

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

**CIVIL APPLICATION NO.3728/2015
in
FIRST APPEAL (ST)no.25541/2015**

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.MJ Sharma for applicant.

**CORAM : K. K. TATED, J
DATE : August 5, 2019.**

P.C.:

Heard learned Mr.M.J. Sharma for
applicant.

2 Office note shows that Respondent's are
duly served inspite of service, no one appeared
on behalf of them when the matter called out.

3 By this civil application, applicants are
seeking permission to file present First Appeal
challenging Judgment and Award dated
24.12.2008 passed by City civil Court, Bombay

in S.C.Suit No.627/2006 directing original defendants to hand over peaceful possession of suit premises i.e. room no.11, ground floor, chawl No.14, Ward No.4478(2) on final plot No.840, 841, 751 and 752 TPS IV (Mahim Area) situated at Chandrakant Dhuru Wadi, Junction of College lane and Kashinath Dhuru road, near Kirti college, Dadar to Respondent/plaintiff. Learned Advocate for applicant submits that they are legal heirs of deceased defendant Krishna Bhikaji Agre.

4. The learned counsel for applicants submit that Respondent/plaintiff filed execution application no.322/2012 dated 15th July 2014, for execution of Judgment and Decree passed by trial court. In that execution application, respondent/plaintiff preferred chamber summons for joining them as part. At that time, they learnt about Judgment and Decree passed by trial court. He submits that during pendency of present proceeding, respondent dispossessed applicant from suit premises on 30.4.2016. He submits that thereafter applicant preferred Chamber Summon No.791/2016 in Execution Application No.322/2012 in S.C.Suit

No.627/2006 for re-issue possession warrant. He submits that said Chamber summons dismissed by Bombay City Civil Court, Bombay by order dated 26.6.2019. He further submits that at the time of dismissing said Chamber summons the trial court recorded in the said order para 6 that *applicant was dispossessed from suit premises by defendant on 30.3.2016. In view of pendency of appeal before Hon'ble High court, application can not be entertained before this Court as execution of decree was not stayed and the decree has been satisfactorily execution in view of submissions by the advocate for plaintiff.* On the basis of these submissions, learned counsel for applicant submits that this Court be pleased to allow applicant to file present Appeal challenging Judgment and Decree dated 24.12.2008 passed by City Civil Court, Bombay

4 In the present proceeding, applicants are legal heirs of deceased defendant.

5 Pursuant to Judgment and Decree passed by the trial court dated 24.12.2008 the Respondent/plaintiff filed Execution Application

no.322/2012 for possession of suit premises. Applicant being Legal heirs of deceased defendant, I am of the opinion that they can be permitted to file present First Appeal. Hence, the order.

- a)Applicants are permitted to file present First appeal challenging Judgment and Decree dated 24.12.2008 passed by City Civil Court, Bombay in S.C. Suit No.627/2006 on its own merits.
- B) Civil application disposed of accordingly.
- C) No order as to cost.

(K.K.TATED, J.)