

IN THE HIGH COURT OF BOMBAY AT GOA

***LETTER PATENT APPEAL NO.12 OF 2009
IN
WRIT PETITION NO. 598 OF 2008***

Gurudas B. Naik

... Appellant

Versus

Subhash Dhaku Mandrekar.

.... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Ms. A. Araujo, Advocate for the Appellant.

Mr. V. Menezes, Advocate for the Respondent.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 19 September 2018.

P.C.:

This appeal was adjourned from time to time to enable the parties to settle the dispute. The learned counsel for the parties tender the consent terms which have been signed by the Appellant, Respondent and the heirs of the Respondent. The learned counsel for the parties inform that the claimants on the side of the Respondent have been joined so as to put to an end to the long pending dispute

and to ensure that all the claims in respect of this litigation is put to an end.

2. The learned counsel for the Respondent on instructions states that the Respondent do not claim to be mundkars of the structure in question and it is a part of the conditions in the consent terms. The learned counsel for the Respondent states that the son of the Respondent also signatory to the consent terms is aware of this statement and so also the other signatories. This statement is accepted.

3. The learned counsel for the parties state that the parties have gone through the consent terms which have been exchanged many times and then they have signed the same. At their request, we take the consent terms on record. The consent terms are marked 'X'. All the statements and undertaking made in the consent terms are accepted.

4. We have gone through the consent terms and we do not find that there is anything unconscionable in these consent terms. The consent terms seek to put to an end to the long pending dispute and there is no impediment in passing the order in terms of the consent terms. It is obvious that the consent terms will not enable the parties to override any provision of law.

5. For the sake of convenience, we reproduce the consent terms which are as under :

- 1. In consideration of the surrender of the occupancy rights of the Respondent to the structure which is the subject matter of this Appeal and in Special Civil Suit No: 11/1986, the Petitioners / Appellants agree to allot possession of one flat of built up area of 50 Sq. meters on the third floor, of the building proposed to be constructed on the Suit Plot bearing Chalta No: 247, 248 and 249 of P.T. Sheet No: 77 City Survey of Panaji on ownership basis.*
- 2. The Respondent agrees to pay to the Appellants or their nominees under any Agreement for Development a consideration of Rs. 10,00,000/- (Rupees Ten Lakhs only) at the time of handing over possession of the said flat of built up area of 50 Sq. meters.*
- 3. The Appellants undertake to make provisions for the inclusion of these terms in any Agreement that they shall enter into with any Developer for the development of the suit plot and area under the Respondents occupation, and such Developer shall be bound by the terms / performance of the present Consent Terms.*
- 4. The Petitioners and / or Developer shall hand over possession of the fully completed flat of 50 Sq. Meters built up area to the Respondent with an Occupancy Certificate within two years of the handing over of possession of the house / structure occupied by the Respondent.*
- 5. The Appellants are at liberty to submit Development Plans to the Planning Authorities/ Municipal Corporation and obtain all necessary licences and permissions for the proposed construction / development after indicating to the*

Respondent in writing, with a copy of such Plans, the location of the flat to be owned by the Respondent.

6. The Respondent shall hand over vacant possession of the structure / house occupied by him to the Appellants within two months of obtaining and handing copies of all licences / Permission from the various Authorities, after which the Appellants or their Developer may demolish the same and commence construction.

7. It is agreed that in the unlikely event of the Respondent expiring, his son, Shri. Vishal Mandrekar shall be the nominee and Successor / heir for the purpose and in relation to this Agreement / Consent Terms and the said flat.

8. These Consent Terms shall form the basis of any Agreement required to be executed by the Parties under RERA or for the purpose of any other Enactment.

9. It is agreed that the Respondent is free to transfer the right created under these Consent Terms so however as not to create any claim in derogation of what has been provided herein. The Appellants have no objection to the Respondent raising finance by creating a mortgage over such right or such flat, after handing over possession of the structure in his occupation to the Appellants, subject however to the condition that Appellant or the developer shall not be liable any claim whatsoever arising out of such transaction.

10. The parties shall file these consent terms in the Special Civil Suit No: 11/1986 and obtain a consent decree from the Court of Civil Judge Senior Division at Panaji.

11. The Respondent shall have no other right, claim or interest in respect of the suit plot or the structure occupied by him save and except what has been provided herein.

12. The present Appeal may be disposed of in terms of the above Agreement/ Consent Terms arrived at by the Parties.

13. Smt. Laxmi Subhash Mandrekar, wife of the Respondent expired on 02/03/2016. Her heirs Shreya Dinesh Kirtane, Vinda Vishwas Agarwadekar, Sradha Uday Vaigankar, Vishranti Mahesh Bhandari and Vishal Subhash Mandrekar have signed the present consent terms in token of their acceptance of the said terms.

6. The appeal is accordingly disposed of in terms of the consent terms.

7. The learned counsel for the parties drawn our attention to the Clause 10 wherein it is stated that the consent terms are required to be filed in Special Civil Suit No.11/1986 before the Court of the Civil Judge Senior Division at Panaji. The parties will appear before the the learned Civil Judge Senior Division at Panaji on 8 October 2018 wherein the learned Civil Judge Senior Division will give a suitable date for necessary orders.

8. All parties to act on an authenticated copy of this order.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.