

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

**CIVIL APPLICATION NO.585 OF 2018
IN
FIRST APPEAL (ST.) NO.16073 OF 2017**

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.Sheetal Mane for the applicant

Ms.Vidya Khatu for the respondent

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

P.C.:

. Heard.

2 Advocate for the Respondent filed their Affidavit-in-Reply dated 22.7.2019. Same is taken on record.

3 By this Civil Application, Municipal Corporation is seeking condonation of 482 days delay in filing First Appeal challenging the judgment and decree dated 5.12.2015 passed by Small Causes Court at Mumbai in

Municipal Appeal No.120 of 2009.

4 The learned counsel for the Applicant submits that for filing First Appeal on behalf of Corporation, Corporation constituted Committee. First matter goes into that Committee. Committee decides whether same is fit to prefer further appeal or not. She submits that, there was delay on the part of Committee to consider the proposal for filing the present First Appeal. Hence, there is a delay in filing First Appeal. In support of this contention, the learned counsel for the Applicant relies on paragraph 4 of the Civil Application. She submits that Applicant has good chance of success in the present proceedings. She submits that rateable value fixed by the concerned officer was set aside by the court below. Hence, they have good chance of success in the present proceedings. Therefore, this Hon'ble Court be pleased to condone the delay and matter be heard on its own merits.

5 On the other hand, the learned counsel for the Respondent vehemently opposed the present Civil Application. She submits that though the Committee decided to file First Appeal on 15.10.2016, present First Appeal filed by the Applicant on 5.6.2017. There is no

explanation for more than 8 months delay in present Civil Application. She further submits that delay is not explained by the Applicant on day to day basis. Therefore, there is no question of allowing the present Civil Application. In support of this matter, she relies on the judgment of the apex Court in the matter of Office of Chief Post Master General & Ors. vs. Living Media India Ltd., AIR 12 SC 1506. She relies on paragraph 13 of the said judgment. Therefore, Civil Application is required to be dismissed.

6 Heard both the sides at length.

7 It is to be noted that in the present proceedings, Applicant specifically stated in Civil Application in paragraph 4 that, before filing any appeal on behalf of Corporation, they have to go before the appeal Committee. Appeal committee goes through the papers and proceedings and decides whether the case is fit to prefer appeal or not. She further submits that during that period there was delay on the part of Committee to take decision.

8 Considering these facts and the law declared by the Apex Court, I am of the opinion that Applicant has made out a case for allowing the Civil Application. Hence,

following order is passed:

- a. Delay in filing First Appeal is condoned.
- b. Applicant to pay cost of Rs.500/- to the Respondent or their advocate on or before 31.8.2019 and place on record receipt to that effect, failing which the First Appeal shall stand dismissed without further reference to the court.
- c. Civil application stands disposed off accordingly.

(K.K.TATED, J.)