

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

CIVIL APPLICATION NO.259/2015
IN
SECOND APPEAL (ST) NO.19241/2005

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. M. A. Utagikar for the Applicant

CORAM : K. K. TATED, J.
DATE : AUGUST 25, 2015

P.C.:

1. Heard. This Application is for restoration of the Second Appeal (ST) No.19241/2005 after condoning the delay of 8 years and 152 days.

2. The learned counsel for the Applicant submits that the office has raised objection about filing of the vakalatnama of Applicant No.2 in Second Appeal. He submits that during that period, the Applicant No.1 fell ill and inadvertently failed to sign the vakalatnama. Thereafter the matter appeared on board under caption "for orders" before the learned Registrar on 15/02/2006. On that day, the learned Registrar granted 4 weeks time to remove office objections, failing which the matter would stand dismissed without further

reference to the court. He submits that inadvertently, the said order did not come to the knowledge of the advocate for the Applicant, therefore, he could not take steps within stipulated time. He submits that when the Applicant made enquiry with his Advocate in the month of June 2014 about the present Second Appeal, the Advocate learnt that the matter was dismissed for non removal of the office objections on 15/02/2006 itself. Hence, the Applicant preferred Civil Application for condonation of delay and for restoration of the Second Appeal. He submits that if Civil Application is not allowed, irreparable loss and injury will be caused to the Applicant. He submits that the Applicant has good chance of success in the matter. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and restore the Second Appeal to file for hearing on merits.

3. Heard the learned counsel for the Applicant at length. He mainly relies on paragraph 3 of the Civil Application in support for his contention of restoration of the Second Appeal, which reads thus:

“3. The Applicant states and submits that thereafter the Applicant No.1 fell ill and inadvertently failed to send the vakalatnama of

Applicant No.2. Thereafter the present Second Appeal was came under the order caption before the Ld.Registrar of this Hon'ble Court on 15/02/2006 and on that day a conditional order has been passed with a direction to take a step within 4 weeks failing which the matter shall stand dismissed. The copy of the said order dated 15/02/2006 is annexed herewith which is marked at exb.A. The Applicant states and submits that inadvertently the said order was not came to the knowledge of the Applicant's advocate, therefore the Applicants advocate could not take steps within the stipulated period, therefore as per the order dated 15/02/2006 the present Second Appeal stand dismissed. The Applicant further states and submits that when the concerned advocate made an enquiry about the present Second Appeal in the month of June 2014 the concerned advocate came to know that the matter was dismissed on 15/02/2006. Thereafter the advocate of the Applicant informed the Applicant that the matter was dismissed on 05/02/2006 on the ground that the vakalatnama of Applicant No.2 was not filed within stipulated period, the Applicant No.1 immediately brought the vakalatnama of Applicant no.2 and the Applicants are ready to comply the conditional order immediately.

4. It is to be noted that there is no explanation in the Civil Application for inordinate delay of more than 8 years in preferring the Civil Application. Even the office note shows that the papers of the Second Appeal have already been destroyed as per the High Court Appellate Side Rules.

5. Considering the submissions made by the

learned counsel for the Applicant and the averments made in paragraph 3 of the Civil Application, I do not find any sufficient reason for condonation of inordinate delay of 8 years in filing the present Second Appeal.

6. Hence, Civil Application stands rejected.

7. No order as to costs.

JUDGE