is 90 days. She submits that ignorance of law cannot be a ground for condonation of delay. Hence, Civil Application be dismissed with costs.

4. Heard. It is to be noted that in the present proceedings, the Applicant in paragraph 6 specifically stated that the papers were misplaced at the time of shifting the office of his Advocate and other ground is that the Applicant was under an impression that the limitation for filing the appeal is 90 days.

5. Considering the reasons disclosed in paragraph 6 of the Civil Application as well as the authorities relied on by the Applicant, I am satisfied that the Applicant has made out a case for allowing the Civil Application. The objection raised by the advocate for the Respondent about ignorance of law cannot be considered in the facts and circumstances of the present case because

there is delay of only 64 days. At the same time, the Applicant to pay costs of Rs.2500/- to the Respondent Plaintiff within 2 weeks from today. Hence, the following order:

a. Civil Application allowed in terms of prayer clause (a) which reads thus:

(a) That this Hon'ble Court be pleased to condone the delay of 64 days in filing the present appeal and the appeal be kindly heard on merits.

b. The Applicant to pay cost of Rs.2500/- either to the Respondent or their advocate or deposit in this court within 2 weeks from today.

c. Civil application stands disposed off accordingly.

JUDGE