

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

CIVIL APPLICATION NO.1685/2017
IN
SECOND APPEAL NO.320/2000

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. Rohit Sonavane i/b. U. B. Nighot for the Applicant
Mr. Sushil A. Inamdar for Respondent No.1 and 2.

CORAM : K. K. TATED, J.
DATE : DECEMBER 20, 2017

P.C.:

1. Heard. This Application is made by the legal heirs of sole Appellant - Defendant No.1 Narayan Babu Harer, who expired on 28.10.2013 for bringing them on record in the Second Appeal.

2. The learned counsel for the Applicant submits that they learnt about the present Second Appeal when they received letter from Advocate Mr. Amit Borkar. Thereafter they made enquiry in the month of July 2017. As soon as they learnt about the pendency of the Second Appeal, they engaged other advocate and filed the Civil Application. He submits that for want of

knowledge about the pendency of the Second Appeal, there is delay in making the Civil Application for bringing the legal heirs on record. In support of this contention he relies on para 5 of the Civil Application. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in making the Civil Application. He submits that they have good chance of success in the matter. If delay is not condoned, irreparable loss will be caused to them.

3. On the other hand, the learned counsel for the Respondent vehemently opposed the Civil Application. He submits that the Applicant has failed to disclose sufficient cause for condonation of more than 3 years delay in making the Civil Application. Hence, there is no substance in the Civil Application.

4. It is to be noted that there is delay on the part of the Applicant for want of knowledge. They learnt about the pendency of the Second Appeal when they received letter from Advocate Amit Borkar. Immediately thereafter they made the Civil Application.

5. Considering the submissions made by the

learned counsel for the Applicant and the reasons disclosed in the Civil Application I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant has to pay cost of Rs.5000/- to the Respondent.

6. Hence, following order is passed.

a. Delay in making the Civil Application is condoned.

b. Abatement is set aside.

c. The Applicant is directed to carry out appropriate amendment in the Second Appeal by bringing the legal heirs on record of the deceased sole Appellant on or before 19.01.2018.

d. If amendment is carried out within stipulated time as stated hereinabove, an amended copy of the Second Appeal along with all annexures shall be served on the advocate for the other side immediately thereafter.

e. The Applicant to pay cost of Rs.5000/- to the Respondent or deposit in the Registry of this court on or before 06.01.2018, failing which the Civil Application shall stand dismissed without further reference to the court.

f. If amount is deposited within stipulated time as stated hereinabove, liberty granted to the Respondent to withdraw the same unconditionally.

g. Civil Application stands disposed of accordingly.

JUDGE