

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

WRIT PETITION NO. 5765 OF 2016

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. Sanskar Marathe for the Petitioner.

**CORAM : K. K. TATED, J.
DATED : 09/06/2016**

PC.:

. Not on board. At the request of Advocate for the petitioner, matter is taken on board for urgent orders.

2 By this petition under Article 227 of the Constitution of India, the petitioner original plaintiff challenges the order dated 01.02.2016 passed by Civil Judge, Junior Division, Vadgoan, Maval below Exh.1 allowing the respondent defendant's application for condonation of 90 days delay in filing the application for setting aside the *ex-parte* decree.

3 The learned Counsel for the petitioner submits that Trial Court failed to consider the fact that the respondent made a false statement for condonation of delay in paragraphs 7 and 10 of their application. He submits that respondent defendant has not placed on record any documentary evidence to show

that he was affected because of Paralytic attack. He submits that if incorrect/false statement was made for obtaining favourable order, court should not entertain the application. On the basis of these submissions, the learned Counsel for the petitioner submits that impugned order passed by the Trial Court below Exh.1 in Civil Misc. Application No. 12 of 2012 be set aside.

4 I heard learned Counsel for the petitioner at length.

5 It is to be noted that there was delay of 90 days on the part of the respondent defendant for making application for setting aside the *ex-parte* decree. The respondent defendant specifically stated in their application in paragraph 7 that because of accident which occurred in 2007, the Respondent No.1 suffered paralytic attack. To that effect, he has placed on record the certificate issued by Doctor also. In any case, there was delay of 90 days in filing the application. At the time of allowing the application, the court has imposed the cost of Rs.2500/-.

6 It is to be noted that the Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123* held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal

remedy for the general welfare.

7 Considering the above mentioned facts and the law declared by the Apex Court, I do not find any substance in the present Writ Petition.

8 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)