

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

**CIVIL APPLICATION NO. 1851 OF 2017
IN
SECOND APPEAL NO. 734 OF 2004**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr. P. G. Lad a/w Sayli Apte for Applicant.
Mr. V. N. Bolinjar I/by K. K. Malpathak for Respondents.

**CORAM : K. K. TATED, J.
DATE : DECEMBER 14, 2017**

P.C.:

- . Heard learned Counsel for parties.
2. This Application is for restoration of Second Appeal No. 734 of 2004 which stand dismissed for non prosecution by order dated 1st July, 2017 passed by this Court.
3. The learned Counsel Mr. Lad for Applicant submits that on 1st July, 2017 Advocate on record for Applicant was held up in another matter. Hence, no one remained present in the Court when the matter was called out. He submits that because of the mistake on the part of the Advocate, litigant should not suffer. Hence, in the interest of justice this Hon'ble Court be pleased to

recall the order dated 1st July, 2017 and restore the Second Appeal on file for hearing on its own merits.

4. The learned Counsel Mr. Bolinjar for Respondents had vehemently opposed the present Civil Application. He submits that earlier also the Second Appeal was dismissed for non prosecution. Hence, there is no question of granting the present Civil Application.

5. I have heard both the sides at length.

6. The reason given by the Applicant in Civil Application is that Advocate on record for Applicant was held up in another matter, hence no one remained present in the Court when the matter was called out. Considering the fact that because of the mistake on the part of Advocate, litigant should not suffer, I am satisfied that Applicant has made out a case for allowing the Civil Application. At the same time they have to pay costs of Rs. 5000/-. Hence, the following order.

ORDER

(A) Second Appeal No. 734 of 2004 is restored on file for hearing on its own merits.

(B) Applicant to pay costs of Rs. 5000/- on or before 12th January, 2018, failing which, Civil Application shall stand dismissed without reference back to the Court.

(C) Costs to be deposited in the office of Kirtikar Library, High Court, Bombay.

(D) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)