

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

**CIVIL APPLICATION NO. 2881 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 claimants for restoration of First Appeal no. 22 of 2005 which was dismissed in view of conditional order dated 14.10.2005 passed by this Court (Coram : D.G.Deshpande, J) for non payment of Bhatta Charges.

3 The learned Counsel for the applicants claimants submits that the above mentioned First Appeal no. 22 of 2005 was on board before this Court (Coram : J. H. Bhatia, J.) on 03.08.2005 for admission. At that time, this Court admitted the First Appeal and issued notice to the respondents returnable after four weeks. He submits that thereafter, Civil Application no. 23 of 2005 appeared on board along with other

matters. On 14.10.2005, this court passed common order in several matters, directing parties to pay Bhatta Charges within two weeks, failing which matters shall stand dismissed.

4 The learned Counsel for the applicant submits that the learned Counsel for the applicant checked status of the matter on 01.08.2014, the matter was shown as admitted (unready). In support of this contention, the learned Counsel for the applicant placed on record the copy of inquiry done by him on 01.08.2014. He further submits that when the applicant tried to file Civil Application for bringing legal heirs on record of appellant no.1 on 30.06.2014, at that time, the applicant learnt that the First Appeal as well as Civil Application no. 23 of 2005 stand dismissed in view of conditional order dated 14.10.2005. He submits that for the first time, the Applicant and his Advocate learnt about the dismissal of the First Appeal and Civil Application. Hence, they immediately made inquiry and learnt that for non payment of Bhatta Charges, matter stands dismissed. Thereafter, they obtained copies from the Registry and filed present Civil Application immediately on 06.08.2014 i.e. within one and half month from the date of knowledge.

5 The learned Counsel for the applicants submits that because of mistake on the part of the Advocate for the applicants, the applicants should not be suffered. He submits that in the present proceeding, the applicants claimants challenging the Judgment and Award dated 07.01.2002 passed by the Motor Accident Claims Tribunal, Mumbai in Application no. 2518 of 1994 for compensation. He submits that if

present Civil Application is not allowed, irreparable loss and injury will be caused to the applicants. He submits that they have good chance of success in the present proceeding.

6 On the other hand, the learned Counsel for the respondent no.1 vehemently opposed the present Civil Application. The learned Counsel for the respondent no.1 filed affidavit-in-reply dated 19.06.2015 to oppose the present Civil Application. She submits that applicants have not shown sufficient cause for condonation of inordinate delay of more than 8 years. She submits that applicants have not explained what they have done before on or before June, 2014. These facts are not explained by the applicants in their application. She submits that it is the duty of the Advocate to pay Bhatta Charges immediately. She submits that applicants have not explained why the Advocate for the applicants failed to pay Bhatta Charges within stipulated time as per order dated 14.10.2005. She submits that if there is inordinate delay, the Court should not entertain the application only on sympathy ground.

7 The learned Counsel for the respondent no.1 in support of her contention relies on Judgment of Madras High Court in the matter of *Syed Kasim V/s. Syed Amir reported in LAWS(MAD)-2011-11-295*. She submits that in this authority the Madras High Court held that Court does not enjoy unlimited and unbridled discretionary power to condone the delay. She relies on paragraph 2 of the said Judgment.

8 The learned Counsel for the respondent no.1 also relied on

Judgment of Delhi High Court in the matter of *Tarlochan Singh V/s. Union Bank of India reported in LAWS(DLH)-2012-12-261*. She submits that in this authority also the Delhi High Court held that Court should not condone inordinate delay. She relies on paragraph 12 of this authority. On the basis of these facts and law declared in the above mentioned authority, learned Counsel for the respondent no.1 submits that there is no substance in the present Civil Application and same to be dismissed with costs.

9 The learned Counsel for the respondent no.2 insurance company also vehemently opposed the present Civil Application.

10 I heard both the sides at length. In the present proceeding, the matter was admitted by this Court on 03.08.2005. Thereafter, the matter was appeared on board for removal office objections on 14.10.2015. That time, this court passed common order in several matters directing parties to pay Bhatta Charges, if the same is not paid within two weeks, matter shall stand dismissed. It is to be noted that in the present proceeding, the High Court website shown the matter as pending on 01.08.2014. To that effect, the learned Counsel for the applicants placed on record the inquiry report, which was generated on 01.08.2014. When, Appellant no.1 expired, the Advocate for the appellant decided to file the application for bringing legal heirs on record. At that time, the Advocate for the appellant attended the Registry of High Court. At that time, he learnt that the matter was dismissed in view of conditional order passed by this Court on 14.10.2005. The Applicants learnt this fact on 30.06.2014. Thereafter,

immediately applicants collected the papers and filed the present Civil Application in this Court on 07.08.2014. This itself shows that the applicants were under impression that matter is pending for hearing and final disposal on its own merits. Even the website of the High Court shows the same case status.

11 The authority cited by the learned Counsel for the respondent no.1 in the case of Syed Kasim (Supra) and Tarlochan Singh (Supra) are not applicable to the facts and circumstances of the present case. In the present case, the website of the High Court on 01.08.2014 shows that matter was pending. Whereas in the authority cited by the respondent no.1, inordinate delay on the part of applicant to prefer appropriate application considered by Court. Hence, they are not applicable in the present matter.

12 It is to be noted that our High Court in the matter of ***Baburao Deorao Wankhede V/s. Seva Sahakari Sanstha & Ors. Reported in 1989 Mah. LR 1144*** held that at the time of condoning the delay Court should not see the delay but cause/reason disclosed by the parties to be seen. In that case, our High Court has condoned the delay of more than 10 years.

13 Even the Apex Court in the matter of ***N.Balkrishnan V/s. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari*, 1969 SC 575 and *State of West Bengal v. The Administrator, Howrah Municipality*, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone

the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

14 Considering the submissions made by the learned Counsel for the applicants, averments made in Civil Application, particularly in paragraph 4 of the Civil Application and law declared by the Apex Court and our High court as stated herein above, I am of the opinion that applicants have made out case for Civil Application.

15 Hence, the following order.

- a) Delay in preferring the Civil Application is condoned.
- b) First Appeal No. 22 of 2005 with Civil Application no. 23 of 2015 are restored on file for hearing on its own merits.
- c) The learned Counsel for the respective respondent nos. 1 and 2 waives service in First Appeal no. 22 of 2005 and Civil Application no. 23 of 2005.
- d) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)