

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

**CIVIL APPLICATION NO.687 OF 2017  
IN  
WRIT PETITION (ST). NO.1297 OF 2012**

Indu Park Co-op. Housing Society Ltd. .. Applicant

vs.

Mrs.Sneh Tuli and Ors. .. Respondents

Mr.Mayur Jariwala for the applicant

Mr.A.A.Mir for the respondent no.1

Mrs.A.D.Vatkar, A.G.P. for the State

**CORAM : K. K. TATED, J.  
DATE : JULY 26, 2017**

**PC.:**

1 Heard the learned counsel for the parties.

2 Advocate for the applicant submits that respondent no.2 is a formal party. They are not claiming any relief against them. Hence, it is not necessary to serve respondent no.2.

3 This application is for restoration of Writ Petition (ST) No.1297 of 2012 which stand dismissed for non-removal of office objections as per order dated 17.6.2014 passed by the learned Registrar (Judicial-I).

4 The learned counsel for the applicant submits that applicant's

earlier advocate Mr.Manoj Kumar Upadhyay never informed to the applicant for taking steps for removing office objections. He further submits that office note shows that when the matter appeared before the learned Registrar for removal of office objections neither the earlier Advocate Mr.Manoj Kumar Upadhyay appeared on behalf of applicant nor he instructed another advocate to take appropriate steps for protecting the applicant's interest. He submits that first time they learnt about the dismissal of Writ Petition when they received letter dated 1.9.2015 from the earlier advocate Mr.Manoj Kumar Upadhyay in which he stated that it requires to take out appropriate application for restoration of Writ Petition. He submits that as soon as applicant learnt about the dismissal of Writ Petition for want of removal of office objections they immediately contacted present advocate and filed Civil Application. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that they have good chance of success in the present matter. He submits that if Civil Application is not allowed, irreparable loss will be caused to them.

5 On the other hand, the learned counsel for the respondent no.1 vehemently opposed the present Civil Application. He submits that applicant failed to disclose sufficient cause for condonation of inordinate delay of 772 days in filing the Civil Application. He further submits that though the matter appeared before the learned Registrar for more than 4 times, no one appeared on behalf of applicant for removal of office objections. Hence, there is no question of allowing the Civil Application.

6 I have heard both the sides at length.

7 It is to be noted that to remove office objections is the duty of the advocate. In the present proceedings, matter stands dismissed for non-removal of office objections as per order passed by the learned Registrar on 17.6.2014. Because of mistake on the part of advocate, litigant should not suffer. Applicant learnt about the dismissal of Writ Petition when they received letter dated 1.9.2015 from advocate Mr. Manoj Kumar Upadhyay who earlier filed his Vakalatnama on behalf of advocate. As soon as they learnt about the dismissal of Writ Petition they preferred the present Civil Application after collecting all the papers.

8 It is to be noted that the Apex Court in the matter of **N. Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos. 11, 12 and 13 of the said judgment read thus :

*“11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory*

*tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.*

*12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.*

*13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."*

9 Considering the above mentioned factors and the law declared by the Apex Court, I am of the opinion that the applicant has made out a case for allowing the Civil Application but at the same time, they have to pay cost of Rs.10,000/-. Cost to be deposited in the office of the Kirtikar Law Library, High Court, Bombay, within two weeks from today, failing which the matter shall stand dismissed without further reference to the court.

10 Applicant undertakes to remove all office objections in Writ Petition (ST) No.1297 of 2012 within four weeks from today. Hence, following order is passed:

- a) Order dated 17.6.2014 passed by learned Registrar (Judicial-I) is set aside.
- b) Writ Petition (ST) No.1297 of 2012 is restored on file for hearing on its own merits.
- c) The applicant is directed to remove all office objections in Writ Petition (ST) No.1297 of 2012 within four weeks, failing which the Writ Petition shall stand dismissed without further reference to the court.
- d) Applicant have to pay cost of Rs.10,000/-.
- e) Cost to be deposited in the office of the Kirtikar Law Library, High Court, Bombay, within two weeks from today, failing which the matter shall stand dismissed without further reference to the court.
- f) Civil application stands disposed off accordingly.

**(K.K.TATED, J.)**