

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

CIVIL APPLICATION NO.1399/2015
IN
SECOND APPEAL NO.544/1992

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

Mr. Onkar V. Warange for the applicant
Mr. Lahu S. Gaikwad for respondent Nos.1 to 5.

CORAM : K. K. TATED, J.
DATE : DECEMBER 12, 2017

P.C.:

1. Heard. Though the legal heirs of respondent No.6 are duly served, none appeared for them.

2. This application is made by the original plaintiff for bringing the legal heirs on record of deceased respondent No.6 Pushpa Rajaram Sawant who died on 02.12.1996. There is delay in making the Civil Application.

3. The learned counsel for the applicant submits that after admission of the Second Appeal in the year 1992 the respondent No.6 died. He submits that when the matter was listed before this court on 05.05.2015 before the learned Registrar,

they learnt that respondent No.6 expired in the year 1996. Thereafter they made enquiry and obtained death certificate from the concerned authority and filed the Civil Application on 15.06.2015. He submits that for want of knowledge about the death of respondent No.6, there is delay in making the Civil Application. He submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay and set aside the abatement and allow the applicant to bring the legal heirs on record of deceased respondent No.6 in the Second Appeal.

4. Considering the submissions made by the learned counsel for the applicant and the averments made in the Civil Application and though the legal heirs of respondent No.6 are duly served, none appeared for them, I am satisfied that the applicant has made out a case for following order:

- a. Abatement is set aside.
- b. Delay in preferring the Civil Application is condoned.
- c. The applicant is permitted to bring the legal heirs on record of deceased respondent No.6 on or

before 19.01.2018, failing which the Civil Application shall stand dismissed without further reference to the court.

d. If amendment is carried out within stipulated time as stated hereinabove, the Registry is directed to issue notice to the added respondent in the Second Appeal.

e. The Applicant is directed to serve an amended copy of Second Appeal on all other Respondents immediately.

f. In addition to usual mode of service, the applicant is permitted to serve the added Respondent along with entire proceedings by way of private notice either by RPAD and/or by hand delivery and to file an Affidavit of service to that effect on or before next date.

g. Civil application stands disposed off accordingly.

JUDGE