

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

**CIVIL APPLICATION NO. 2882 OF 2014
IN
FIRST APPEAL NO. 22 OF 2005**

Shri. Behram Jamshedji Tarapore Deceased, through his Legal heirs & Ors. V/s. M/s. Safe Speed Carrier Pvt. Ltd. & Anr.	... Applicants ... Respondents
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Mr. Tejesh Dande i/b Dande & Asso. for the applicant.
Mrs. H. D. Kapadia i/b Ms. Kalyani Parmar for the respondent no.1.
Mr. Jinsiwale i/b Harshada Rane for respondent no.2.

**CORAM : K. K. TATED, J.
DATED : 03/07/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by legal heirs of Appellant no.1 Behram Jamshedji Tarapore, who died on 06.03.2008.

3 The learned Counsel for the applicant submits that the legal heirs of deceased Appellant are already on record. Hence, there is no question of any abatement.

4 In support of this contention, the learned Counsel for the applicant relies on the Judgment in the matter of *Mahabir Prasad V/s. Jage Ram & Ors. Reported in 1971(1) Supreme Court Cases 265.*

5 The learned Counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in preferring the present Civil Application and allow the applicant to be treated as legal heirs of deceased Appellant no.1.

6 The learned Counsel for the respondent no.1 vehemently opposed the present Civil Application. She submits that there is delay of more than six years in preferring Civil Application. She submits that as there is no sufficient cause shown by the applicant for condonation of delay, Civil Application deserves to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that in the present proceeding, the legal heirs of the deceased Appellant no.1 are already on record as appellants itself. Therefore, there is no question of abatement.

8 Considering the submissions made by the learned Counsel for the applicant and law declared by the Apex Court in the matter of Mahabir Prasad(Supra), I am satisfied that applicants have made out case for allowing Civil Application.

9 Hence, the following order.

a) Delay in preferring Civil Application is condoned.

b) Applicants are permitted to delete the name of appellant no.1 Behram Jamshedji Tarapore from the First Appeal as well as pending Civil Application and treated the other

appellants as legal heirs of the deceased.

c) Amendment to be carried out within six weeks from today, failing which civil application shall stand dismissed without referring back to the court .

d) The learned Counsel for the applicants to serve the amended copy of First Appeal and pending Civil Application if any, on respondents Advocate thereafter immediately.

e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)