

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

**CIVIL APPLICATION NO. 3478 OF 2012
IN
FIRST APPEAL NO. 5 OF 2002**

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. V. K. Tripathi for the applicant.

Mrs. M. R. Bhoir for the respondent/Corporation.

CORAM : K. K. TATED, J.

DATED : 08/04/2015.

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff for restoration of First Appeal no. 05 of 2012, which was dismissed in view of conditional order dated 15.02.2007.

3 The learned Counsel for the applicant submits that earlier they appointed Advocate Mr. Shetty to file First Appeal as well as Civil Application. He submits that earlier Advocate Mr. Shetty retired from practice. When the applicant made inquiry in September 2012, he learnt that First Appeal stands dismissed for non removal of office objections. He

submits that in between the original appellant expired in the month of November 2011. He submits that applicant preferred application for bringing legal heirs on record. Hence, there is delay in preferring the present Civil Application. In support of his contention, the learned Counsel for the applicant relies on paragraph 6 of the Civil Application. He submits that in the interest of justice, this Hon'ble court be pleased to condone the delay and restore the First Appeal for hearing on its own merits.

4 On the other hand, the learned Counsel for the respondent corporation vehemently opposed the present Civil Application. She submits that applicant has not disclosed the reasonable cause for condonation of more than four years delay in preferring Civil Application. Hence, there is no substance in the Civil Application and same to be dismissed with costs.

5 I heard both the sides at length. Considering the submissions made by the learned Counsel for the applicant and reasons disclosed in paragraph 6 of the Civil Application, I am satisfied that applicant has made out case for allowing Civil Application. But, at the same time, applicant to pay cost of

Rs.10,000/- to the respondent corporation within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .

6 Hence, the following order.

a) Delay in preferring Civil Application is condoned.

b) First Appeal no. 5 of 2002 is restored on file.

c) Applicant is granted four weeks time from today to remove all office objections in the First Appeal as per earlier order dated 15.02.2007 passed by this Court. (Coram: A.S. Oka, J).

d) Applicant to pay cost of Rs.10,000/- to the respondent corporation within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .

e) Civil Application is disposed of accordingly.

(K.K.TATED, J.)