

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

CIVIL APPLICATION NO. 279 OF 2016
IN
CIVIL REVISION APPLICATION NO. 250 OF 2015

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. G.S. Godbole with Mr. Faran Khan i/b Sharique R. Nahan for the Applicant.

Ms. Zeriobia Shapoor Irani for Respondent No.1.

Mr. S.K. More for Respondent Nos.2 to 4.

CORAM : K.K. TATED, J.

DATE : 05 MAY, 2016.

P.C. :

1 Heard learned counsel for the parties.

2 This Application is for restoration of Civil Revision Application No.250 of 2015 which was dismissed in view of the conditional order dated 29.03.2016 passed by this Court.

3 The learned counsel for the applicant submits that this Court by order dated 29.03.2016 directed applicant to pay cost of Rs.5,000/- to the respondent or their advocate on or before 11.04.2016. He submits that the said order was conditional. He submits that advocate for the applicant forwarded a cheque of Rs.5,000/- to the respondent by courier on 11.04.2016. He submits that the said envelope

containing a cheque was delivered to the respondent on 12.04.2016. In support of this contention, Advocate for the applicant relies on the Exhibits 'C' and 'D' to the Civil Application. The learned counsel for the applicant submits that it remain on the part of applicant to place on record in matter about the compliance of the said order.

4 The learned counsel for applicant submits that for want of communication about compliance of conditional order dated 29.03.2016, the registry of this Court shown the matter stands dismissed. The said dismissal reads thus :-

“As per Court's order dated 29/03/2016 Advocate for the Petitioner has not given any information regarding payment of cost of Rs.5000/- paid to the Respondent or their Advocate in stipulated time hence conditional order stands the Civil Revision Application stand dismissed without further reference to the Court.

We, may therefore, disposed off the Civil Revision Application No.250 of 2015 and send to the Decree Department for further necessary action.”

He submits that in the interest of justice this Hon'ble Court be pleased to restore the Civil Revision Application on file for hearing on its own merits.

5 On the other hand the learned counsel Ms. Irani appearing on behalf of Respondent No.1, vehemently

opposed the present Civil Application. She filed affidavit in reply dated 02.05.2016. The learned counsel for respondent No.1 submits that as the applicant neglected to comply the conditional order within stipulated time, there is no question of restoring the Civil Revision Application. She further submits that the applicant intentionally posted a cheque for payment of cost on last date i.e. 11.04.2016 that is also by courier. She submits that respondent No.1 is 82 years old. She submits that just to harass the respondent No.1, the applicant posted the said cheque on last date. She submits that applicant has not shown any sufficient cause for restoration of the Civil Revision Application. Hence, the present Civil Application to be dismissed with cost.

6 I heard both the sides at length. It is to be noted that in the present proceedings this Court directed the applicant to pay cost of Rs.5,000/- on or before 11.04.2016. The learned counsel for the applicant forwarded a cheque for Rs.5,000/- to the respondent on 11.04.2016 by courier. The same was delivered to the respondent on 12.04.2016. To that effect the applicant has placed on record the documentary proof issued by courier Company. It remains on the part of the advocate for the applicant to give intimation about payment of cost to the

registry. Hence the registry shown the matter stands dismissed in view of the conditional order. Considering these facts, I am of the opinion that applicant has complied the order dated 29.03.2016. The applicant has made out the case for allowing this Civil Application. Hence, the following order is passed :

a) Civil Application is allowed in terms of prayer clauses (a) and (b) which reads thus :

a) this Hon'ble Court be pleased to restore the above Civil Revision Application No.250 of 2015;

b) this Hon'ble Court be pleased to continue the interim reliefs granted by His Lordship M.S. Sonak, J. pending the hearing and final disposal of the Civil Revision Application.

b) Civil Application is disposed of accordingly.

c) The office is directed to place the Civil Revision Application No.250 of 2015 for final hearing in weekly board commencing from 13.06.2016 as per the earlier order dated 11.06.2015 passed by this Court (Coram : M.S. Sonak, J.).

(K.K. TATED, J.)