

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

**CIVIL APPLICATION NO.766 OF 2015
IN
FIRST APPEAL (ST) NO.13443 OF 2014**

Mr.Velji K. Gala .. Applicant

vs.

Somnath Constructions & Ors. .. Respondents

Mr.Zubin Behramkamdin with Mr.Dhiren Shah i/b M/s.Vimala & Co.
for the applicant

Mr.Ritesh Singh i/b Mr.S.R.Singh for the respondent no.1

Mr.Jhangiani Narula and Associates for the respondent nos.5 to 28

Mrs.M.R.Bhoir for the BMC

**CORAM : K. K. TATED, J.
DATED : 12/02/2016**

P.C.:

. Heard.

2 The learned counsel for the applicant submits that rest of the respondents are served and to that effect they filed affidavit of service. He further submits that they do not want to press Civil Application against unserved respondent no.29.

3 On his request name of respondent no.29 is deleted from the cause title at his cost and consequences.

4 This application is preferred by defendant no.5 for condonation of 2 years 208 days delay in filing First Appeal challenging the judgment and decree dated 9.8.2011 passed by City Civil Court for Gr. Mumbai (Borivali Division), Dindoshi, Goregaon, Mumbai in L.C.Suit No.5732 of 2002.

5 The learned counsel for the applicant submits that in Trial Court the applicants Constituted Attorney org.defendant no.4 Rahulbhai Nagda used to look after the matter. He submits that the said Constituted Attorney failed and neglected to intimate to the applicant about the decision given by the Trial Court. Hence, there is a delay in filing First Appeal. He further submits that as soon as they learnt about the order passed by Trial Court in October, 2013 they immediately made application for certified copy on 28.2.2014 and same was received on 15.3.2014 and thereafter the applicant filed the present First Appeal in this court on 20.4.2014.

6 The learned counsel for the applicant further submits that respondent nos.1 to 4 filed First Appeal No.2432 of 2011 as well as flat purchaser also filed First Appeal No.420 of 2012 challenging the said judgment and decree passed by Trial Court. Both the appeals are admitted. He submits that considering these facts and the reason disclosed by the applicant in paragraph 11 and 12 of Civil Application, this Hon'ble Court be pleased to condone the delay in filing the First Appeal.

7 On the other hand, the learned counsel for the respondent nos.5 to 28 vehemently opposed the present Civil Application. He submits that applicant has not shown sufficient cause for condonation of delay.

Hence, there is no substance in the present Civil Application.

8 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. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If

the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss.”

9 Considering the reason disclosed by the applicant in paragraph 11 and 12 of the Civil Application and as other First Appeal Nos.2432 of 2011 and 420 of 2012 arising from the same judgment and decree are already admitted by this court, I am satisfied that applicant has made out a case for allowing the Civil Application but at the same time, he has to pay cost of Rs.5000 to the contesting respondent as well as Corporation. Hence, following order is passed:

- a) Delay of 2 years 208 days in filing First Appeal challenging the judgment and decree dated 9.8.2011 passed by City Civil Court for Gr. Mumbai (Borivali Division), Dindoshi, Goregaon, Mumbai in L.C.Suit No.5732 of 2002 is condoned.
- b) Applicant to pay cost of Rs.5000 to the contesting respondent as well as Corporation within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- c) Civil application stands disposed off accordingly.

(K.K.TATED, J.)