

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

**CIVIL APPLICATION NO. 2310 OF 2014
IN
FIRST APPEAL NO. 1494 OF 2006**

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. G. V. Pandya for the applicant.

Mr. P. J. Almada for the respondent.

CORAM : K. K. TATED, J.

DATED : 18/04/2015.

PC.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff for permission to carry out appropriate repairs in a suit house i.e. House No. 78, Kalina Village, Santacruz (E), Mumbai 400 029. The repairs which he wants to carryout are described in schedule on page 7 of Civil Application, which reads thus:

i) Part of the plastering above the main entrance of Appeal premises alongwith the canopy/chhaja thereon, the admeasuring repairing of 15' ft is required to be made.

ii) Right side portion of the Appeal premises near to window existing there admeasuring 15' repairing work.

iii) Covering of the first floor window in the front side of the Appeal premises to protect the same from the monsoon water.

iv) Bathroom drainage pipeline damaged due to that problem”

3 The learned Counsel for the applicant submits that these repairs are required to be carried out immediately, otherwise the suit property may damage. Hence, this Hon'ble Court be pleased to permit the applicant to carry out appropriate repairs.

4 The learned Counsel for the respondent defendant vehemently opposed the present Civil Application. He filed affidavit-in-reply dated 11.08.2014. The learned Counsel for the defendant submits that in the present proceeding, this Court passed order on 26.07.2006 in Civil Application no. 2903 of 2006 and another order on 26.10.2010 in Civil Application no. 1468 of 2008 directing both the parties to maintain status quo in respect of disputed property. He submits that inspite of these two orders, the applicant carried out unauthorised constructions/alterations in the suit property. Hence, respondent defendant preferred Civil Application no.1468 of 2008 under Order 39 R.2A & 11 of CPC for taking appropriate action against the plaintiff. To bypass the action under Order 39 Rule

2A of the CPC, the applicant has filed the present application seeking permission to carry out the repairs work of the suit premises. He further submits that in any case, the plaintiff has not placed on record any documentary evidence from corporation or competent authority i.e. either architecture or structural engineer to show that these repairs are essential to the suit premises. For want of documentary evidence, this Hon'ble Court be pleased to reject the Civil Application.

5 I heard both the sides at length. In the present proceeding, this Court already directed both the parties to maintain status quo in respect of the suit premises. Though, the application preferred by the plaintiff for permission to carry out repairs work in the suit premises. Applicant has not placed on record any certificate from the Competent Authority i.e. architecture or structural engineer to show that these repairs are essential, otherwise, the suit structure may collapse or damage.

6 In view of these facts, I do not find any reason to entertain the present Civil Application.

7 Hence, same is rejected.

8 Liberty granted to the applicant to prefer appropriate application for same cause of action after obtaining certificate from the architecture or structural engineer to show that these repairs are

essential.

(K.K.TATED, J.)