

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

**CIVIL APPLICATION NO. 475 OF 2017
IN
SECOND APPEAL (ST) NO. 24288 OF 2016**

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. Girish R. Agrawal for Applicants.
Mr. Satyajee P. Dighe for Respondent Nos. 6 & 7.

**CORAM : K. K. TATED, J.
DATE : DECEMBER 19, 2017**

P.C.:

- . Heard learned Counsel for parties.
2. This application is preferred by the Applicants/Original Plaintiff Nos. 1 & 2 and Defendant No.4 for condonation of 10 years and 99 days delay in filing Second Appeal challenging the Judgment and Decree passed by the Appellate Court on 23rd February, 2006 in Regular Civil Appeal No. 272 of 2004 .
3. The learned Counsel Mr. Agrawal for Applicants submits that as soon as the Judgment and Decree passed by the Appellate Court in Regular Civil Appeal No. 272 of 2004 on 23rd February, 2006, they have immediately filed the

Review Petition No. 1 of 2007 in the Court of District Judge, Nashik on 21st June, 2006. He submits that Review Petition was dismissed by the learned District Judge-6, Nashik on 21st July, 2014. He submits that thereafter the Applicants have preferred the Civil Revision Application No. 742 of 2015. He submits that there was delay in filing Civil Revision Application by 18 days. Hence, the Applicants have preferred Civil Application No. 239 of 2015 under section 5 of Limitation Act. He submits that delay was condoned by this Court by order dated 9th December, 2015.

4. The learned Counsel for Applicants submits that Civil Revision Application No. 742 of 2015 was fixed for hearing on 21st July, 2016. On that day this Court passed order and disposed of the Civil Revision Application with liberty to the Applicants to file appropriate proceedings. Hence, the Applicants have filed the present Second Appeal along with Civil Application for condonation of delay on 24th August, 2016 i.e. 1 ½ months from the date of disposal of Civil Revision Application No. 742 of 2015. He submits that there is delay because of the pendency of the Review Petition and Civil Revision Application before this Court. He submits that time required for review can be condoned in view of the Judgment in ***State of Kerala & Ors. V/s M. G. Presanna, reported in***

2011 AIR SCW 1302. He relies on para 4 of which reads thus :

“4. It is true that technically the Division Bench was not bound to accept the period in respect of which delay in filing the review petition had been condoned by the learned single Judge, as a period in regard to which sufficient cause was made out for condoning the delay, while considering the question of delay, in filing the Writ appeal. That is because the learned single Judge was dealing with delay in filing the review petition, whereas the Division Bench was dealing in filing the writ appeal. Nevertheless, if the delay of 305 days in filing the review petition had been condoned by the learned single Judge, as having been satisfactorily explained and thereafter the review petition had been dismissed without prejudice to the right to file an appeal, the Division Bench in all fairness ought to have excluded the entire period upto the date of disposal of the review petition, as a period bona fide spent in pursuing other remedies. Of course, the position would be different if the Division Bench had found that filing of the review petition was not for bona fide reasons or there were other reasons to suspect the bona fides of the appellant. Be that as it may. We are of the view that on the facts of this case, the period upto the dismissal of the review petition, which was filed and prosecuted bona fide by the State, ought to have been

treated as satisfactorily explained, while considering the explanation for the delay, and the delay in filing the appeal ought to have been condoned.”

5. The learned Counsel for Applicants submits that Applicants have good chance of success in the present Second Appeal. He submits that the delay was caused in the present proceeding because of pendency of Review Petition and Civil Revision Application. He submits that in the interest of justice this Hon'ble Court be pleased to condone the delay and allow the Applicants to put up his case in the present Second Appeal. He submits that if delay is not condoned, irreparable loss will be caused to the Applicants.

6. On the other hand, the learned Counsel Mr. Dighe appearing on behalf of Respondent Nos. 6 and 7 vehemently opposed the present Civil Application. He submits that Applicants have failed and neglected to show the sufficient cause for condonation of inordinate delay of more than 10 years in filing the present Second Appeal. He further submits that even the Second Appeal itself is not maintainable in view of Order 47 of the Code of Civil Procedure. Therefore, there is no question of entertaining the present Civil Application and the same is required to be rejected.

7. I have heard both the sides at length.

8. It is to be noted that in the present proceedings as soon as the Judgment and Decree was passed by the Appellate Court on 23rd February, 2006, the Applicants have preferred the Review Petition and the same was decided on 21st July, 2014 i.e. after more than 8 years. Thereafter the Applicants have preferred the Civil Revision Application before this Court. The Civil Revision Application stand disposed of by order dated 21st July, 2016. Thereafter within 1 ½ month from the date of disposal of Civil Revision Application, Applicants have filed the present Second Appeal along with Civil Application for condonation of delay. The time consumed in deciding the Review Petition and thereafter the Civil Revision Application can be condoned in view of the Judgment of the Apex Court in the matter of ***State of Kerala & Ors. V/s M. G. Presanna (supra)***.

9. Considering these facts, I am of the opinion that Applicants have made out a case for allowing the Civil Application. Objection raised by the learned Counsel for Respondent Nos. 6 and 7 about the maintainability of the Second Appeal in view of Order 47 of the Civil Procedure Code is kept open. That is required to be considered when the Second Appeal comes for admission. Hence, the following order.

ORDER

- (A) Delay in preferring the Second Appeal is condoned.
- (B) Civil Application stands disposed of.
- (C) No order as to costs.

(K.K.TATED, J.)