

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

CIVIL APPLICATION NO.2976 OF 2014
IN
FIRST APPEAL NO.2569 OF 2011

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. Sanjay Jain with Ms. Kausar Banatwala with Ms. Swapna Rupavate i/b. Tushar Godadia for the Applicant
Mrs. S. D. Sonawane for the Respondent Municipal Corporation

CORAM : K. K. TATED, J.
DATE : MARCH 19, 2015

P.C.:

1. Heard the learned counsel for the Applicant and the Respondent Corporation. The learned counsel for the Applicant submits that a copy of the Civil Application is already served on the Appellant. He undertakes to file an Affidavit of service within 3 days from today. Undertaking is accepted.

2. This Application is preferred by the Applicant for joining them as Respondent No.2 in First Appeal No.2569/2011.

3. The learned counsel for the Applicant submits that in the present proceedings, the Applicant is owner of the building known as Sheervai Building, 18/20, Wim Bridge Compound, Sleter Road, Grant Road (West) Mumbai – 400 007. He submits that the Applicant purchased the said building by conveyance deed dated 28/06/2007. He submits that the Appellant is a tenant on the ground floor premises in the said building. He submits that the Appellant carried out some unauthorised construction in the tenanted premises. Hence, the Respondent Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act, 1888 dated 17/08/2007. Thereafter, the Corporation passed order dated 28/09/2007 directing the Appellant to remove unauthorised covering of open passage on ground floor with B.M. wall and rolling shutter admeasuring 36 x 8 with 11' height. He submits that the Appellant filed L.C.Suit No.3632/2007 in the Bombay City Civil Court, Mumbai challenging the notice under section 351 of the MMC Act as well as the order dated 01/10/2007. In that suit, the Appellant has not made them party Defendant. He submits that the said suit was dismissed by the Trial Court by judgment and decree dated 15/10/2011. Thereafter, the Appellant preferred

the present appeal and the same is admitted and ad-interim relief granted.

4. The learned counsel for the Applicant submits that they are owner of the building in which the Appellant is a tenant on ground floor and therefore, they are necessary party in the present proceedings. He submits that out of 31 tenants 29 have already vacated. He submits that if any order is passed in the present proceedings, their rights are going to affect. Hence, they are necessary party in the present proceedings.

5. The learned counsel for the Respondent submits to the orders of the court.

6. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application.

7. Hence, the following order:

i) Civil Application is allowed in terms of prayer clauses(a) and (b) which read thus:

“(a) That this Hon'ble Court may be pleased to allow the present Civil Application

to implead the petitioners as the party Respondent No.2 in the above First Appeal.

(b) That this Hon'ble Court may be pleased to direct the Appellant to implead the Petitioner as the party Respondent No.2 in the above First Appeal and direct the Appellant to carry consequential amendment in the memo of First Appeal.”

ii) The Appellant is directed to carry out appropriate amendment in the First Appeal by adding the Applicant as Respondent No.2 within 4 weeks from today, failing which the Applicant is permitted to carry out the amendment.

iii) Civil application stands disposed off accordingly.

iv) Office is directed to place the connected Civil Applications on board on 23/04/2015.

JUDGE