

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.4131 OF 2018
IN
FIRST APPEAL (ST) NO.18574 OF 2018**

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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Mr. S.P. Shinde for applicant.

Mr. Yogesh Dabake, AGP for respondent No.1.

**CORAM : K. K. TATED, J
DATE : MARCH 29, 2019**

P.C.:

. Heard learned Counsel for parties.

2. By this Civil Application, applicant/original claimant is seeking condonation of 5 years and 68 days delay in filing the First Appeal challenging the judgment and award dated 23.01.2013 passed by Civil Judge, Senior Division, Nashik in Land Acquisition Reference No.48 of 2012.

3. The learned Counsel for the applicant submits that because of financial

difficulties and medical ground, it remain on the part of the applicant to file the Appeal within time. In support of his contention, he relies on paragraph 5 of the Civil Application which reads thus :-

“5. The Applicants state that they applied for the certified copies and the same came to be delivered to the applicants on 8/3/2018. The Applicants state that they were not aware that they would be required to file the present first appeal in this Hon'ble High Court. The Applicants state that after obtaining the certified copies, they had submitted the papers of the present matter to their advocate in trial court for legal opinion. The Applicants state that their advocate in the first week of April 2018 gave their legal opinion about filing of present First Appeal for enhancement of compensation awarded by the Ld. Reference Court. Accordingly, the Applicants in the second Week of April 2018 approached the present Advocate for filing the present Appeal. The Applicants took some time in obtaining the papers from their Advocate in trial Court. The Applicants also took some time in drafting the Appeal and preparing the exhibits of the present Appeal. Applicants took some time in raising the funds to be incurred on filing and prosecuting the present first Appeal including the court fees and professional charges of the Advocate. The Applicants state that the

Applicant No.1 who was looking after the proceedings before the Ld. Tribunal, was not keeping well in the meantime and therefore the doctor advised him rest and not to travel. The Applicants crave leave to refer to and rely upon the copy of medical certificate as and when produced at the time of hearing. The Applicants further crave leave to file detailed/additional affidavit if necessary and so advised in future.”

4. The learned Counsel for the applicant submits that they have good chance of success in the present First Appeal. He submits that in the interest of justice this Hon’ble Court be pleased to condone the delay in filing First Appeal and matter to be heard on its own merits

5. The learned Counsel for the applicant in support of his contention relies on the judgment of the Apex Court in the matter of **K. Subbarayudu and Others Vs. Special Deputy Collector (Land Acquisition)**¹.

¹ (2017) 12 SCC 840

6. The learned Counsel for the applicant submits that in this Authority, the Apex Court condoned the delay of more than 3671 days in filing First Appeal. On the basis of these submissions, the learned Counsel for the applicant submits that in the interest of justice this Hon'ble Court be pleased to condone the delay in filing First Appeal and matter to be heard on its merits.

7. On the other hand, the learned AGP appearing on behalf of respondent-State vehemently opposed the present Civil Application. He submits that, applicant has not shown sufficient cause for condonation of inordinate delay of more than 5 years in filing First Appeal. Hence, there is no substance in the present Civil Application and same is required to be dismissed with cost.

8. I heard both the sides at length, it is to be noted that in the present proceedings, the Reference Court passed judgment and

award dated on 23.01.2013. Thereafter, the applicant filed application for certified copies on 19.01.2018. Same was made available on 22.01.2018. Thereafter, the applicant has filed the present Appeal as well as Civil Application in this Court.

9. Bare reading of the Civil Application shows that, the main ground raised by the applicant for condonation of delay is that in another matter, the reference Court awarded enhanced compensation in respect of the land from the same village. The applicant also raised the ground that applicant No.1's Son (baby) was not keeping well. He was under eye treatment for long time. It is also the case of the applicants that they have to take care of the minor son. It is to be noted that the grounds given by the applicant in paragraph 5 of the Civil Application are not sufficient for condonation of inordinate delay of more than 5 years.

10. The authority relied by the applicants in the matter of **K. Subbarayudu and Others (Supra)** is not applicable in the facts and circumstances of the present case. In that authority, the claimant handed over the papers to his colleague from his village for filing the First Appeal. Those papers are handed over to the advocate. In the meanwhile, the colleague of the claimant left the India and went to Kuwait. At the same time, the advocate to whom the papers were handed over was died and applicant was under impression that the appeal was filed on behalf of them.

11. The Apex Court in the matter of **Maniben Devraj Shah V. Municipal Corporation of Brihan Mumbai²** in paragraph Nos.18, 21 and 22 of the said authority held as under:-

“18. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be

2 AIR 2012 SC 1629

adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and/or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.

21. The applications filed for condonation of delay and the affidavits of Shri Sirsikar are conspicuously silent on the following important

points:

(a) The name of the person who was having custody of the record has not been disclosed.

(b) The date, month and year when the papers required for filing the first appeals are said to have been misplaced have not been disclosed.

(c) The date on which the papers were traced out or recovered and name of the person who found the same have not been disclosed.

(d) No explanation whatsoever has been given as to why the applications for certified copies of the judgments of the trial Court were not filed till 23.8.2010 despite the fact that Shri Sirsikar had given intimation on 12.5.2003 about the judgments of the trial Court.

(e) Even though the Corporation has engaged battery of lawyers to conduct cases on its behalf, nothing has been said as to how the transfer of Shri Ranindra Y. Sirsikar operated as an impediment in the making of applications for certified copies of the judgments sought to be appealed against.

22. Unfortunately, the learned Single Judge of the High Court altogether ignored the gapping holes in the story concocted by the Corporation about misplacement of the papers and total absence of any explanation as to why nobody even bothered to file applications for issue of certified copies of judgment for more than 7 years. In our considered view, the cause shown by the Corporation for delayed filing of the appeals was, to say the least, wholly unsatisfactory and the reasons

assigned by the learned Single Judge for condoning more than 7 years delay cannot but be treated as poor apology for the exercise of discretion by the Court under Section 5 of the Limitation Act.”

12. It is to be noted that bare reading of the application filed by the applicant for condonation of more than 5 years do not disclosed sufficient cause. It is to be noted that the reason given by the applicant also not supported by any documentary evidence on record. There is no question of allowing the Civil Application for condonation of delay without any sufficient reason. It is to be noted that if reason given by the applicant that minor son of the applicant No.1 was not keeping well since December 2013 and he was continuously taking treatment for his eyes, also not supported with any documents on record. The documents placed on record by the applicant i.e. discharge card dated 17.04.2014 issued by the Tulsi Eye Hospital do

not shows for how many days applicant No.1's son was taking the treatment in that hospital. Apart from that applicant failed to place on record that in their family no one was there to take care of the matter in filing within time.

13. Considering these facts, I do not find any substance in the present Civil Application. Hence, Civil Application stands rejected.

(K.K.TATED, J.)