

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

CIVIL APPLICATION NO.3884/2015
IN
FIRST APPEAL NO. 3188/2006

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. Prabhanjan Gujar for the Applicant
Mr. L. H. Patil for the Respondent Nos.2 and 3.

CORAM : K. K. TATED, J.
DATE : JANUARY 20, 2016

P.C.:

1. Heard. The Application is made by the legal heirs of the original Appellant Ksimat Ali for bringing them on record in the present First Appeal.

2. The learned counsel for the Applicant submits that the sole Appellant expired on 03/05/2014. He submits that in another connected First Appeal, the Respondent made Civil Application on 17/04/2014. At that time they contacted the Advocate, who informed that it is necessary to bring on record the legal heirs of the deceased Appellant. He submits that the Applicant has good chance of success. He submits that in the

interest of justice, this Hon'ble Court be pleased to allow the Applicant to bring on record the legal heirs of the deceased Appellant in the First Appeal.

3. On the other hand, the learned counsel for the Respondent filed Affidavit-in-Reply dated 20/08/2015 to oppose the Civil Application.

4. The learned counsel for the Respondent submits that the Applicant has not shown sufficient cause for condonation of more than 300 days delay in making the Civil Application. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

5. Considering the submissions made by the learned counsel for the Applicant and the averments made in paragraph 12 and 13 of the Civil Application and as the Applicant learnt about the pending proceedings when they received a copy of the Civil Application No.1741/2014 in connected First Appeal, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, since there is delay in making the Civil Application, the Applicant has to pay cost of Rs.1500/- to the Respondent within 4 weeks.

6. Hence, the following order:

a) Civil Application is allowed in terms of prayer clauses (a) to (c) which read thus:

(a) That by an order of this Hon'ble Court the abatement against original Appellant NO.1 i.e. Kismat Ali son of Dargahi Shaikh in the First Appeal No.3188/2006 be kindly set aside.

(b) That by an order of this Hon'ble Court the delay of 321 days caused in filing the present Civil Application be kindly condoned.

(c) By an order of this court the Applicants be permitted to bring on record the Applicant Nos.1A and 1B along with opponent No.7 and 8 being the heirs and legal representatives of the original Appellant NO.1 in the present First Appeal No.3188 of 2006 as the Appellant Nos.1A and 1B and Respondent No.7 and 8 the Applicants be permitted to amend the title of the First Appeal accordingly.

b) The Applicant is directed to carry out appropriate amendment in the present First Appeal within 6 weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

c) If amendment is carried out within stipulated time as stated hereinabove, the Applicant is

directed to serve an amended copy of the First Appeal as well as pending Civil Application, if any, on the Advocate for the Respondent, immediately thereafter.

d) The Applicant to pay cost of Rs.1500/- either to the Respondent or their Advocate within 4 weeks from today.

e) Civil application stands disposed off accordingly.

JUDGE