

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

CIVIL APPLICATION NO.2082/2016
IN
WRIT PETITION NO.5312/1996

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. Ramdas Shelke i/b. S. G. Deshmukh for the applicant

Mr. Ajay A. Joshi for the respondent

CORAM : K. K. TATED, J.

DATE : AUGUST 18, 2016

RC.:

1. Heard. This application is for restoration of the Writ Petition which was dismissed for default in view of order dated 16.06.2016 passed by this court (Coram : R. P. SondurBaldota,J.).

2. The learned counsel for the applicant submits that on 16.06.2016, the advocate on record was held up in another court i.e. Court Room No.34. Hence, when the matter was called out none attended the matter.

3. The learned counsel for the applicant submits that the applicant has good case on merits in the Writ Petition. Hence, this Hon'ble Court be

pleased to restore the Writ Petition on file for hearing on its own merits. In support of this contention, the learned counsel for the applicant relies on the averments made in paragraph 2 of the Civil Application, which reads thus:

“2. The applicant states that the petition was on board before Smt. R. P. SondurBaldota,J. On 16.06.2016 for final hearing at sr.no.226. At about 1.40 pm on 16.06.2016, it was called out unfortunately the advocate for the petitioner at that time was before another court (C.R.No.34). The advocate therefore could not attend the matter. As a result the petition was dismissed in default.”

4. On the basis of this submission, the learned counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to allow the Civil Application.

5. On the other hand, the learned counsel for the respondent vehemently opposed the Civil Application. He submits that earlier, the matter was on board on 22.01.2016. On that day, none appeared on behalf of the applicant petitioner. Hence, the Writ Petition stood dismissed for non prosecution. Thereafter the advocate for the applicant petitioner mentioned the matter on 29.01.2016. Considering the submissions made by the learned counsel for the applicant petitioner,

this Hon'ble Court recalled the order dated 22.01.2016 and placed the matter for final hearing on 11.02.2016 at 3.00 pm (high on board). He submits that thereafter again the matter appeared for hearing on 09.06.2016. On that day, none appeared on behalf of the applicant. Hence, the matter was adjourned to 10.06.2016 under caption "for dismissal". Thereafter, as none appeared on behalf of the petitioner on 16.06.2016, the matter stood dismissed for default. He submits that this itself shows that the applicant petitioner has taken the matter in a casual manner. He submits that there is no explanation in the Civil Application as to why none appeared in the matter on several occasions. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

6. Heard both sides. There is no dispute that the present Writ Petition appeared on board on several occasions when none appeared on behalf of the applicant petitioner. Once the matter stood dismissed for default on 22.01.2016. Thereafter same was restored at the request of the advocate for the applicant petitioner by order dated 22.01.2016. Thereafter when the matter appeared on board, none appeared on behalf of the applicant petitioner.

7. Considering these submissions and conduct of the applicant petitioner, I do not find any substance in the Civil Application to consider the applicant's application for restoration of the Writ Petition.

8. Hence, the Civil Application stands rejected.

JUDGE