

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

**CIVIL APPLICATION NO. 3506 OF 2014
IN
FIRST APPEAL NO. 2667 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. S.M. Kamble for the applicant.

Mr. N. V. Walavalkar, Senior Counsel i/b Mrs. M.R. Bhoir for the respondent/Corporation.

CORAM : K. K. TATED, J.

DATED : 26/02/2016

PC.:

. Heard learned Counsel for the applicant and learned Senior Counsel for the Respondent Corporation.

2 This Civil Application is preferred by plaintiff for permission to construct the boundary wall to protect the suit property till the hearing and final disposal of First Appeal.

3 The learned Counsel for the applicant submits that as on today the suit property is vacant plot. He submits that if the same is encroached by the third party, then it will be very difficult for them to remove the encroacher from the suit plot, if they succeed before this Court in present First Appeal.

4 Applicant undertakes to construct boundary

wall on his own costs without claiming any right, title and interest. He submits that if Applicant failed before this Court in present First Appeal, he has no objection if the possession is taken by the Respondent or any other person with the said wall. He submits that he filed additional affidavit-cum-sketch dated 26.02.2016 to show the way in which he wants to carry out the construction of the boundary wall. He further submits that applicant will make appropriate application to the respondents-corporation for carrying out construction of boundary wall. He submits that the Respondent Corporation may be directed to allow his application if the same is fulfilled all Rules and Regulations except on the ground that applicant is not owner of the suit property.

5 On the other hand, the learned Senior Counsel appearing on behalf of Respondent Corporation vehemently opposed the present Civil Applications. He submits that once the boundary wall is constructed, it will be very difficult for them to take possession of the suit property if they succeed before this court in the matter.

6 The learned Senior Counsel further submits that if the Applicant makes a application for carrying out construction of the boundary wall, they will allow the same if it is within four corners of the law.

He further submits that they will not reject the applicant's application on the ground that he is not owner of the suit property.

7 I heard both the sides at length. It is to be noted that as on today, suit property is vacant plot. If during the pendency of the First Appeal, if someone encroached on suit plot then it will be very difficult either for applicant or Respondent to vacant the same. Therefore, in the interest of justice, it is necessary to protect the suit property. That can be protected by constructing boundary wall as submitted by applicant in his affidavit-cum-sketch dated 26.02.2016.

8 Hence, following order:

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

“a) This this Hon'ble Court be pleased to grant permission to put up a boundary wall of bricks, sand and cement or an iron angle fencing with tin sheets protecting the vacant area of the suit plot of structure admeasuring 35 x 45 sq. ft. of land bearing C.T.S. No. 1582 Room No.4, Waghri Seva Samaj Sangh, Near Talao, Opp. Amar Subway Society, Lohiya Nagar, Milan Subway Road, Vile Parle (W), Mumbai – 400 056 in limits of Municipal Corporation K-West Ward.”

b) The applicant to make appropriate application to the Respondent Corporation for construction of boundary wall.

c) Respondent Corporation not to reject the said application on the ground that applicant is not owner of the suit plot and they are directed to decide the application within eight weeks from the receipt of the same.

d) Applicant's undertaking is accepted that he will not claim any right, title and interest in respect of construction of boundary wall, if the First Appeal is decided against him.

e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)