

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4913 OF 2016
IN
FIRST APPEAL (ST) NO.14609 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. Nigel Quraishy for applicant.
Mr. Yash Jain I/b Halai and Co. for respondent No.1.
Mr. D. D'mello for respondent No.2.
Mr. Kevin Chettiar for respondent No.3.

**CORAM : K. K. TATED, J
DATE : MARCH 29, 2019**

P.C.:

. Heard learned Counsel for parties.

2. By this Civil Application, applicant is seeking condonation of 167 days delay in filing First Appeal challenging the judgment and decree dated 17.10.2015 passed by Bombay City Civil Court, Bombay in Suit No.8622 of 1992 (High Court Suit No.995 of 1992).

3. The learned Counsel appearing on behalf of respondent Nos. 2 and 3 submits that they have no objection if delay is condoned.

4. The learned Counsel appearing on behalf of respondent No.1 vehemently opposed the present Civil Application. He submits that applicant has not shown sufficient cause for condonation of delay in filing First Appeal. He further submits that in earlier First Appeal filed by the other respondent, applicant appeared and filed her Vakalatnama. He submits that in spite of knowledge about the judgment and decree passed by the trial Court, applicant failed and neglected to file present First Appeal within time. Hence, there is no substance in the present Civil Application. Same to be dismissed with cost.

5. 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."

6. Considering the submissions made by learned Counsel for the applicant, averments made in Civil Application, and in

view of the law laid down by the Apex Court in the matter of **N.Balakrishnan (Supra)**, I am satisfied that the applicant has made out case for allowing this Civil Application. Hence, following order :-

- a) Delay in filing First Appeal is condoned.
- b) Civil Application stands disposed of accordingly.
- c) No order as to costs.

(K.K.TATED, J.)