

Sequeira

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

***WRIT PETITION NO. 11738 OF 2015
Along with
CIVIL APPLICATION (St.) NO.4613 OF 2017 – Not on
Board.***

Mr.Muzaffar Hussain .. Petitioner

Vs

Mr.Gaffar K.Chataiwala & ors. .. Respondents

Mr.Induprakash Tripathi i/b C.K.Tripathi, for the Petitioner.

Mr.Gaffar K.Chataiwala, Respondent No.1 present in Court

Mr.Abhishek Tripathi, for proposed Respondent 4.

***CORAM : N.M.Jamdar, J.
Wednesday, 22 February 2016.***

P.C. :

On 25 January 2017 the following order was passed.

'The learned Counsel for the parties state that the settlement talks are going on and substantial progress has been made and the dispute is expected to be resolved amicably. At their joint request, stand over to 22 February 2017. In case the settlement talks succeed or fail before the next date, liberty to apply. Ad-interim order to continue.'

2. The learned counsel for the Petitioner states that the matter is now settled between the parties. He states that Respondent No.1 is present in the Court. Though his advocate had appeared earlier he has not filed his vakalatnama.

3. Civil Application Stamp No.4613 of 2007 which is not on board, taken on board by consent of parties and the Respondent No.1.

4. It appears that there are various proceedings pending between the Petitioner and his wife i.e. the proposed Respondent No.4 in Civil Application on one hand and Respondent No.1 on the other hand. The parties have settled all their disputes and are proposing to file Consent terms in this Writ Petition. Though the subject matter of the present proceedings arise from leave and license agreement in view of the fact that quietus will be given to the litigation at various times, I am inclined to accept the request made by all the parties to permit the Applicant to be brought on record as Respondent No.4 in the present Writ Petition. Accordingly, the Civil Application (Stamp) No.4613 of 2017 is allowed in terms of prayer clause (a). Amendment to be carried out forthwith.

5. The added Respondent No.4 has filed SC Suit No. 1307 of 2013 for specific performance against the Respondent No.1. Criminal Complaint is also filed which is pending before the Metropolitan Magistrate, Bandra Mumbai. The third proceedings are the present ones arising out of leave and license agreement. The learned counsel for the Respondent No.4-Petitioner and Respondent No.1 states that they have arrived at an arrangement by which the Petitioner and the Respondent No.4 will pay an amount of rupees

seventeen lakhs to the Respondent No.1 who will execute a Sale deed in favour of Respondent No.4 herein the wife of the Petitioner and he will give up all his rights in the suit property. The Respondent No.1 is present in the Court and has confirmed to do so. Considering the fact that two Civil proceedings and one Criminal proceedings pending between the parties are being given quietus to through these Consent terms, in the Consent terms need to be taken on record.

6. The learned counsel for Respondent No.4 on instructions states that the Civil Suit No.1307 of 2013 will be withdrawn placing the copy of the order passed along with the Consent terms on the file of the learned City Civil Court. It is open to the other parties to do so as well. Same will apply to the complaint pending before Metropolitan Magistrate Mumbai, wherein the learned counsel for the Petitioner and Respondent No.4 have made statement which is also included in the Consent terms.

7. For ready reference, the Consent terms are reproduced as under-

CONSENT TERMS

That now the petitioner and respondents have amicably settled the dispute among themselves on the following terms and are desirous to file the present consent terms.

1. *The respondent had filed an eviction proceedings*

*under section 24 of the MRC act against the petitioner for recovery of the possession bearing Flat no. 206 on 2nd floor of building known as "Falcon Vila 39/C lying being and situate at Chapel Road, Bandra (w), Mumbai – 400 050 and other reliefs on the basis of an alleged leave and license agreement dtd. 11.12.2003 claiming to be the owner and licensor of the said flat no. 206 on second floor of building known as "Falcon Vila 39/C and the said proceeding before the competent authority came to be allowed which order of eviction was challenged by the petitioner by preferring revision application bearing no. 595/2012 before the commissioner, Kokan Division and which revision application was dismissed vide order dtd 26.10.2015 against which the petitioner has preferred the above Writ Petition bearing no. **11738 Of 2015** challenging the legality validity of the orders passed by the competent authority dated nil and commissioner, Kokan Division dated 26.10.2015.*

2. That in the mean time the petitioner herein along with his wife the respondent no. 4 herein filed Civil Suit before City Civil Court Dindoshi branch bearing no SC Suit no 1307 / 2013 on the basis of an agreement for sale entered into between the petitioner and respondent no. 4 as purchasers with respondent no. 1 who claimed to be the owner seeking the declaration in respect thereof and for the other declaration as prayed in the said suit .

3. It is agreed by and between the petitioner and respondents that by consent the Civil Application bearing (St.) No. 4613 of 2017 be allowed and the respondent in civil application be join as respondent no. 4 .

4. It is agreed declared and confirmed by the petitioner and respondents that by consent the orders passed by the competent authority under the rent act

dated nil and order passed by commission Kokan Division dtd 26.10.2015 be set aside and quashed .

5. It is agreed, confirmed and declared by the respondent no. 1 that the respondent no. 1 is the absolute owner of the said flat premises and he has all the right, title, interest and claim in the said flat premises and he has absolute right and authority as owner to sell, assign, convey and /or dispose off to the respondent no. 4 and he is not prevented and/or prohibited by any order of court or by any authority from selling, assigning, conveying and transferring the said flat premises absolutely in favour of and to the respondent no. 4.

6. It is declared and agreed by the petitioner that petitioner has no objection and gives his consent for sale of the said flat premises in the name and favour of the respondent no. 4 by respondent no. 1.

7. It is declared and confirmed by the respondent no. 1 that except respondent no. 1 nobody else whether claiming through under upon him or in any other capacity whatsoever has any right, title, interest and claim in the said flat premises.

8. It is agreed confirmed and declared by the respondent no. 1 that the respondent no 1 has sold assigned and transferred and conveyed the said premises viz. and for a sum of Rs. 17,00,000 /- (Rupees Seventeen Lakhs Only) to the respondent no. 4 and respondent no. 4 agrees confirms and admits having received the total consideration amount of Rs. 17,00,000 /- (Rupees Seventeen Lakhs Only) from the respondent no. 4 vide cheque nos. 1) 665727 dated 06/02/2017 for a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only), 2) cheque no. 065730 dated 21/03/2017 for a sum of Rs. 4,00,000/- (Rupees Four Lakhs Only), 3) cheque no.

065728 dated 05/05/2017 for a sum of Rs. 4,00,000/- (Rupees Four Lakhs Only) and 4) 065729 dated 20/06/2017 for a sum of Rs. 4,00,000/- (Rupees Four Lakhs Only) drawn on Central Bank Bandra Branch in the name of respondent no. 1. i.e., Gaffar K. Chataiwala.

9. It is agreed confirmed and declared by the petitioner and respondent no. 1 and respondent no. 4 that in the event the respondent no. 4 has to enter into any third party arrangement for making payment of the cheque amounts of total consideration amount of Rs. 17,00,000 /- (Rupees Seventeen Lakhs Only) as mentioned herein above in that event the respondent no. 4 undertakes to pay first the entire consideration amount of Rs. 17,00,000 /- (Rupees Seventeen Lakhs Only) thereafter only the balance amount if any, shall be appropriated by the respondent no. 4 and it is further undertaken by respondent no. 4 and the petitioner that under no circumstances the post dated cheques issued by the respondent no. 4 in favor of the respondent no. 1 towards the sale price of the said flat premises shall be bounced and/or dishonored and/or returned unpaid under any circumstances whatsoever.

10. It is agreed confirmed, declared and under taken by respondent no. 1 that respondent no. 1 shall not claim any right, title, interest and claim in the said premises hereafter under any circumstances at any point of time and he further undertakes to execute such deeds documents as may be required by the respondent no. 4 for effectually transferring said flat premises in the name of respondent no. 4 to enable respondent no. 4 to hold possess and enjoy the same as absolute owner.

11. It is agreed confirmed, declared and under taken by respondent no. 1 that it shall be the absolute responsibility and liability of the respondent no. 1 to

settle all the claims counter claims that may be made by any third party either claiming directly and/or through the respondent no. 1 or in any other manner on account of the said flat premises being sold by respondent no. 1 to the respondent no. 4 and the respondent no. 4 shall not be liable and/or responsible for any such claim made by such third parties in respect of the said flat premises having being sold by respondent no. 1 to respondent no. 4.

12. It is agreed and undertaken by respondent no. 1 that respondent no. 1 shall sign all such papers, applications, forms, Performa's that may be required by the respondent no. 4 for effectually transferring the said premises in the name of respondent no. 4 .

13. It is agreed and undertaken by respondent no. 1 that respondent no. 1 shall appear before the sub-registrar of assurances for registration of documents such as sale deed and /or conveyance deed in respect of the said premises in favour of respondent no. 4 as and when requested by respondent no. 4 without charging, without asking for any additional sum of money under any garb or guise or circumstances.

14. It is further agreed between respondent no. 1 & 4 that the respondent no. 4 shall give 3 clear working days advance notice to respondent no. 1 intimating therein respondent no. 1 for appearing before the sub-registrar of assurances for registration of SALE DEED and/or CONVEYANCE DEED in favor of respondent no. 4 in respect of said flat premises.

15. It is agreed, confirmed and declared by the petitioner and respondents herein that the agreement of leave and license dated 11.12.2003, agreement for sale dated 11.12.2003, agreement for sale dated 19.09.2003

and writing date 11.05.2011 shall stand determined , revoked, cancelled and terminated immediately on filing of this consent terms and they shall not have any enforceability and/or executility and/or binding effect on any of the parties to the said agreements .

16. It is further agreed, declared and confirmed and undertaken by the petitioner and respondent no. 4 that they shall withdraw the civil suit bearing SC Suit no. 1307 of 2013 pending before City civil court at Dindoshi unconditionally immediately after the date of filing of the consent terms .

17. It is further agreed, declared and confirmed by the petitioner and respondent no. 4 that they shall withdraw the complaint bearing no. 134SW/2013 filed before Ld. Metropolitan Megistrate 12th court , Bandra(E) , Mumbai forthwith, immediately without any delay and/or excuse and likewise the petitioner shall withdraw and/ or compound the criminal complaint filed by petitioner against the respondent no. 1 bearing FIR No. 252/2011 and case no. 1854 /PW/2011 immediately and shall co-operate and consent to the petition that may be filed by the respondent no. 1 for quashing of the said case no. 1854 /PW/2011 and FIR no. 252/2011 filed by Bandra Police station.

18. It is agreed declared confirmed and undertaken by the respondent no. 1 that respondent no. 1 shall not claim and/or demand any sum from respondent no. 4 as well as from petitioner on account of any orders that has been passed in the eviction proceedings initiated by the respondent no. 1 against the petitioner and all such sums stands forfeited and/or waived on filing of this consent terms and on account of respondent no. 4 having paid the agreed total consideration amount of Rs. 17,00,000 /- (Rupees Seventeen Lakhs Only) towards the purchase

price of the said premises.

19. It is agreed, confirmed and declared by the respondent no. 1 that respondent no. 1 has received the entire consideration amount of Rs. 17,00,000 /- (Rupees Seventeen Lakhs Only) from the respondent no. 4 and there is no sum due and payable by the respondent no. 4 and respondent no. 4 and the petitioner are in exclusive use, occupation, enjoyment and possession of the said premises .

20. It is agreed, declared and undertaken by the petitioner and respondents that they shall withdraw all complaints lodged by them against each other before any of the authorities unconditionally if are disclosed at later stage of filing of the consent terms.

21. It is agreed ad undertaken by the respondent no. 4 and petitioner that they shall not claim ay damage and/or compensating and/or any such amount in respect of the said premise in the event of any damage and/or loss that is being caused due to any circumstances to the said premises under any circumstances.

22. It is agreed, confirmed and admitted by the respondent no. 4 and the petitioner that the sale of the said premises is on "As is where is" basis and without looking into the title of the parties and on account of the respondent no. 4 and petitioner being in exclusive use, occupation and possession of the said premises for more than 15 years.

23. It is agreed, confirmed and declared by the parties herein i.e. respondent no. 1 and respondent no. 4 inter-se that this consent terms shall operate as conveyance in respect of sale of the said premises.

8. All undertakings are accepted. The Writ Petition is disposed of accordingly in terms of the Consent terms.

(N.M.Jamdar, J.)