

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

WRIT PETITION (L) NO. 3240 OF 2016

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. Chetan Kapadia i/b Jamshed Ansari for the Petitioner.

Mr. K.S. Dewal i/b J.M. Joshi for the Respondent Nos.1 and 2.

Mr. Kedar Dighe, AGP for Respondent Nos. 3 and 4.

CORAM : K. K. TATED, J.

DATED : 20/12/2016

P.C.:

. Heard learned Counsel for the parties.

2 By this petition under Articles 226 & 227 of the Constitution of India the Petitioner challenges the order dated 24.11.2016 passed by learned Chief Metropolitan Magistrate, Mumbai below Exh.1 in Case No.555/SA/2016 appointing Adv. Dattatray Kumbhar as Court Commissioner to take possession of attached property namely M/s. Shehnai Banquets, Vertex Vikas Premises Co. Op. Society Ltd, 1st Floor, B-Wing, Sir. M.V. Road, behind Police Station, Andheri (E), Mumbai – 400 069.

3 The learned counsel for the petitioner submits

that Respondent Bank filed application below Exh.1 on the basis of Demand Notice dated 06.06.2014.

4 The learned counsel for the petitioner submits that the said Demand Notice was withdrawn by the Respondent Bank by making appropriate application before the Joint Registrar, Cooperative Societies in Revision Application No. 395 of 2014. Hence, the impugned order passed by the learned Magistrate is required to be set aside.

5 The learned counsel for the Respondent Nos. 1 and 2 submits that though they withdrawn the earlier Demand Notice dated 06.06.2014 by order dated 13.11.2014, thereafter they issued another Demand Notice dated 14.05.2015. He submits that in view of this fact, the Respondent Nos. 1 and 2 may be permitted to withdraw the application filed by them before the learned Chief Metropolitan Magistrate, Mumbai below Exh.1 in Case no. 555/SA/2016 with liberty to file a fresh application for same cause of action. To that effect, the learned counsel for the Respondent Nos. 1 and 2 filed Affidavit-in-Reply dated 20.12.2016 duly affirmed by Bhalchandra Raut, Respondent No.2 for himself and on behalf of Respondent No.1. In that affidavit-in-reply in paragraph 4 they made a statement that

they may be allowed to withdraw the application filed by them in Case No. 555/SA/2016 with liberty to file a fresh application for same cause of action. The said paragraph 4 reads thus:

“4. I say that, under such circumstances, liberty may kindly be granted to the present Respondent No.1 to withdraw the said application bearing No. 555/SA/2016, filed before the Chief Metropolitan Magistrate, Mumbai under Rule 107(11)(d-1)(vi)(a) of the Maharashtra Co-operative Societies Rule, 1961 and further be allowed to file a fresh application before the Chief Metropolitan Magistrate, Mumbai under Rule 107(11)(d-1)(vi)(a) of the Maharashtra Co-operative Societies Rule, 1961 for recovery of possession of the Petitioner's premises.”

6 The learned counsel for the Respondent Nos. 1 and 2 submits that this Hon'ble Court be pleased to allow their request as made in paragraph 4 of the Affidavit-in-Reply.

7 Considering the submissions made by both the parties and affidavit-in-reply filed by Respondent Nos.1 & 2 and particularly in paragraph 4 as reproduced as above, I am of the opinion that in the interest of justice, following order is required to be passed.

8 Hence, following order is passed:

a) Order dated 24.11.2016 passed by learned Chief Metropolitan Magistrate, Mumbai

below Exh.1 in Case No. 555/SA/2016 is set aside.

b) Liberty granted to the Respondent Nos. 1 and 2 to file a fresh application for same cause of action on the basis of subsequent Deemed Notice dated 14.05.2015.

c) All contentions of both the parties are kept open.

d) Writ Petition stands disposed of accordingly.

(K.K.TATED, J.)