

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

**CIVIL APPLICATION NO. 1018 OF 2015
IN
WRIT PETITION NO. 4767 OF 2005**

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.N. R. Bubana for the Applicant.

Mr. K. K. Malpathak for the Respondent No. 1(v).

CORAM : K. K. TATED, J.

DATED : 21/03/2016

P.C.:

. Heard learned Counsel for the parties.

2 Though the respondent nos. 1(i) to 1(iv) are duly served, no one appeared on behalf of them, when the matter called out.

3 This application is preferred by defendant for restoration of Writ Petition No. 4767 of 2005 which was stands dismissed by order dated 28.02.2012 for non bringing legal heirs on record of deceased Respondent No.1.

4 The learned Counsel for the Applicant submits that when the applicant received execution notice from Executing Court dated 13.02.2015 at that time, he learnt that Writ Petition filed by him stands dismissed. Thereafter, he immediately contacted his

Advocate and requested him to take appropriate steps for bringing legal heirs on record of deceased Respondent No.1. Hence, there is delay in filing Civil Application.

5 On the other hand, the learned Counsel for the Respondent No.1(v) vehemently opposed the present Civil Application. He submits that applicant failed to disclose the sufficient cause for condonation of more than 3 years delay in preferring the present Civil Application. He submits that this Court passed order dated 28.02.2012 after hearing both the sides. In spite of that, the applicant took more than 3 years in preferring the present Civil Application. Hence, same to be dismissed with costs.

6 I heard both the sides at length. It is to be noted that Writ Petition No. 4767 of 2005 was admitted after hearing both the sides at length. During the pendency of the Writ Petition, the Respondent No.1 expired. Thereafter, the learned Counsel for the petitioner tried to contact with the Petitioner. The applicant learnt about the dismissal about Writ Petition when he received notice dated 13.02.2015 issued by executing court. Hence, there is delay on their part to prefer appropriate application.

7 Considering the submissions made by learned counsel for the applicant and averments made in

civil application, I am satisfied that applicant has made out the case for allowing the civil application. But at the same time, he has to pay sum of Rs.10,000/- by way of cost to the Respondent No.1(v) Keshavprasad Shambhunath Tiwari.

8 Hence, following order is passed:

a) Delay in preferring Civil Application is condoned.

b) Abatement is set aside.

c) Applicant is permitted to bring legal heirs on record of deceased Respondent No.1 in Writ Petition No. 4767 of 2005 as stated in the cause title of present Civil Application.

d) Amendment to be carried out within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .

e) Applicant either to deposit cost of Rs.10,000/- in the Registry of this Court or pay the same to the Respondent no. 1(v) or his Advocate within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .

f) If cost is deposited within stipulated time as stated herein above in the Registry, the Respondent No.1(v) Keshavprasad Shambhunath Tiwari is entitled to withdraw the same without

furnishing any security.

g) If amendment is carried out within stipulated time as stated herein above, office is directed to issued notice to the added respondents in Writ Petition No. 4767 of 2005, returnable after 12 weeks.

h) The learned Counsel for the Respondent no. 1(v) waives service.

i) Liberty granted to the applicant to prefer appropriate application for remaining prayers, if he so desire and that application shall be decided on its own merits.

j) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)