

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

**CIVIL APPLICATION NO.3338/2015
in
FIRST APPEAL (ST)NO.22709/2015**

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 Mr.Sagar Joshi for applicant.
Adv.Mr.Sumeet Bansod i/b LJ Law for Respondent no.1.

**CORAM : K. K. TATED, J
DATE : AUGUST 5, 2019.**

P.C.:

Heard learned counsel for parties.

2 Learned Advocate for Respondent seeks some time to file affidavit of reply with copy to the side. He also admit that copy of civil application was duly served on them in the year 2017. For the last two years Respondent failed to file affidavit in reply. Hence, oral request made by learned Advocate for Respondent is rejected.

4. By tis civil application, applicant is seeking condonation of 138 days delay in filing

First appeal challenging Judgment and Decree dated 2.12.2014 passed by Learned 4th joint Civil Judge, Senior Division, Nasik in Special Civil Suit No.580/2012 dismissing applicant/plaintiff's suit for recovery of sum of Rs.1,28,29,510/-.

5 Learned counsel for applicant submits that because of financial difficulty, it remained on the part of applicant to file First Appeal immediately. In support of his contention he relies on paragraph 2 of the civil application.

6 Learned counsel for applicant submits that they have good chance of success in the present proceeding. He submits that in the interest of justice, this Court be pleased to condone the delay in filing first appeal and matter be heard on its own merits.

7 On the other hand, learned counsel Mr.S.A.Joshi, appearing on behalf of Respondent/Defendant vehemently opposed present civil application. He submits that though applicant filed application for certified copy of impugned judgment and decree on 12.12.2014 and same was made available on 8.1.2015, they filed present proceeding in the

month of August 2015. There is no explanation for the month of January 2015 to August 2015 in the entire civil application. He submits that hence, the application required to be dismissed with cost.

8 Heard both the sides at length. It is to be noted that in the present proceeding, suit filed by applicant for recovery of amount against respondent stand rejected.

9 Considering the submissions made by learned counsel for applicant, averments made in paragraph 2 of the application and as the law laid down by Apex court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** holding 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.

10. Considering the facts and circumstances of the present case and in view of the law laid down by the Apex Court in the matter of N.Balakrishnan (Supra), I am of the opinion that the Applicants have made out a case allowing the Civil Application, but at the same

time applicant to pay cost of Rs.500/- to Respondent or their advocate. Hence, the order.

a) Delay in filing First Appeal is condoned.

b) Applicant to pay cost of Rs.500/- to Respondent or their Advocate on or before 23.8.2019 and place on record receipt, failing which civil application shall stand dismissed without referring back to the court.

(K.K.TATED, J.)