

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1404/2015
IN
SUIT NO.1120/2011

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. Vishal Kanade with Ms. Prabhjyot Kaur Chhabra and Ms. Ayesha Talpade i/b. M/s.Cyril Amarchand Mangaldas for the Applicant
None for the Respondent

CORAM : K. K. TATED, J.
DATE : DECEMBER 2, 2015

P.C.:

1. Heard the learned counsel for the Plaintiff. He submits that they served Defendant by RPAD. To that effect, the Plaintiff filed Affidavit of service dated 26/11/2015. Same is taken on record and marked "X" for identification.

2. Though the Defendants are duly served, none appeared for them.

3. This Notice of Motion is preferred by the Plaintiff for withdrawal of Rs.2,99,27,480/- with accrued interest, if any, till today as per order dated 21/03/2014 passed by this court (Coram : G. S. Patel, J.) in Notice of Motion No.84/2014.

4. The learned counsel for the Plaintiff Applicant submits that this court, by order dated 21/03/2014 permitted the Plaintiff to withdraw the amount deposited by them by furnishing a bank guarantee of any nationalized bank. He submits that pursuant to the said order, they furnished bank guarantee dated 05/08/2015 of Indian Bank for the sum of Rs.3,03,99,472/- in the office of Prothonotary and Senior Master of this Court. He submits that the office of Prothonotary and Senior Master of this Court by order dated 07/08/2015 (Exhibit-F, page 51) accepted the said bank guarantee and granted liberty to the Plaintiff to apply for return of the amount. Hence, the Notice of Motion.

5. Considering the submissions made by the learned counsel for the Applicant and the averments made in the affidavit in support of the Notice of Motion and in view of the order dated 21/03/2014 passed by this court in Notice of Motion No.84/2014, the bank guarantee dated 05/08/2015 and order dated 07/08/2015 passed by the Prothonotary and Senior Master of this Court, I am satisfied that the Applicant has made out a case for allowing them to withdraw the

amount as per prayer clause (a) of the Notice of Motion.

6. Hence, following order is passed:

a. Notice of Motion is made absolute in terms of prayer clause (a) which reads thus:

“(a) That pending the hearing and final disposal of the suit, the Hon'ble Court be pleased to direct that the amount of Rs.2,99,77,480/- (Rs.Two Crores Ninety Nine Lakhs Seventy Seven Thousand Four Hundred and Eighty only) or such other amount that is invested in 5(five) fixed deposits of different dates and amounts lying the account of Suit No.1120/2011 be returned to the Applicant.”

b. The Applicant is entitled amount over and above Rs.2,99,77,480, if it is available in the account of this suit with the office of the Prothonotary and Senior Master but not more than Rs.3,03,99,472/- on the basis of bank guarantee provided by them.

c. Notice of Motion stands disposed accordingly.

JUDGE