

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

CIVIL APPLICATION NO.688/2016
WITH
CIVIL APPLICATION NO.689/2016
IN
WRIT PETITION NO.2654/2006

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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Ms. Deepa Matwankar for the applicant

CORAM : K. K. TATED, J.
DATE : MARCH 23, 2016

P.C.:

1. Heard. This application is made by the plaintiff for restoration of the Writ Petition which was dismissed for non prosecution, by order dated 01.10.2010.

2. The learned counsel for the applicant submits that the petitioner No.1 used to look after the matter in this Hon'ble Court. She submits that the petitioner No.1 Ruth Issac Joseph Payne expired on 03.06.2013. Thereafter her legal heirs made enquiry about the present proceedings. At that time, they learnt that the earlier Advocate left the practice due to old age and old age related

diseases. Hence, the legal heirs of petitioner No.1 made enquiry about the status of the above matter with the NIC of this court and at that time, they learnt that the Writ Petition stood dismissed for non prosecution. Thereafter they made the Civil Application for restoration of the Writ Petition as well as Civil Application No.689/2016 for bringing the legal heirs on record of deceased/ plaintiff No.1 Ruth Issac Joseph Payne on record.

3. The learned counsel for the applicant submits that for want of knowledge, there is delay on the part of the applicant to make the present Civil Application. She submits that the earlier Advocate left the practice because of old age. She submits that the Applicant has good chance of success. She submits that if the delay is not condoned, irreparable loss, harm and injury will be caused to the Applicant. On the basis of this submission, the learned counsel for the Applicant submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in making the Civil Application and restore the Writ Petition for hearing on its own merits.

4. Heard the learned counsel for the applicant at length. In order dated 01.10.2010, this court recorded that earlier the Writ Petition was

dismissed on two occasions. There is delay of 5 years and 96 days in making the civil application. The cause title of the Writ Petition shows that petitioner No.2 David Issac Joseph Payne is son of petitioner No.1. The occupation of petitioner No.2 is shown as service, whereas, the occupation of the deceased petitioner No.1 is shown as house-wife. In the entire application, the applicant has not explained, what the petitioner No.2 done during this period. As the applicant failed to show sufficient cause for condonation of more than 5 years' delay in making the civil application and as the Writ Petition was dismissed earlier for 2 occasions, I do not find any substance in the civil application. Hence, the civil application stands rejected.

5. In view of rejection of civil application No.688/2016 for restoration of the Writ Petition, nothing survives in the civil application No.689/2016. Same stands dismissed as infructuous.

JUDGE