

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

CIVIL APPLICATION NO.2949 OF 2016
IN
WRIT PETITION NO.3178 OF 2016

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.C.M.Lokesh i/b M/s.G.K.S.Hegde & Associates
for the applicant

Ms.Namrata A. Kadam i/b Mr.A.R.Bhatt for the
respondent

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

P.C.:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by the petitioner for recalling the order dated 1.8.2016 passed by this court in Writ Petition No.3178 of 2016 by which Writ Petition stands dismissed for non-compliance of the order.
- 3 The present petition is filed by the petitioner on 30.10.2015. Thereafter, matter appeared on board before this court on 18.4.2016, 25.4.2016, 21.6.2016 and 1.8.2016. Applicant failed to serve copy of petition on respondent's advocate. Hence, this court passed conditional order dated 1.8.2016

directing applicant to complete the service on or before the next date. On 1.8.2016 no one appeared on behalf of applicant before this court. Applicant failed to comply the order on 1.8.2016. Hence, matter stands dismissed for non-prosecution.

4 The learned counsel for the applicant submits that they learnt about the order dated 1.8.2016 when the respondent served Execution Application on them on 19.6.2016. He submits that by mistake it remained on their part to provide copy of petition on respondent's advocate who filed caveat. He submits that they have good chance of success in the present proceeding. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the Civil Application by recalling the order dated 1.8.2016 and Writ Petition No.3178 of 2016 be restored on file for hearing on its own merits. He submits that they have already handed over copy of present Civil Application as well as Writ Petition to the advocate for the respondent.

5 Advocate for the respondent admits service of Civil Application as well as Writ Petition. She submits that there is a delay on the part of the applicant to prefer the present application. She submits that applicant has not shown any cogent reason for recalling the order dated 1.8.2016 by which the Writ Petition stands dismissed for non-

prosecution.

6 I have heard both the sides.

7 It is to be noted that because of mistake on the part of advocate for applicant, applicant should not suffer. Considering these facts, and as service is completed on respondent's advocate, I am satisfied that applicant has made out a case for allowing the Civil Application but at the same time, they have to pay cost of Rs.1,500/- to the respondent or their advocate within 3 weeks from today, failing which Civil Application shall stand dismissed without referring back to the court. Hence, following order is passed:

- a) Order dated 1.8.2016 passed by this court (Coram: S.C.Gupte, J.) in Writ Petition No.3178 of 2016 is recalled.
- b) Writ Petition No.3178 of 2016 is restored on file for hearing on its own merits.
- c) Applicant to pay cost of Rs.1,500/- either to the advocate for the respondent or respondent within 3 weeks from today and file acknowledgment to that effect in the Registry, failing which Civil Application shall stand dismissed without referring back to the court.
- d) Civil application stands disposed off accordingly.

JUDGE