

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

**CIVIL APPLICATION NO. 2501 OF 2015
IN
FIRST APPEAL NO. 1212 OF 2014**

Shri. Nandkishore Lalbhai Mehta & Anr.	... Applicants
V/s.	
Municipal Corporation of Gr. Mumbai & Ors.	... Respondents

Mr. V. B. Naik, Senior Counsel i/b D. H. Mehta with Farhan Dubhash i/b Pravin Mehta & Mithi & Co. for the applicants.
Mrs. M.R. Bhoir for the respondent/Corporation.

**CORAM : K. K. TATED, J.
DATED : 14/08/2015.**

PC.:

. Heard learned Senior Counsel for the applicants and learned Counsel for the respondent/Corporation.

2 The letter dated 03.08.2015 tendered by the learned Senior Counsel for the applicants, taken on record and marked 'X' for its identification.

3 This application is preferred by the plaintiffs for the directions to the respondent corporation to remove/cut the trees growing out of the wall of the suit building situated at Rustomji Fakirji Building, 165/167, Walkeshwar Road, Teenbatti, Mumbai – 400 006 and other reliefs.

4 The learned Senior Counsel for the plaintiffs submits that the

respondent corporation by their letter dated 03.08.2015 permitted the applicants to remove the said trees at their own risks. He submits that for an applicants, it is difficult them to remove the said trees. He submits that as per Section 383 of M.M.C. Act, Corporation have to remove the trees which are in dangerous condition, in case the private party failed to do so and recover the entire costs from the private party.

5 The learned Senior Counsel for the applicants submits that applicants are ready and willing to deposit the sum of Rs.2,00,000/- as advance with the Respondent Corporation to remove the said trees at the applicants costs.

6 The learned Counsel for the respondent corporation after taking instructions from his Officer Mr. Vasaikar, who is present in the court submits that they are ready and willing to remove the trees as per their letter dated 03.08.2015 on condition that applicant to bare all the expenses for the same.

7 Considering the submissions made by the learned Counsel for the respondent corporation, the following order is passed:

ORDER

i) Civil Application is allowed in terms of prayer clauses (a) and (c), which reads thus:

“a) Pending the hearing and final disposal of the above First Appeal, this Hon'ble Court be pleased to direct Respondent no.1 Corporation to remove/cut the said trees growing out of the wall of the structure/suit building situated Rustomji Fakirji Building, 165/167, Walkeshwar Road, Teenbatti, Mumbai – 400 006 and thereafter permit the

Applicants/Appellants to demolish the upper 1st floor of the said structure, as directed in the Report of the Technical Advisory Committee (TAC) of the Respondent no.1 Corporation dated 23rd April 2015.

c) In the event of this Hon'ble Court granting prayer clause (b) above, this Hon'ble Court also be pleased to relieve the Applicants/Appellants from the undertaking dated 29th December, 2014 submitted by them earlier pursuant to the order dated 18th December, 2014."

ii) Applicants to deposit sum of Rs.2,00,000/- with the respondent corporation within one week from today.

iii) If amount is deposited within stipulated time as stated herein above, the respondent corporation is directed to comply the letter dated 03.08.2015 as early as possible, but in any case within four weeks from the date of depositing the amount.

iv) The respondent corporation to refund the amount after deducting their charges to the applicants within four weeks from the date of complying the letter dated 03.08.2015.

v) Civil Application is disposed of accordingly.

(K.K.TATED, J.)