

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

**APPEAL FROM ORDER NO. 314 OF 2014
WITH
CIVIL APPLICATION NO. 363 OF 2014
WITH
CIVIL APPLICATION NO. 512 OF 2014**

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. Sandeep Mahadik i/b Manoj Kumar Upadhyay for the appellant.

Mr. Roop Vasudeo for the respondent no.1.

Mr. Akhil Kupade i/b M/s. Uttangale & Co. for respondent no.2.

CORAM : K. K. TATED, J.

DATED : 11/08/2015.

PC.:

. Heard learned Counsel for the parties.

2 This Appeal from Order is preferred by plaintiff challenging the order dated 26.02.2014 passed by Bombay City Civil Court, Dindoshi in Notice of Motion no. 354 of 2014 in S.C. Suit No. 292 of 2014 declined to grant ad-interim relief.

3 The appellant/plaintiff made following prayers in Notice of Motion.

“a) That pending the hearing and final disposal of the suit that this Hon'ble Court be pleased to restrain the defendants, their servants and agents from temporary order of injunction from putting up

any further constructions in lieu of the FSI or TDR, be generated out of the plot of land bearing CTS No. 69 or any part thereof, which is loaded upon any another adjoining CTS number, after the amalgamation of the plot and further directed to be maintain status-quo at suit site.

b) That pending the hearing and final disposal of the suit that this Hon'ble Court be pleased to appoint Court Receiver upon the suit property i.e. CTS No. 69 Village-Kandivali, Taluka – Borivali, Mumbai Suburban District at Shanta Nagar, Near Desaiwadi and Thakur Chawl, Opp. Poisar Gymkhana, Kandivali (W), Mumbai – 400 067 with all power of Order 40 Rule 1 of Civil Procedure Code.

c) That this Hon'ble Court be pleased to appoint a Court Commissioner being an Architect of panel of the Court to visit the site and report the same to this Hon'ble Court as whether suit premises is completed or not.

d) That any other and further reliefs;

e) Cost for the suit is provided.”

4 These prayers shows that plaintiff seeking an order of injunction restraining respondent defendant from putting up any further constructions in lieu of FSI/TDR generated out of plot bearing CTS No. 69 or any part thereof.

5 The present Appeal from Order is filed by the plaintiff in this Court on 20.03.2014. Thereafter, the matter appeared on board on several occasions. Matter was adjourned from time to time at the request of Appellant on one or other ground.

6 The learned counsel for the respondent defendant filed their Affidavit-in-Reply dated

06.07.2015. The defendants in their Affidavit-in-Reply stated that construction is already completed. Not only that, they placed on record photographs of the new building constructed by them on page 124. The photographs show that construction work of the building is near about completed.

7 The learned Counsel for the respondent further submits that in the Trial Court, they already filed their Affidavit-in-Reply in Notice of Motion no. 354 of 2014. He submits that appellant plaintiff is taking time in the Trial Court, on the ground that Appeal from Order is pending in this Court.

8 Considering the fact that ad-interim relief is not granted by this Court and/or by Trial Court and construction is near about completed and the motion is ready for hearing, the following order is passed:

ORDER

- a) Appeal from Order stands rejected.
- b) Trial Court to decide the Notice of Motion no. 351 of 2014 on its own merits, without influenced with the order passed by this Court.
- c) In view of rejection of Appeal, nothing survives in the Civil Application. Same stands dismissed as infructuous.

(K.K.TATED, J.)