

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

**CIVIL APPLICATION NO. 4193 OF 2017
IN
FIRST APPEAL NO. 168 OF 2003**

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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Nazia S. A. Sheikh i/b. P. J. Thorat for Applicants.
Sheetal Mane for MCGM.

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

P.C.:

Heard.

2. By this Civil Application, the Applicants are seeking permission to bring the legal heirs on record of deceased Sole Appellant in First Appeal No. 168/2003.

3. The Learned Counsel for the Applicants submits that, the Sole Appellant died on 12/02/2010. She submits that, they have received letter dated 26/04/2017 from the earlier advocate stating that now he is designated as a Senior

Counsel. Therefore, the Applicants have to take appropriate steps i.e. they have to appoint another advocate. Hence, they approached the present Advocate on record and informed that the Original Appellant is expired in the year 2010. The Learned Counsel for the Applicants submits that, there is delay in filing the Civil Application for bringing legal heirs on record because of want of knowledge. In support of this contention, the Learned Counsel for the Applicants relies on para. 4 of the Civil Application.

4. The Learned Counsel for the Applicants submits that, the Applicants have good chance of success in the present matter. She submits that, in the interest of justice, this Hon'ble Court be pleased to condone delay in filing the Civil Application and matter to be heard on its own merits by permitting the Applicants to bring legal heirs on record of deceased Sole Appellant.

5. On the other hand, the Learned Counsel for the Respondent vehemently opposed the present Civil Application. She submits that, there is no any explanation in the entire Civil Application of the Applicants that why they took more than 7 years in filing the Civil Application. She submits that for want of knowledge cannot be a ground for

condonation of such inordinate delay in filing the application. Therefore, the present Civil Application is required to be dismissed with cost.

6. Heard both sides at length. It is to be noted that, the present First Appeal was filed in 2003. During the pendency of the First Appeal, the Sole Appellant was expired. The Learned Counsel who filed appeal was designated as a Senior Counsel. Hence, he informed the Appellant in 2017 to take appropriate steps. At that time, legal heirs learned about the present litigation.

7. Considering these facts and the reason given by the Applicants in para. 4 of the Civil Application, I am satisfied that the Applicants have made out a case for allowing this Civil Application. Hence, the following order:

- a. Abatement set aside.
- b. Delay in filing the Civil Application is condoned.
- c. The Applicants are permitted to bring legal heirs on record of deceased Sole Appellant in First Appeal No. 168/2003 on or before 22/11/2019, failing which, Civil Application shall stand dismissed without further reference to the Court.

- d. If the amendment is carried out within the time, the Applicants are directed to provide amended copy of the First Appeal to the advocate for Respondent.
- e. Civil Application stands disposed of accordingly.
- f. No order as to costs.

(K.K.TATED, J.)