

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

CIVIL APPLICATION NO.79/2017
IN
WRIT PETITION NO.7890/2016

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. Ajit R. Pitale for the Applicant
Mr. M. A. Shaikh for the Respondent

CORAM : K. K. TATED, J.
DATE : FEBRUARY 15, 2017

P.C.:

1. Heard. This application is for restoration of the Writ Petition No.7890/2016 with Civil Application Nos.1649/2016 and 2968/2016 which were dismissed for non prosecution by order dated 14.12.2016 as none appeared on behalf of the applicant.

2. By this Civil Application, the applicant also seeks extension of time to comply with order dated 26.09.2016 in Civil Application No.1649/2016. By that order, this court had directed the applicant to deposit an amount of Rs.2,80,000/- in this court on or before returnable dated i.e. 24.10.2016. The learned counsel for the applicant submits that the applicant has drawn a cheque of Rs.2,80,000/-

dated 24.10.2016 for compliance of order passed by this court. He submits that there was delay on their part to deposit the said cheque in the Registry. Thereafter he tried to deposit the same on 27.10.2016 but the Registry has refused to accept the same, as it was beyond the period granted by this court.

3. The learned counsel for the applicant submits that on 06.12.2016 and 14.12.2016, the Advocate on record was held up in other matter. Hence, none appeared on behalf of them. To that effect, the learned counsel for the applicant relies on paragraph Nos.5 and 6 of the Civil Application.

4. The learned counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to extend the time to comply with the order dated 26.09.2016 and recall the order dated 14.12.2016 so that the matter can be heard on merits. He submits that the applicant has good chance of success in the matter.

5. On the other hand, the learned counsel for the respondent vehemently opposed the Civil Application for extension of time to comply with order dated 26.09.2016. He submits that though this court had granted four weeks time to the

applicant to deposit sum of Rs.2,80,000/- they failed and neglected to do so. Hence, there is no substance in the prayer made by the applicant for extension of time to comply with the order dated 26.09.2015.

6. Heard the learned counsel for the parties. It is to be noted that the Authority has prepared a cheque on 24.10.2016 for compliance of order passed by this court. Same remained to be deposited in the Registry of this court. As the learned counsel for the applicant was held up before another Bench of this court on 06.12.2016 and 14.12.2016, none appeared before this court on behalf of the petitioner.

7. Considering the submissions made by the learned counsel for the applicant and the explanation given in the Civil Application, I am satisfied that the applicant has made out a case for extension of time to comply with the order dated 26.09.2016 and for recalling the order dated 14.12.2016. However, for extension of time to comply with the order dated 26.09.2016, the applicant has to pay cost of Rs.5000/- to the respondent.

8. Hence, following order is passed:
- a. Order dated 14.12.2016 passed by this court is recalled.
 - b. Writ Petition No.7890/2016, Civil Application No.1649/2016 and 2968/2016 are restored to file for hearing on its own merits.
 - c. Time to comply with order dated 26.09.2016 i.e. to deposit Rs.2,80,000/- in the Registry of this court is extended till 24.02.2017.
 - d. The applicant to pay cost of Rs.5000/- to the respondent and/or deposit in the Registry of this court within two weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
 - e. If the cost is deposited in the Registry of this court within stipulated time as stated hereinabove, the respondent is permitted to withdraw the same unconditionally.
 - f. Civil application stands disposed off accordingly.

JUDGE