

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

CIVIL APPLICATION NO.895 OF 2014
IN
CIVIL APPLICATION NO.1167 OF 2012
IN
FIRST APPEAL (ST) NO.7060 OF 2012

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. Niketan Nakhawa i/b. A. M. Gokhale for the Applicant

CORAM : K. K. TATED, J.
DATE : MARCH 12, 2015

P.C.:

1. Heard the learned counsel for the Applicant.
None for the Respondent though served.

2. This Application is preferred by the original claimants for restoration of Civil Application No.1167/2012 (for condonation of delay) which was dismissed in view of conditional order dated 25/10/2012 passed by this court for non payment of cost.

3. The learned counsel for the Applicant submits that the advocate who appeared on behalf of the Applicant on 25/10/2012 immediately communicated the said order to the advocate on

record Mr. M. B. Kotak about payment of cost of Rs.2500/- to Respondent No.2 Insurance Co. He submits that earlier advocate Mr. M. B. Kotak expired on 04/11/2012, therefore the cost could not be paid to the Insurance Co. within stipulated time.

4. The learned counsel for the Applicant submits that the Applicant contacted the office of Late Mr. M. B. Kotak on 15/10/2012 regarding progress of the matter. He was shocked to know about sad demise of Mr. M. B. Kotak who was no record for him. He submits that at that time, wife of Mr. M. B. Kotak informed that Mr. A. M. Gokhale, Advocate is looking after all the matters of Mr. M. B. Kotak. Thereafter, the Applicant contacted the present advocate and came to know that the matter is already dismissed for non compliance of conditional order dated 25/10/2012 passed by this court.

5. The learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to recall the order dated 25/10/2012. He submits that if the order is not recalled, irreparable loss, harm and injury will be caused to them.

6. Considering the submissions made by the learned counsel for the Applicant and the fact that the earlier advocate Mr. M. B. Kotak expired on 04/11/2012 before complying with the conditional order dated 25/11/2012, I am satisfied that the Applicant has made out a case for allowing the Civil Application. Hence, the following order:

A) Civil Application allowed in terms of prayer clauses (b) to (d) which read thus:

“(b) Delay caused in filing the present Civil Application be condoned.

(c) The conditional order dated 25/10/2012 in Civil Application No.1167/2012 in First Appeal (ST) No.7060/2012 be recalled and Civil Application No.1167/2012 for condonation of delay be restored back to file.

(d) The present Applicant be granted two weeks time for payment of cost of Rs.2500/- to the Respondent No.2 and also to file an additional affidavit in support of Application for condonation of delay.”

B) Civil application stands disposed off accordingly.

JUDGE