

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

**CIVIL APPLICATION NO.255/2019
IN
CIVIL APPLICATION O.1480.2015
IN
FIRST APPEAL NO.436/2015**

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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Advocate Ms. Fatima Barotawalla i/b Raval Shah & CO. for applicant.

Advocate Mr.Vikas Warekar for Respondent.

**CORAM : K. K. TATED, J
DATE : AUGUST 16, 2019.**

P.C.:

Heard learned counsel for parties.

2 By this Civil Application applicant is seeking restoration of Civil Application No.1480/2015 which stands dismissed for non prosecution, by order dated 4.6.2019.

3. Learned counsel for applicant submits that because of mistake on the part of advocate, litigant should not

suffer. In support of her submission, she relies on para 1 of Civil Application. She submits that, this Court be pleased to allow present Civil Application and matter to be heard on its own merits. She submits that they have good chance of success.

4 On the other hand, learned counsel appearing on behalf of Respondent vehemently opposed the civil application. He submits that in para 1 of the Civil Application, applicant has blamed their earlier Advocate. He submits that applicant failed to disclose name of the said Advocate. Therefore, there is no question of allowing present Civil Application.

5 Heard both the sides at length. It is correct that because of mistake on the part of Advocate, the litigant should not suffer. Considering this principle and the reasons disclosed by applicant in para 1 of civil application, I am satisfied that applicant has made out a case for allowing application, but at the same time they have to pay cost of Rs.2,500/-. Hence, the order.

a)Order dated 4.6.2019 passed by this Court is recalled.

b)Civil Application No.1480/2015 is restored on file for hearing on its own merits.

- c) Applicant to pay cost of Rs.2500/-
- d) Cost to be deposited in Kirtikar Law Library, High Court, Main building, Mumbai on or before 31.8.2019 and place on record receipt thereof failing, which the civil application shall stand dismissed without referring back to the court.
- e) Liberty granted to Respondent to file their affidavit in reply.
- f) Civil application disposed of accordingly.

(K.K.TATED, J.)