

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

CIVIL REVN. APPLICATION NO. 432 OF 2016

Gannon Dunkerley & Co. Ltd.

... Applicants.

V/s.

The New Poornima Apartments Co-op.

Housing Society Ltd. and Ors.

... Respondents.

Mr. Shailesh Shah a/w. Kanchi Joshi, Priyanka Pandey i/b. M/s.
Mahesh Jani & Co. for the Applicants.

Mr. N.N. Bhadrashete for the Respondents.

CORAM : N.M. Jamdar, J.

04 October, 2016.

Oral Order :-

The learned Counsel for the parties seek to tender consent terms executed between the parties. The learned Counsel for the parties state that the consent terms have been duly signed by the parties and the parties are present. The learned Counsel for the parties request that the consent terms be taken on record.

2. Consent terms were sought to be tendered in the suit filed by the Petitioner bearing No. 8772 of 1994. The learned City

Civil Court Judge did not take the consent terms on record on the ground of pecuniary jurisdiction and also that the agreement mentioned in the consent terms would be contrary to law.

3. The Civil Revision Application can always be disposed of in terms of the consent terms leaving it open to the Applicants to withdraw the suit in view of the agreement arrived at between the parties in this Revision Application. Therefore, I do not find any impediment in disposing of the Revision Application in terms of what is agreed between the parties and upon the undertaking of the Petitioner that the suit will be withdrawn.

4. As far as the consent terms being contrary to law is concerned, it is clarified that the consent terms will bind only the Petitioner and the Respondent that is the Plaintiff and the Defendant and whatever stated in the consent terms will not bind any statutory authority or any person/authority not joined as a party in the Suit nor it will enable the parties to override any provision of law. The agreement will remain binding only between the parties and whenever it contravenes any law, the legal provisions will override the agreement between the parties. If in law the parties cannot agree to any position, then it is needless to state that the consent terms will not give them any right to do so. The learned Counsel for the parties are agreeable to this position being clarified in the order. Since this clarification takes care of the ground stated in

the impugned order by the learned City Civil Court Judge, this impediment in accepting the consent terms also does not survive.

5. In the circumstances, the consent terms are taken on record and marked 'X' for identification. The Civil Revision Application is disposed of in terms of the consent terms. The learned Counsel for the Applicants on instructions undertakes to withdraw the suit within period of four weeks from today. This undertaking is accepted.

(N.M. Jamdar, J.)