

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

**CIVIL APPLICATION NO.4026 OF 2015
IN
FIRST APPEAL NO.494 OF 2014**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
---	---------------------------

Mr.Vishal Kanade with Mr.Salil Dabake i/b M/s.Divekar and Co. for the applicant

Mr.Makhija with Mr.Vikas Kumar Jha i/b M/s.Cyril A. Mangaldas for the appellant

**CORAM : K. K. TATED, J.
DATED : 09/02/2016**

PC.:

. Heard the learned counsel for the applicant.

2 This application is preferred by plaintiff for withdrawal of the amount deposited by the appellant defendant in the Registry of this court.

3 The learned counsel for the applicant submits that they filed Suit No.7536 of 1981 in the Bombay City Civil Court, Mumbai (Originally in High Court being Suit No.325 of 1981) for recovery of Rs.4,24,885.72 as damages along with interest. He submits that the Trial Court by judgment and decree dated 13.1.2014 15.1.2014, 16.1.2014, 28.1.2014 and 31.1.2014 held that the applicant is entitled sum of Rs.4,24,885.75 along with interest @ 20% p.a.

from the date of suit till judgment. He submits that applicant may be permitted to withdraw the said amount. He further submits that applicants are ready and willing to provide solvent security to the satisfaction of the Registry.

4 On the other hand, the learned counsel for the respondent original defendant vehemently opposed the present Civil Application. He submits that if entire amount is withdrawn by the applicant, nothing will survive in the present First Appeal. He further submits that as on today the said amount is already invested in Fixed Deposit. Hence, at least they are getting interest on that amount. He submits that if this Hon'ble Court allows the applicant to withdraw the said amount then this Hon'ble Court be pleased to direct the applicant to pay interest on withdrawal amount, in case they succeed in the First Appeal.

5 Heard both the sides.

6 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and as money decree is passed in favour of applicant plaintiff, I am satisfied that the Applicant has made out a case for allowing the present Civil Application on terms and conditions as stated hereinbelow. Hence, following order:

A) Civil Application is allowed in terms of prayer clause (a) which read thus:

“(a) The Hon'ble Court be pleased to permit the Applicant to withdraw the said amount of Rs.21,47,799/- with accrued interest thereon, if any.”

B) Applicant plaintiff to provide solvent security to the satisfaction of the Registry for withdrawal of amount as per prayer clause “A” above.

C) Before accepting solvent security, Registry to issue notice to the respondent original defendant and hear them.

D) Question of payment of interest by applicant on withdrawal amount in case it requires to redeposit, is kept open.

E) Civil application stands disposed off accordingly.

(K.K.TATED, J.)