

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

**CIVIL APPLICATION (ST.) NO.21802 OF 2019
IN
FIRST APPEAL (ST.) NO.21800 OF 2019**

Kishore Shivaji Desai .. Applicant

VS.

Smt.Kiran Kamlakar Desai & Ors. .. Respondents

Mr.Amogh K. Karandikar for the applicant

Mr.Shishir Joshi I/b Ms.Bhakti C. Jogal for the respondent no.1
and 2

Ms.Sheetal Mane for the BMC

**CORAM : K. K. TATED, J
DATE : AUGUST 14, 2019**

P.C.:

. Heard.

2 Advocate for the Applicant submits that Respondent no.4 is also duly served. He already filed affidavit of service to that effect. Statement is accepted.

3 By this Civil Application, Applicant original defendant no.2 is seeking condonation of 70 days delay in filing First Appeal challenging the judgment and decree dated 22.04.2019 passed by Bombay City Civil Court at Bombay in L.C.Suit No.937 of 2014 holding that plaintiff as well as defendants are entitled to inherit the joint tenancy in respect of Room no.52, B.I.T. Chawl No.5, Chandanwadi, Mumbai.

4 The learned counsel for the Applicant submits that as soon as the order was passed by Trial Court, their Advocate applied for certified copy on 4.6.2019 and same was ready for delivery on same day. Thereafter, applicant contacted his advocate. Advocate after going through the papers and proceeding advised Applicant to file First Appeal before this court. He submits that in taking advise from the advocate, there was delay in filing First Appeal. In support of this contention, he relies on paragraph 8 of the Civil Application.

5 The learned counsel for the Applicant submits that they have good chance of success in the present matter. He submits that in the interest of Justice, this Hon'ble court be pleased to condone the delay in filing First Appeal and matter be heard on its own merits.

6 On the other hand, the learned counsel for the Respondent nos.1 and 2 vehemently opposed the present Civil Application. He submits that Applicant failed to disclose sufficient cause for condonation of 70 days delay in filing First Appeal. The learned counsel for the Respondent nos.1 and 2 submits that bare

reading of the impugned judgment and decree dated 22.4.2019 shows that plaintiff as well as defendants are satisfied with the said order. He submits that Trial Court on the basis of documents placed on record held that all the legal heirs of the deceased Shivaji Ramchandra Desai are entitled to inherit the joint tenancy in respect of Room no.52, B.I.T. Chawl no.5, Chandanwadi, Mumbai. Therefore, there is no question on the part of Applicant to challenge the said order.

7 The learned counsel for the Respondent nos.1 and 2 further submits that, in the present proceeding, Applicant with mala fide intention filed deed of indemnity dated 17.10.1997 before the Municipal Corporation, stating that the deceased Shivaji Ramchandra Desai does not have any legal heirs except the Applicant and on the basis of the said declaration he obtained transfer of the tenancy of the suit property in his favour. Therefore, Applicant is not entitled to any relief from this court and for condonation of 70 days delay in filing First Appeal. Hence, same is required to be dismissed with costs. In support of this contention, he relies on the judgment of the Apex Court in the matter of ***Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others.***¹

8 Heard.

9 It is to be noted that, in the present proceeding, Applicant specifically stated in paragraph 8 of the Civil Application about legal advise of Advocate, whether appeal be filed or not. There is

1 (2013) 12 SCC 649

a delay in filing First Appeal.

10 It is to be noted that as soon as certified copy of impugned judgment and decree is received by the Applicant, he immediately filed present Appeal before this court in the month of July, 2019 itself. Bare reading of paragraph 8 of the Civil Application shows that Applicant has made out sufficient cause for condonation of delay. It is to be noted that Apex Court in the matter of *N.Balkrishnan Vs. M. Krishnamurthy*² 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.

11 It is to be noted that in the authority cited by the Respondent nos.1 and 2 in the matter of *Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and Others* (Supra), delay was more than 7 years, whereas in the present case in hand, delay is of 70 days only. In view of these facts, I am of the opinion that Applicant has made out a case for allowing the Civil Application but at the same time he has to pay cost of Rs.5,000/- to the Respondent nos.1 and 2. Hence, following order is passed

- a. Delay in filing First Appeal is condoned.
- b. Applicant to pay cost of Rs.5,000/- jointly to Respondent nos.1 and 2 or their Advocate on or before 31.08.2019 and place on record receipt to that effect, failing which Civil

2 (1998) 7 SCC 123

Application shall stand dismissed without referring back to the court.

- c. Civil Application is allowed accordingly.
- d. If cost is paid and receipt is placed on record, Registry is directed to place the matter on board on 26.8.2019, otherwise as per CMIS date.

(K.K.TATED, J.)