

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

CIVIL APPLICATION NO.2308 OF 2019

IN

FIRST APPEAL NO.415 OF 1991

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.S.S.Hardikar for the applicant

Mr.K.P.Shah i/b Mr.P.B.Shah for the respondent nos.3 to 8

Ms.Anamika Malhotra, A.G.P. for the respondent nos.9 and 10

CORAM : K. K. TATED, J

DATE : JULY 10, 2019

P.C.:

. Heard.

2 By this Civil Application, Applicant is seeking permission to carry out amendment as per earlier order dated 22.04.2015 passed by this court in Civil Application No.2381 of 2014.

3 The learned counsel for the Applicant submits that it remained on their part to carry

out appropriate amendment as per earlier order. He submits that Applicant's Advocate's clerk also filed affidavit dated 05.03.2019 stating that he tried to find out papers and proceedings in the matter but same could not be found.

4 The learned counsel for the Applicant submits that in the interest of Justice, this Hon'ble Court be pleased to condone the delay and permit the Applicant to carry out amendment in proceeding as per earlier order dated 22.04.2015. He submits that if Applicant is not allowed, irreparable loss will be caused to the Applicant.

5 On the other hand, the learned counsel for the Respondent nos.3 to 8 vehemently opposed the present Civil Application. He submits that there is a delay of more than 3 years 245 days in filing the present Civil Application. He further submits that even clerk who filed his affidavit dated 05.03.2019 failed to show any case why papers were not available in the Registry of this court. Therefore, there is no substance in the present Civil Application. Same be dismissed with costs.

6 Heard.

7 It is to be noted that in the present proceedings, this court by order dated

22.04.2015 in Civil Application No.2381 of 2014 permitted Applicant to carry out amendment by bringing legal heirs on record of original Applicant no.1.

8 Considering the submissions made by the learned counsel for the Applicant, the reason disclosed in Civil Application and the affidavit filed by his clerk, I am satisfied that the Applicant has made out a case for allowing the present Civil Application but at the same time they have to pay cost of Rs.5,000/- to the Respondent nos.3 to 8 and or their Advocate. Hence, following order is passed:

- a. Delay in filing Civil Application is condoned.
- b. Applicant is permitted to carry out appropriate amendment in First Appeal No.415 of 1991 as per earlier order dated 22.04.2015 in Civil Application No.2381 of 2014 on or before 16.08.2019, failing which the Civil Application shall stand dismissed without further reference to the court.
- c. If amendment is carried out within stipulated time as stated hereinabove, Applicant to serve amended copy of appeal memo on Respondent or their Advocate immediately.

- d. Applicant to pay cost of Rs.5,000/-.
- e. Cost shall be paid to Respondent nos.3 to 8 or their advocate on or before 09.08.2019 and place on record a receipt thereof , failing which the Civil Application shall stand dismissed without further reference to the court.
- f. Civil application stands disposed off accordingly.

(K.K.TATED, J.)