

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

**CIVIL APPLICATION NO. 3951 OF 2013
IN
FIRST APPEAL NO. 170 OF 2012**

Shri. Vajubhai Vrandavandas Vora	... Applicant.
V/s.	
Waman Narayan Patil & Ors.	... Respondents

Mr. Sandesh Patil for the applicant.
Mr. R.D. Suryawanshi for the respondent nos. 1, 3, 4, 6 and 7.
Mr. R. N. Gite for respondent nos. 2 and 5.

**CORAM : K. K. TATED, J.
DATED : 29/07/2015.**

PC.:

. Heard learned Counsel for the parties.

2 Though the respondent no.8A is duly served, no one appeared on behalf of him, when the matter called out.

3 This application is for setting aside the order dated 01.08.2012 passed by the learned Registrar by which the First Appeal stands abated against respondent no.8.

4 The learned Counsel for the applicant submits that they learnt about the death of respondent no.8, when the matter appeared on board before the Registrar on 01.08.2012. Thereafter, the learned Counsel for the applicant informed the applicant to find out the names

and addresses of legal heirs of deceased respondent no.8. He submits that applicant took some time to find out the same. He submits that the respondent no.8 died on 28.12.2007. He submits that for want of knowledge about the death of respondent no.8, there is delay in preferring the Civil Application. He submits that applicant has good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and allow the applicant to bring the legal heirs of respondent no.8 on record.

5 On the other hand, the learned Counsel for the respondents vehemently opposed Civil Application.

6 Considering the submissions made by learned counsel for the applicant and reasons disclosed in Civil Application, I am satisfied that applicant has made out the case for allowing the civil application.

7 Hence, the following order is passed:

a) The delay in preferring the present Civil Application is condoned.

b) Order dated 1st August, 2012 passed by the learned Registrar and abatement of appeal against Respondent no.8 is set aside.

c) Applicant is permitted to bring legal heirs on record of deceased respondent no.8 in First Appeal and pending Civil Application if any within four weeks from today, failing which civil application shall stand dismissed without referring back to

the court .

d) If appropriate amendment is carried out within stipulated time as stated herein above, office is directed to issue notice to the added Respondent no.8A in First Appeal, returnable after ten weeks.

e) In addition to usual mode of service, the Applicant is directed to serve the Respondent no.8A in First Appeal no. 170 of 2012 by way of private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before next date.

f) The appellant is directed to file private paper book as per earlier order dated 10.04.2012 within 10 weeks from today, failing which First Appeal shall stand dismissed without referring back to the court .

g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)