

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

**CIVIL APPLICATION NO. 2220 OF 2014
IN
FIRST APPEAL NO. 1410 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. J. N. Jayale for the applicant.

None for Respondent No.1.

Mr. A. R. Patil, AGP for the respondent nos. 2 to 6.

Mrs. M.R. Bhoir for Respondent Nos. 7 to 9 BMC.

CORAM : K. K. TATED, J.

DATED : 23/02/2016

PC.:

. Heard learned Counsel for the parties.

2 The learned Counsel for the applicant submits that he is not pressing the present Civil Application against the Respondent Nos. 7 to 12. In view of this statement, Civil Application and First Appeal stand dismissed against Respondent Nos. 7 to 12.

3 Though Respondent No.1 is duly served, no one appeared on behalf of him, when the matter called out.

4 This application is preferred by defendant for restoration of First Appeal No. 1410 of 2002, which was dismissed in view of conditional order dated 04.11.2004 passed by the learned Registrar

(Judicial-I) for non payment of necessary charges.

5 The learned Counsel for the applicant submits that First Appeal was admitted by this Court on 16.10.2002 after hearing Advocate for the Respondent Nos. 1 to 6. He further submits that even at the time of deciding Civil Application No. 3868 of 2002, the Advocate for Respondent Nos. 1 to 6 appeared before this Court. He submits that the applicant was under impression that as Respondent Nos. 1 to 6 represented through Advocate, it is not necessary to pay Bhatta Charges. He submits that applicant had learnt about the dismissal of First Appeal for non payment of Bhatta charges on 11.10.2013 when the Respondent No.1 preferred application for execution of Judgment and Decree passed by the Trial Court.

6 The learned Counsel for the Applicant submits that because of mistake on the part of the Advocate the Applicant should not suffer. He submits that they have good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to restore the First Appeal on file for hearing and disposal of on its own merits.

7 Considering the submissions made by learned counsel for the applicant, reasons disclosed in paragraph 6 of civil application and because of mistake on the part of the Advocate, litigant should

not suffer, I am satisfied that applicant has made out the case for allowing the civil application. But at the same time, applicant to pay cost of Rs.15000/- to the Respondent No.1 Sadhana Co. Op. Hsg. Soc. Ltd. within six weeks from today, failing which civil application shall stand dismissed without referring back to the court .

8 Hence, following order is passed:

a) Delay in preferring the Civil Application is condoned.

b) Order dated 04.11.2004 passed by learned Registrar (Judicial-I) is set aside.

c) Applicant to comply the order dated 04.11.2004 within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .

d) Applicant either to pay cost of Rs.15000/- to the Respondent No.1 Sadhana Co. Op. Hsg. Soc. Ltd. and/or deposit in the Registry within six weeks from today, failing which civil application shall stand dismissed without referring back to the court .

e) If amount is deposited in the Registry within stipulated time as stated herein above, Respondent No.1 is permitted to withdraw the same without furnishing any security.

f) Interim protection granted earlier in the

present proceeding to continue.

g) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)