

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

**CIVIL APPLICATION NO.3408/2016
IN
FIRST APPEAL NO.2535/2011**

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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Advocate Mr.Bhushan Deshmukh for applicant.

**CORAM : K. K. TATED, J.
DATE : AUGUST 23, 2019.**

P.C.:

Heard learned counsel for applicant.

2. By this civil application, applicant/plaintiff is seeking permission to withdraw sum of Rs.73,140/- with interest, deposited by appellant to satisfy judgment and decree dated 6.8.2009, passed by City Civil Court, Bombay in Suit No.1897/2002.

3. Learned counsel for applicant/plaintiff submits that they filed S.C.Suit No.1097/2002 in Bombay City Civil Court, Bombay for specific performance of contract in terms of Tripartite Agreement

dated 21.1.2000. The trial Court after hearing both sides decreed the suit. Operative part of the Decree reads thus:

Defendant Nos. 2 to 10 shall pay amount of Rs.73,140/- to the plaintiff with 18% with quarterly interest p.a. thereon from 12.10.2006 till payment of entire amount towards the amount spent by the plaintiff for registration of the agreement dated 21.2.2000 Exh.3 of which duty was cast on defendant Nos. 2 to 10.

4. Learned counsel for applicant submits that applicant filed Execution Application No.362/2000 for execution of judgment and decree passed by the trial court. He submits that in that civil application the Executing Court handed over area of 82 sq.ft to applicant/plaintiff. In support of his contention, learned counsel for applicant placed on record report dated 22.2.2019 of the Asst. Registrar(Appointed Commissioner) Bombay City Civil Court, Greater Bombay. The said Report reads thus;

I took measurement of possession of 82 sq.ft. Area only adjacent to shop n o.6 as per photocopy of ground floor plan and sketch plan produced by abovenamed applicant (decree holder). It is marked as annexure 'Q' and 'R' respectively. It is 82 sq.ft. Thereafter the said area is marked in white colour boundary line and the said possession is handed over to Suresh Shantaram Sane, Applicant (Decree Holder).

5 Learned counsel for applicant submits that in view of subsequent events, applicant filed present civil application for withdrawal of amount of Rs.73,140/-. He submits that the said amount was spent by applicant for getting document registered i.e.

agreement in respect of suit property. Hence, applicant may be permitted to withdraw said amount during pendency of present first appeal.

6 On the other hand, learned counsel for appellant, vehemently opposed present application. He submits that if entire amount is withdrawn, nothing will survive in first appeal. He submits that appellant is challenging entire decree. He submits that, they are not liable to pay any registration and or stamp duty charges, in respect of shop no.6, therefore, there is not question of allowing the civil application.

7. I heard learned counsel for parties at length. It is to be noted that, in present proceeding, the trial court directed the appellant/defendant to pay sum of Rs.73,140/- to the applicant/plaintiff towards expenses incurred by him for registration of document. In any case, said amount is deposited by appellant in the Registry of this Court.

9. Considering the submissions made by learned advocate for applicant and para 38 of the impugned judgment and decree, I am satisfied that applicant has made out a case for allowing him to withdraw the said amount during the pendency of present first appeal but at the same time, applicant has to file Undertaking before this court that in case appellant succeeds in first appeal, he will bring back entire amount with interest. Hence, the order.

- a) Applicant is permitted to withdraw the amount of Rs.72,140/- with accrued interest if any, without furnishing any security but subject to outcome of first appeal.
- b) Before withdrawal of amount applicant has to file an Undertaking stating that in case the Court directs him, he will bring entire amount with interest immediately.
- c) Civil application disposed of accordingly.
- d) No order as to cost.

(K.K.TATED, J.)