

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

**CIVIL APPLICATION NO. 1096 OF 2016
IN
WRIT PETITION NO. 5385 OF 2015**

Nadeem Majid Oomerbhoy	... Applicant
V/s.	
Swastik Co-operative Society Ltd & Ors.	... Respondents

Mr. Shailesh Thakkar for the Applicant.
Mr. C.P. Deogirikar for the Respondent No.1.

**CORAM : K. K. TATED, J.
DATED : 02/05/2016**

P.C.:

. Heard learned Counsel for the parties.

2 This application is preferred by plaintiff no.2 for providing police protection for carrying out inspection of the portion of suit marked in red colour hatch line on the plan Ex.B to the present Civil Application, of which the dispute is pending before the Trial Court.

3 The learned Counsel for the applicant submits that they filed RAE Suit No. 688/1057 of 2003 in the Small Causes Court for various reliefs. In that suit, they preferred application below Exh.35 under Section 28 of Maharashtra Rent Control Act, 1999 for inspection of the suit property i.e. building situated at Plot No.4, City Survey No. 17/1504 situated at Palton Road, Carnac Road, Mumbai 400 001. That application was allowed by the Trial Court by order dated 25.11.2013

directing respondents defendants to give inspection of the suit premises to the plaintiff. The Trial Court permitted the plaintiff to take inspection of the suit premises along with photographer and architect with prior intimation of 7 days in writing to the Advocate for defendants. He submits that the said order was challenged by the defendant society. He further submits that thereafter, the defendants failed and neglected to give inspection of entire suit premises. Hence, plaintiff filed appropriate application before the Trial Court for striking out the defence of the defendants. Order on applications bearing Exh.35 and Exh.45 were challenged by the society by preferring Misc. Appeal Nos. 27/2015 & 28/2015. Both the Appeals partly allowed by the Appellate Court by order dated 21.02.2015. The operative part of the said order reads thus:

“1. The Appeals are partly allowed on the following terms:-

- i] The order dated 6.1.2015 passed by the Ld. Trial Court below Exh. 38 and 45 is hereby set aside.*
 - ii] The matter is remanded back to the Ld. Trial Court to reconsider the officer given in para No.12 of the affidavit-in-reply of plaintiff No.2 dated 17.9.2014 and by the defendant for giving inspection of the entire suit premises including measurement of the entire suit premises including measurement and photographs to the plaintiffs and his representatives under the supervision of Court Commissioner.*
 - iii] The Ld. Trial Court to appoint the Court Commissioner as may be suggested by the parties and to direct the inspection to be completed within a period of 30 days from the date of receipt of this order and at any rate on or before 30th March, 2015.*
 - iv) The hearing of the suit is expedited considering the fact that the suit is of the year 2003.*
- 2. Appellant to pay costs of Rs. 5,000/- to respondents No.1(a) to 1(c).”*

4 The Trial Court thereafter passed order below Exh. 51 dated 08.07.2015 and appointed Court Commissioner to visit the suit premises for inspection along with Architect and Photographer of respective parties. Pursuant to the said order, the Court Commissioner visited suit premises and submitted his report dated 03.02.2016. In report, he has specifically stated that he could not able to do inspection work of disputed portion of the property. Paragraph 17 of the report reads thus:

“17) On the same day i.e. on 28/11/2015 there is a dispute arose by the Plaintiff in respect of some commercial premises situated in front of gully/passage nearby Ground Floor of the Defendant Society Building. According to the Defendant Society members those premises are not belongs to the Defendant society and the occupants of the said commercial premises were not ready to give the inspection or description of the premises. However Plaintiff insisted for the inspection of the said premises. According to the Plaintiff, the premises were belongs to Defendant Society. The Plaintiff went out from the inspection of the suit building at or around 12.45 p.m. and he came around 1.30 pm with the copy of the Plan of the Building. The Plaintiff try to invite my attentions on copy of Plan of the Building and Defendants also try to invite my attention on the paper and proceedings of City Civil Court Case No. 3040 of 2008. The Plaintiff has also called his Advocate and his Advocate was come at the ground floor of the suit building and shared the words with Plaintiff and me. However I have been appointed to supervise the inspection of the premises those are belongs to Defendant Society Building. Thereafter according to my convenience the supervision and inspection of the remaining premises belongs to defendant Society Building was postponed on next suitable date.”

5 Hence, applicant plaintiff no.2 preferred the present Civil Application for police protection to carry out inspection of the disputed

portion of the suit premises.

6 The learned Counsel for the plaintiff no.2 submits that though the Trial Court as well as Appellate Court allowed plaintiff to carry out inspection of the entire suit premises, the some of the persons those who are in occupation of the disputed portion of the suit premises preventing the plaintiff to complete inspection. He submits that defendant also specifically stated in the present pleading that the persons who are occupying the disputed portion are not their members nor defendants have any control on them. He submits that to complete the inspection of disputed portion of the suit property, it is necessary in the interest of justice that this Hon'ble Court be pleased to provide police protection.

7 On the other hand, the learned Counsel for the defendant filed their reply dated 29.04.2016. The learned Counsel for the defendant submits that they have no objection if the police protection is provided to the plaintiff to carry out the inspection of the remaining portion of the suit premises. He submits that the occupants of the disputed portion are not members of their society.

8 Considering the submissions made by the learned Counsel for the applicant, earlier order passed by the Trial Court as well as Appellate Court and as the defendants have no objections to provide the police protection for carrying out inspection of the disputed portion of the suit premises, I am of the opinion that in the interest of justice, it is necessary to allow the present Civil Application, so that the plaintiff can complete the inspection of disputed portion of the suit property with

the help of police.

9 Hence, following order is passed:

a) Civil Application is allowed in terms of prayer clause (a), which reads thus:

“a) The Hon'ble court be pleased to direct the concerned police authorities to provide police protections and personals to the petitioner for the purpose of taking inspection of the portion marked in red colour hatch line on the plan Exhibit B hereto in the presence of the office bears of Respondent No.1 society.”

b) Plaintiff is permitted to take inspection alongwith photographer as well as architect.

c) Plaintiff to bear the expenses of police protection.

d) Plaintiff to give 7 days notice in advance to the defendants or their Advocates on record about carrying out the inspection.

e) Defendants or their Advocates are permitted to remain present at the time of carrying out inspection, if they so desire.

f) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)