

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

**CIVIL APPLICATION NO.49 OF 2015
IN
CROSS OBJECTION (ST). NO.33037 OF 2014
IN
FIRST APPEAL NO.484 OF 2014**

Amit Hussein Tameez Hussein & Ors. .. Applicant

vs.

Mohammed Jaffer Abdul Karim
& Ors. .. Respondents

Mr.Bhupesh Dhumatkar i/b M/s.Jhandiani Narula and Associates for
the applicant

Mr.G.S.Hiranandani for the appellant

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

PC.:

. Heard the learned counsel for the parties.

2 This application is preferred by applicant plaintiff for
condonation of 130 days delay in filing Cross Objection in First Appeal
No.484 of 2014 which was admitted by this court on 8.7.2014.

3 The learned counsel for the appellant/defendant filed Affidavit-
in-Reply to oppose the present Civil Application. He submits that
applicant has not shown sufficient cause for delay of more than 130

days in filing Cross Objection. There is no substance in the present Civil Application and same be dismissed.

4 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.”

5 Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application and the law declared by the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998)*** (*Supra*), I am satisfied that the Applicant has made out a case for allowing the present Civil Application. Hence, Civil Application is allowed in following terms:

A) Delay of 130 days in filing Cross Objection in First Appeal No.484 of 2014 is condoned.

B) Civil application stands disposed off accordingly.

(K.K.TATED, J.)