

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

**CIVIL APPLICATION NO.3309 OF 2014
IN
FIRST APPEAL (ST). NO.20088 OF 2014**

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.A.L.N.Khatr i/b M/s.A.L.N.Khatr i and Co. for
the applicant

Mr.A.I.Mukhtiar i/b Mr.U.V.Singh for the
respondent nos.1 and 2

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

PC.:

- . Heard the learned counsel for the parties.
- 2 This application is preferred by plaintiff for condonation of 101 days delay in filing First Appeal challenging the the Judgment and Decree dated 18.1.2014 passed by Bombay City Civil Court, Mumbai in S.C.Suit No.1615 of 2011 by which the Trial Court dismissed plaintiff's suit.
- 3 The learned counsel for the applicant submits that as soon as the judgment and decree passed by Trial Court, they immediately applied for certified

copies on 20.1.2014. Same was ready for delivery on 13.2.2014 and thereafter present First Appeal filed before this court on 25.7.2014.

4 The learned counsel for the applicant submits that since beginning entire matter was looked after by applicant no.1 Imran Ishaque Shaikh only. He submits that applicant no.1 was not keeping well and therefore there was delay in filing the present First Appeal. In support of this contention, the learned counsel for the applicant relies on certificate issued by Doctor i.e. 28.3.2014, 18.4.2014 and 5.6.2014. Those are at Exhibit-1, 2 and 3 in the application.

5 The learned counsel for the applicant submits that they have good chance of success in the present matter. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the present Civil Application and matter be decided on its own merits.

6 On the other hand, the learned counsel for the respondent defendant vehemently opposed the present Civil Application. Respondent filed their Affidavit-in-Reply dated 7.7.2015.

7 The learned counsel for the respondent submits that respondent no.1 is 82 years and respondent no.2 is 63 years old. He submits that applicant has not shown sufficient cause for condonation of delay. He submits that medical

certificate placed on record by the applicant does not show sufficient cause. He submits that first medical certificate dated 28.3.2015 shows that applicant no.1 can resume his duty on 29.3.2014 whereas 2nd medical certificate dated 18.4.2014 shows that applicant can resume duty on 19.4.2014. He submits that even the 3rd medical certificate dated 5.6.2014 shows that applicant can resume duty on 6.6.2014. In spite of that applicant has filed the present First Appeal on 21.7.2014. He submits that there is no sufficient cause for condonation of inordinate delay of 101 days delay. In support of this contention, the learned counsel for the respondent relies on the *order dated 23.12.2014 in Second Appeal No.719 of 2014 in the matter Shri Rajendra Murlidhar Laygude vs. Shri Dinkar Tukaram Tamkar & Ors. So also Apex Court judgments in the matter of B. Madhuri Goud vs. B. Damodar Reddy (2012) 12 SCC 693 and Ajit Singh Thakur Singh and Anr. vs. State of Gujarat 1981 (1) SCC 495.*

8 On the basis of these submissions and the law laid down by the Apex Court as well as this court the learned counsel for the respondent submits that applicant failed to show sufficient cause for condonation of more than 101 days delay in preferring the present First Appeal. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

9 Heard both the sides at length.

10 The present Civil Application is for condonation of 101 days delay in filing First Appeal on the ground that applicant no.1 was not keeping well. It is to be noted that recently the Apex court in the matter of ***Dhiraj Singh (Dead) Through Legal Representatives and Others vs. State of Haryana, 2014(14) SCC 127*** at the time of condoning the delay of 324 days it is held that approach of court should be pragmatic and not pedantic.

11 The authority cited by the advocate for the respondent in the matter of ***Shri Rajendra Murlidhar Laygude vs. Shri Dinkar Tukaram Tamkar & Ors. (Supra)*** the delay was 412 days in filing the appeal and delay was not explained properly. Hence, this court held that unless and until delay is explained that should not be condoned. In similar way in the matter of ***B. Madhuri Goud vs. B. Damodar Reddy (Supra)***, the apex court rejected the application for condonation of delay on the ground that delay was 1236 days and same was not properly explained. The said authority is not applicable in the facts and circumstances of the present case. Other authority cited by the advocate for the respondent in the matter of ***Ajit Singh Thakur Singh and Anr. vs. State of Gujarat (Supra)*** is also not applicable because that matter arose from the Criminal Procedure Code and delay

was not properly explained.

12 Considering the submissions made by the learned counsel for the Applicant, medical certificate placed on record and the law laid down by the Apex Court as stated above, I am of the opinion that the Applicant has made out a case for allowing the present Civil Application but at the same time he has to pay cost of Rs.7500/- to the respondent or their advocate. Hence, following order is passed:

- a) Delay of 101 days in filing First Appeal challenging the judgment and decree Judgment and Decree dated 18.1.2014 passed by Bombay City Civil Court, Mumbai in S.C.Suit No.1615 of 2011 is condoned.
- b) Applicant either to pay to the respondent or their advocate or deposit in the Registry of this court Rs.7500/- by way of cost within two weeks from today failing which Civil Application shall stand dismissed without referring back to the court.
- c) If cost is deposited in the Registry, respondents are entitled to withdraw the same without furnishing any security.
- d) Civil application stands disposed off accordingly.

(K.K.TATED, J.)