

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

WRIT PETITION NO.402 OF 2016

Hindustan Dorr-Oliver Limited .. Petitioner

vs.

T.R.Krishna Rao & Anr. .. Respondents

Mr.G.V.Murti i/B Mr.A.K.Saxena for the petitioner

None for the respondent

CORAM : K. K. TATED, J.
DATE : MAY 4, 2016

P.C.:

- 1 Heard the learned counsel for the petitioner.
- 2 Though respondents are duly served, no one appeared on behalf of them when the matter was called out.
- 3 Advocate for the petitioner filed Affidavit of service dated 4.4.2016. Counsel for the petitioner submits that the respondent failed to appear before the appellate bench of Small Causes Court when the application below Exhibit-1 was decided.
- 4 By this petition, under Article 227 of the Constitution of India, petitioner plaintiff challenges the order dated 14.10.2015 passed by

appellate bench of Small Causes Court below Exhibit-1 in Marji Application No.380 of 2014 rejecting their application for condonation of delay in filing Marji Application No.380 of 2014.

5 The learned counsel for the petitioner submits that when the matter was called out before appellate bench of Small Causes Court on 14.10.2015 advocate on record was held up before Division Bench of this court. Hence, no one remained present. In support of this contention, the learned counsel for the petitioner relies on paragraph 8 of the Writ Petition which reads thus:

“8. The Petitioners state that on 14.10.2015 as the Advocate for the Petitioners was held up before the Division Bench in the Hon'ble High Court. The Marji Application No.380 of 2014 was called out. The Trial Court at about 3.20 p.m. When the clerk of the Advocate requested the court to keep back the matter but the same was declined and Marji Application was dismissed for the reasons more particularly stated in the Order dated 14.10.2015. Hereto annexed and marked as Exhibit “C” is the cop of the said Order dated 14.10.2015.”

6 The learned counsel for the petitioner submits that in the interest of justice, this Hon'ble Court be pleased to set aside the order dated 14.10.2015 passed by appellate bench of Small Causes Court and matter be remanded for fresh hearing on Exhibit-1. He submits that if present petition is not allowed, irreparable loss will be caused to the petitioner. He submits that petitioner has good chance of success in Marji Application No.380 of 2014.

7 Appellate Bench of Small Causes Court in impugned order dated

14.10.2015 in paragraph 5 recorded that though application was called out repeatedly no one appeared on behalf of the petitioner till 3.20 p.m. Neither advocate for petitioner filed any application for adjournment nor petitioner remained present.

8 Considering the fact that appellate bench of Small Causes Court dismissed the petitioner's application below Exhibit-1 for want of prosecution, I am of the opinion that in the interest of Justice, petitioner may be provided chance to argue their application on its own merits. Hence, following order is passed:

- a) Order dated 14.10.2015 passed by appellate bench of Small Causes Court below Exhibit-1 in Marji Application No.380 of 2014 in Marji No.328 of 2012 in Appeal (ST) No.2877 of 2014 in L.C.Suit No.80-87/2001 is set aside.
- b) Application below Exhibit-1 in Marji Application No.380 of 2014 is remanded to the appellate court for hearing on its own merits.
- c) Appellate court to hear Exhibit-1 application on 27.6.2016.
- d) Petitioner to pay cost of Rs.2500.
- e) Cost to be deposited in the office of the Maharashtra State Legal Services Authority, High Court, Bombay on or

before 10.6.2016 and file receipt to that effect before Small Causes Court, failing which the matter shall stand dismissed without further reference to the court.

JUDGE