

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

WRIT PETITION NO. 11536 OF 2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr. Bharat Vaishnawa i/b M/s. Bharat Vaishnawa & Co. for the Petitioner.

Mr. Kishor Jain a/w Najafiya Shroff for the Respondent No.4F.

CORAM : K. K. TATED, J.

DATED : 04/04/2016

PC.:

. Heard learned Counsel for the petitioner and learned Counsel for the respondent no. 4F.

2 The learned Counsel for the petitioner submits that respondent No.3E Bipin Premji Vardhan died. He further submits that copy of Writ Petition is served on other side. He undertakes to file affidavit of service within one week from today. Statement is accepted.

3 By this Petition under Article 227 of Constitution of India, the petitioner is challenging the order dated 14.07.2015 passed by the Small Causes Court, Mumbai below Exh. 54 in R.A.E. & R Suit No. 13/21 of 2012 allowing defendant Nos. 3(B) to 3(H) and 4(B) to 4(G) to file their written statement by condoning the delay.

4 The learned Counsel for the petitioner submits that at the time of passing the order dated 14.07.2015, the court has not considered properly the provisions of Civil Procedure Code, 1908. He submits that respondents defendants have not shown sufficient cause for condonation of more than 120 days delay in filing written statement. He submits that though the respondents in their application dated 15.11.2014 (Exh. 54) stated that there was delay of 57 days in filing written statement, actually the delay was more than 150 days in respect of some of the defendants. He submits that the Apex Court in the matter of ***Rani Kusum (Smt) V/s. Kanchan Devi (Smt) & Ors., (2005)6 Supreme Court Cases 705*** held that if the delay is not explained properly, the court should not entertain the application for condonation of delay in filing written statement. He submits that the Trial Court ought to have rejected the defendants' application below Exh. 54 for filing written statement and for condonation of delay.

5 On the other hand, the learned Counsel for the respondent vehemently opposed the present Writ Petition. He submits that in their application below Exh. 54 dated 15.11.2014 in paragraph 4, they specifically stated that in the first week of October 2014, the defendants religious Guru expired and on

15.10.2014 grandmother of defendant No.3F expired. Hence, there was delay in filing written statement. He submits that in the Trial Court matter was on board on 15.11.2014 for filing written statement. He submits that on the same day, they filed application below Exh.54 stating that their written statement was ready. He submits that considering the reasons disclosed by the defendants in their application below Exh.54, the Trial Court rightly condoned the delay. Hence, there is no question of entertaining the present Writ Petition.

6 I heard both the sides at length. By perusing the application dated 15.11.2014 filed by the defendants for condonation of delay and order allowing them to file written statement, I am satisfied that the defendants have made out case for condonation of delay. Even in authority in the matter of Rani Kusum (supra) specifically stated that if sufficient cause is shown, the delay can be condoned. To that effect, the reference can be made of paragraph 18(v).

7 Considering this fact, I do not find any substance in the present Writ Petition.

8 Hence, Writ Petition stands rejected.

(K.K.TATED, J.)