

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

**CHAMBER SUMMONS NO.816 OF 2017
IN
EXECUTION APPLICATION NO.1323 OF 2015**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.B.R.Deshmukh for the applicant

**CORAM : K. K. TATED, J.
DATE : NOVEMBER 3, 2017**

P.C.:

1. Heard the learned counsel for the applicant.
2. The learned counsel for the applicant submits that as per order dated 8.9.2017 passed by this court, they served the respondents and filed Affidavit of service to that effect. Statement is accepted. He further submits that matter was on board before this court on 13.10.2017. On that date, inspite of service, no one appeared on behalf of respondent.
3. The learned counsel for the applicant submits that as per the deed of development dated 10.8.2011 and award dated 11.2.2014, respondent is bound to hand over the possession of office of 100 sq.ft. in the existing building for the purpose of

completion of the terms and conditions of the development deed. To that effect, he relies on paragraph 16 of the deed of development rights of the property which reads thus:

“16) The Owner has agreed and confirmed that on the signing this agreement, the Owner shall provide to the Developer one office of 100 sq. ft. at the existing building for the purposes of completion and achieving the terms and conditions of the Development Agreement. For the same. Developer has nothing to pay to the owner monthly rent, compensation etc. in respect of use of the 100 sq. ft. The Developer will pay the electricity charges of the said 100 sq.ft. office. The Owner has agreed and confirmed that developer shall use, occupy, and possess the one of the office of the Owner for purposes of and till completing with the terms and conditions of this Agreement.”

4. The learned Counsel for the applicant submits that as the respondent is neither ready and willing to comply with the award dated 11th February, 2014 nor has he handed over possession of the said office, hence, this Hon'ble Court be pleased to allow the Chamber Summons in terms of prayer clause (a). He submits that unless and until prayer clause (a) is allowed, it is not possible for the applicant to complete the development of the said property.

5. It is to be noted that though the respondents are duly served from time to time, they failed and

neglected to remain present before this court. As per the deed of development dated 10.8.2011 and award dated 11.2.2014. Respondent is bound to hand over possession of the office of admeasuring 100 sq.ft.

6. Considering the submissions made by the learned counsel for the Applicant Claimant and the averments made in the affidavit in support of Execution Application, I am of the opinion that applicant has made out a case for allowing the present Chamber Summons in terms of prayer clause (a) otherwise it is not possible for the applicant to complete the development activities. Hence, following order is passed:

(A) Chamber Summons is allowed in terms of prayer clause (a) which reads thus:

“(a) Be pleased to direct the Respondents herein to hand over the Office Premises admeasuring 100 sq.ft. at the Building known as Parekh Niwas, situated at Plot bearing Considering the submissions made by the learned Counsel for the No.1446 (part), Survey No.1454, Dadar Division, 25, Rao Bahadur, S.K.Bhole Marg, Dadar (W), Mumbai 400 028 as per the Development Agreement dated 10.08.2011 for the reasons and circumstances mentioned hereinabove.”

(B) Chamber Summons stands disposed of accordingly.

(C) No order as to costs.

(K.K.TATED, J.)