

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

CIVIL APPLICATION NO.3146/2014  
IN  
FIRST APPEAL (ST) NO.23088/2014

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| 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. Abhijeet A. Joshi for the Applicant  
Mr. D. D. Bhosale for the Respondent No.1.  
Mr. Kuldeep U. Nikam h/f. Shriram Choudhari for Respondent Nos.2 and 3.

**CORAM : K. K. TATED, J.**  
**DATE : AUGUST 13, 2015**

**P.C.:**

1. Heard. This Application is preferred by the Insurance Company for condonation of 2 years 43 days delay in filing the appeal challenging the award dated 16/04/2012 passed by MACT Pandharpur in MACP No.91/2008.

2. The learned counsel for the Applicant submits that the Tribunal passed award on 16/04/2012. Thereafter, immediately the Insurance Company instructed their Advocate to file an appeal in this court in the year 2012 itself. He submits that the Insurance Company forwarded certified copies as well as draft of Rs.25000/- to

the concerned Advocate for filing an appeal. He submits that the concerned Advocate prepared papers and proceedings and forwarded the same to the Insurance Company for affirmation. To that effect, the learned counsel for the Applicant relies on the Application for stay of the impugned award which was duly affirmed before the Notary at Solapur on 29/08/2012. The learned counsel for the Applicant submits that the Advocate immediately handed over the papers and proceedings to their clerk to file in this court. He submits that the Advocate as well as the Insurance Company were under impression that the concerned clerk has filed the appeal in this court. He submits that the learned counsel for the Applicant learnt about missing of papers when the Advocate carried out an audit of his briefs in January 2014. Hence, he made enquiry in the Registry of this court as well as with his clerk. At that time he learnt that the said clerk has not filed the appeal in this court. These facts were informed by the Advocate to the Insurance Company immediately. Thereafter the Insurance Company again applied for certified copies of the impugned award dated 16/04/2012 on 15/07/2014. Same was ready and collected on 17/07/2014. Thereafter the present First Appeal filed on

27/08/2014 along with Civil Application for condonation of delay.

3. The learned counsel for the Applicant submits that because of mistake on the part of the Advocate, the litigant should not suffer. He submits that the Applicant has good chance of success. He submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant.

4. On the other hand, the learned counsel for the Respondent No.1 vehemently opposed the Civil Application. He submits that the Applicant has not placed on record photocopy of earlier Civil Application for stay which was affirmed before the Notary on 29/08/2012. He submits that even the Applicant has not made any averment in the Civil Application about affirmation of earlier Civil Application for stay. He submits that the Applicant has not explained the delay of more than 2 years in the Civil Application. Hence, there is no substance in the Civil Application. Same to be dismissed with costs.

5. The learned counsel for the Respondent Nos.2 and 3 also vehemently opposed the Civil

Application. He submits that the Applicant has not explained and/or given sufficient cause for condonation of delay of more than 2 years in filing the First Appeal. Hence, there is no substance in the Civil Application. Same to be dismissed with costs.

6. Heard both sides. It is to be noted that in the present proceedings, the Insurance Company, in the year 2012 forwarded papers and proceedings to the concerned Advocate for filing the First Appeal. To that effect they affirmed Civil Application for stay before the Notary at Solapur on 29/08/2012. Because of mistake on the part of the Advocate, the litigant should not suffer. In any case, considering the facts and circumstances of the case, I am of the opinion that the Applicant has made out a case for allowing Civil Application. At the same time, the Applicant has to pay cost to the Respondent.

7. Hence, following order is passed:

a. Delay of 2 years and 43 days in filing the First Appeal challenging the award dated 16/04/2012 passed by MACT Pandharpur in MACP No.91/2008 is condoned.

b. The Applicant either to pay to the Respondent No.1 Sachin Maruti Shinde or deposit in this court sum of Rs.10,000/- towards cost within 8 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

c. The Applicant has to pay cost of Rs.2500/- to the Respondent Nos.2 and 3 and/or deposit in this court within 8 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

d. Civil application stands disposed off accordingly.

**JUDGE**