

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

**CIVIL APPLICATION NO.14 OF 2016
WITH
CIVIL APPLICATION NO.15 OF 2016
WITH
FIRST APPEAL (ST.) NO.2559 OF 2015**

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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Ms.Swati Sawant I/b Mr.Imtiyaz Patel for the applicant

Mr.Shrikant M.Dange for the respondent no.9

**CORAM : K. K. TATED, J
DATE : AUGUST 22, 2019**

P.C.:

. Heard.

2 Though Respondents are duly served, no one appeared on behalf of them when the matter was called out.

3 By this Civil Application , Applicant owner of the vehicle seeks condonation of 2 years 172 days delay in filing First Appeal challenging

the judgment and award dated 5.5.2012 passed by MACT, Sindhudurg in MACP No.41 of 2007 holding that Respondent original Claimants are entitled compensation of Rs.16,44,000/- with interest @ 6% p.a.

4 The learned counsel for the Applicant submits that as soon as the impugned judgment and award passed by the Tribunal, they applied for certified copy. She submits that certified copy was received by them immediately. She submits that because of financial difficulty, it remained on the part of Applicant to file present First Appeal immediately. In support of this contention, the learned counsel for the Applicant relies on paragraph 3 and 4 of the Civil Application which reads thus:

“3. The Applicants state that after passing of the order dated 05.05.2012 Applicants were trying to collect the amount of the court fees as the ad-velorum court fees being paid and Advocate's fees. The applicants state that the due to financial problems the Applicants could not contact the Advocate in Mumbai. The Applicants state that after that due to ensuing summer vacation, the

Applicants could not contact the Advocate and further the arrangement for money was not done and therefore the Applicants were helpless. The Applicants state that thereafter the Applicants due to work load and health problem totally lost the track of the matter and it was slept from the Applicants mind of filling of the First Appeal and therefore there is delay of 917 days in preferring the present First Appeal.”

“4. The applicants state that the Applicants recollected when the Respondent Nos. 1 to 3 had taken out the Execution application for recovering the amount and the Applicants received the notice of the Execution on 21.11.2014, the applicants immediately consulted the present Advocate for filling the First Appeal and accordingly the First Appeal as well civil applications for condition of delay and stay.”

5 The learned counsel for the Applicant submits that when the Applicant received notice of execution on 21.11.2014, Applicant

immediately consulted his advocate for filing First Appeal and filed the same before this court on 20.1.2015. She submits that Applicant have good chance of success in the present proceeding. She submits that in the interest of Justice, this Hon'ble court be pleased to condone the delay and matter be heard on its own merits. She submits that if delay is not condoned, irreparable loss will be caused to them.

6 On the other hand, the learned counsel for the Respondent vehemently opposed the present Civil Application. He submits that Applicant has not shown sufficient cause for condonation of 2 years 172 days delay in filing First Appeal. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

7 Heard.

8 It is to be noted that in the present proceeding, in an accident which occurred on 2.2.2007 original Claimant lost her husband whereas Claimant nos.2 to 6 lost their father. On the date of accident, deceased was 23 years old. He was getting salary of Rs.25,000/- per month. Deceased was studying in B.E.Electronics in S.S.P.M.College of Engineering Harkul Budruk College. He

passed with first class in 7th semester of B.E.Electronics and Telecommunications. On the basis of these facts, Respondent original Claimant filed Application under section 166 of the Motor Vehicle Act for compensation. On the basis of evidence on record, Tribunal held that Respondent original Claimants are entitled sum of Rs.16,44,000 by way of compensation with interest @ 6% p.a. It is to be noted that though the impugned judgment and award was passed on 5.5.2012 Applicant filed present First Appeal in January 2015.

9 Considering the submissions made by the learned counsel for the Applicant and the averments made in paragraph nos.3 and 4 of the Civil Application, and that Applicant has filed present Civil Application in casual manner, there is no substance for condonation of delay of more than 3 years. Hence, I do not find any substance in the present Civil Application.

10 Hence, following order is passed:

- a. Civil Application stands rejected.
- b. In view thereof, nothing survives in the First Appeal. Hence, registration of First Appeal stands rejected.
- c. Civil Application for stay does not survive. Same stands dismissed as

infructuous.

d. Refund of court fee according to law.

(K.K.TATED, J.)