

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

CIVIL APPLICATION NO.191/2017
IN
WRIT PETITION NO.3511/2000

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. Vishal P. Shirke i/b. Sandeep V. Marne for the applicant
Ms. Ishwari Sabadre i/b. S. I. Shah & Co. for the respondent Nos.2 to 4.

CORAM : K. K. TATED, J.
DATE : MAY 2, 2017

P.C.:

1. Heard. The Civil Application is made by the applicant seeking to recall the order dated 15.06.2012 passed by this court (Coram : Anoop V. Mohta, J.) in Writ Petition No.3511/2000 by which the Writ Petition stood dismissed for default.

2. The learned counsel for the applicant submits that there was confusion in their office about the Advocate who was handling the present matter. He submits that when they received letter dated 05.02.2016 from the respondent, they made enquiry with their Advocates and at that time they

instructed their Advocate to take appropriate steps for restoration of the Writ Petition. In support of this contention, the learned counsel for the applicant relies on paragraph 6, 7 and 8 of the Civil Application which read thus:

“6. I further say that MTNL was absolutely unaware about passing of order dated 15.06.2012 by this Hon'ble Court. Since the present petition had not appeared on Board for considerable period of time after its admission, the concerned officials of MTNL also did not make any inquiries with Advocate S.I. Shah about status of the present petition after 15.06.2012.

7. I further say that on 08.02.2016, the office of Senior Manager (Adm-III), Kandivli Telephone Exchange received letter dated 05.02.2016 signed by respondent Nos.6, 7 and 8 stating that on 05.02.2016, they reported to resume their duties but the watchman standing on the entrance gate did not allow them to enter into the premises. A request was made for reinstatement by the said respondents. A copy of the said letter dated 05.02.2016 is annexed hereto and marked as Exhibit-C. After receipt of the letter dated 05.02.2016 on 08.02.2016, Shri Ravindra Kande, the then Asstt. Manager (Legal) made an inquiry in the office of Advocate S.I. Shah about the status of the present petition in February 2016. At that time the petitioners got to know that the present petition was dismissed by this Hon'ble Court by order dated 15.06.2012. On making inquiries with Advocate S.I. Shah the petitioners got to know that Advocate S.I. Shah did not appear in the matter under an impression that she was

directed to handover the papers in the matter to Advocate Shri S. R. Rajguru. The officers of MTNL accordingly contacted Advocate Shri S. R. Rajguru, who informed the petitioners that the papers in the present petition was never handed over to him and that therefore he was not supposed to appear in the present petition. Thus by March 2016 a picture emerged where the papers in the present petition were available neither with Advocate S.I. Shah nor with Advocate Shri Rajguru.

8. I further say that MTNL accordingly requested Advocate S.I. Shah by their letter dated 27.06.2016 to initiate necessary steps for restoration of the present petition. However, by that time, Advocate S.I. Shah suffered from cardiac ailments and expressed inability to deal with the matter further. MTNL thereafter contacted another panel advocate and accordingly filed the present application for restoration of the present petition.

3. On the basis of these submissions the learned counsel for the applicant submits that this Hon'ble Court be pleased to allow the Civil Application by recalling the order dated 15.06.2012 and the Writ Petition No.3511/2000 be decided on merits.

4. The learned counsel for the respondent vehemently opposed the Civil Application. She submits that the applicant has not shown sufficient cause for condonation of more than 4 years delay. She submits that this court by order dated 15.06.2012 dismissed the petition for default and

thereafter the applicant made the Civil Application on 16.11.2016. She submits that there is no explanation as to why the applicant took more than four and half years to make the Civil Application. Hence, same may be dismissed with costs.

5. It is to be noted that in the entire application it is nowhere stated by the applicant that when they learnt about the order dated 15.06.2012. The explanation given by the applicant is from 08.02.2016. There is no supporting affidavit of the concerned advocate as stated in paragraph 7 of the Civil Application. Bare reading of the Civil Application shows that the applicant has filed Civil Application without disclosing sufficient cause for more than four and half years. Hence, I do not find any substance in the Civil Application.

6. Hence, the Civil Application stands dismissed.

JUDGE