

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3590/2018

Mrs. Manisha Suhas Shivarkar & Ors. ... Petitioners

V/s.

District Magistrate & Collector, Pune & Ors. ... Respondents

Mr. Sarang S. Aradhye for the Petitioners

Mr. Nikhil Rajani I/b. V. Deshpande & Co. for Respondent No.3.

Mrs. Sushama S. Bhende for Respondent No.1 and 2.

**CORAM: K.K. TATED &  
N. J. JAMADAR, JJ.**

**DATED : OCTOBER 26, 2018**

**P.C. :**

1 Heard. Both the counsel submit that the matter is settled out of court. The Petitioner and Respondent Nos.3 and 4 filed Consent Terms dated 26.10.2018.

2 The learned counsel for the Petitioner submits that Petitioner Nos.1 to 3 are present in court. The learned counsel for the Respondent Nos.3 and 4 submits that their authorised officer Mrs. Archana Wagle is present in court. They entered into witness box and admit the contents of the Consent Terms and execution thereof. Same are taken on record and marked "X" for identification.

3 The Consent Terms read thus:

**“CONSENT TERMS BETWEEN THE PETITIONER AND  
RESPONDENT NO.3 AND 4**

1. The Petitioners agree and confirm of their availing financial assistance from the Respondent Bank and their indebtedness to the Respondent No. 3 in the sum of Rs. 1,20,68,473/- due and payable as on 30.11.2016 along with interest thereon at the contractual rate till payment and or realization and as called for by the Respondent No. 3 in the notice dated 02.12.2016 issued under Section 13(2) of the SARFAESI Act, 2002.
2. The Petitioners agrees and confirms that the repayment of the aforesaid amount is duly secured by the mortgaged / hypothecated securities as detailed in notice dated 02.12.2016 issued under Section 13(2) of the SARFAESI Act, 2002 by the Respondent No. 3.
3. The Petitioner further agrees and confirms that in furtherance of the aforesaid notice dated 02.12.2016, the Respondent No. 3 and 4 has obtained order dated 19.01.2018 from the Court of District Magistrate Pune to take physical possession of mortgaged / hypothecated securities as detailed in the said notice and being aggrieved by the said measures, the Petitioners has filed the aforesaid Petition.

4. In the interim and during the pendency of the said Petition, the parties hereto admits and confirms that the following payments of Rs. 76,53,212.00 have been made by the Petitioners from time to time in satisfaction of their joint and several liability to the Respondent No. 3 against the claim as made in the said notice dated 02.12.2016.

- a. A sum of Rs. 3,75,000/- by RTGS paid on 06.04.2018 towards the Term Loan Account
- b. A sum of Rs. 2,48,000/- by RTGS paid on 07.04.2018 towards the Term Loan Account
- c. A sum of Rs. 2,27,000/- by NEFT paid on 09.04.2018 towards the Term Loan Account
- d. A sum of Rs. 6,20,802/- by RTGS paid on 03.04.2018 towards the Overdraft Facility
- e. A sum of Rs. 8,60,410/- by RTGS paid on 03.04.2018 towards the Overdraft Facility
- f. A sum of Rs. 1,40,000/- by NEFT paid on 03.04.2018 towards the Overdraft Facility
- g. A sum of Rs. 80,000/- by NEFT paid on 04.04.2018 towards the Overdraft Facility
- h. A sum of Rs. 36,00,000/- by RTGS paid on 01.10.2018
- i. A sum of Rs. 66,000/- paid on 19.4.2018
- j. A sum of Rs. 43,000/- paid by NEFT on 19.4.2018
- k. A sum of Rs. 82,000/- paid on 2.5.2018
- l. A sum of Rs. 6,99,000/- paid by RTGS on 2.5.2018
- m. A sum of Rs. 6,12,000/- on 3.5.2018

5. The Petitioners admits and acknowledges that apart from the aforesaid, aggregate payment of Rs. 76,53,212.00 made till the date of filing of this Consent Terms, a sum of Rs 78,57,127.16 as on 26.10.2018 still remains due and payable in full satisfaction of the claim of the Respondent No. 3 Bank and as made in the aforesaid notice dated 02.12.2016 which the Respondent No. 3 Bank is entitled to claim the same with interest at the contractual rate till actual payment and or realization.
6. The Petitioner agrees and undertakes to this Hon'ble Court to make the aforesaid payment of Rs. 78,57,127.16 on or before 31.12.2018 with further interest thereon at the contractual rate amounting to Rs. 1,80,825.49 from 26.10.2018 till 31.12.2018 and aggregating to Rs. 80,37,988.65 in full satisfaction of their joint and several liability in respect of the claim as made by the Respondent No. 3 in the aforesaid notice dated 02.12.2016 which the Respondent No. 3 has agreed to accept the same in full and final settlement of the claim as made in the said notice dated 02.12.2016.
7. The Petitioner agrees and undertakes to this Hon'ble Court that by 31.12.2018 or any date prior to that, the Petitioner shall clear the entire loan liability of the Respondent Bank as claimed in the notice dated 02.12.2016 and by making aggregate payment of Rs. 80,37,988.65 and only on this assurances and commitment, the Respondent No.3 Bank

has agreed to enter into the present Consent Terms.

8. The Petitioner admits and undertakes that on signing of this Consent Terms, they shall handover physical possession of the aforesaid secured assets to the Respondent No.4 being the Authorised Officer of the Respondent No. 3 who in turn has agreed and undertakes before this Hon'ble Court to restore the same forthwith unto the Petitioners but as his agents with a clear understanding that the legal and juridical possession of the said secured assets shall continue to be vest in the Respondent No. 4 and the possession of the Petitioners on restoration are merely that of an Agent of the Respondent No.4. The Petitioners will occupy the possession of the premises as an Agent of the Respondent No.3 Bank.
9. The Petitioner agrees, confirms and undertakes to this Hon'ble Court that in the event of default in making entire payment of Rs. 80,37,988.65 by 31.12.2018, the Petitioner undertakes to voluntarily vacate from the said secured assets by removing all their belongings and dependents and surrender the said secured assets as detailed in notice dated 02.12.2016 to the Respondent No. 4 who in turn shall resume physical, juridical and legal possession of the said secured assets and in that event, the agency created shall stand automatically terminated without any notice and the Respondent Bank shall be entitled to act in furtherance of their measures including sale of the said secured assets and the Petitioner undertakes that they shall not cause any

obstructions in the said process.

10. The Petitioner agrees and confirms that from the date of execution of this Consent Terms till 31.12.2018 i.e. the period during which the said contract of agency subsist, no third party rights will be created of any nature whatsoever in respect of any of the said secured assets as detailed in notice dated 02.12.2016 and as on date, they alone are in possession thereof.
11. The Petitioner agrees and confirms that from the date of execution of this Consent Terms till 31.12.2018 i.e. the period during which the said contract of agency subsist, the Petitioner shall keep each of the said secured assets in good and tenable condition and shall regularly pay all the outgoings in respect of the same including Society maintenance and other charges and also if called for, provide payment receipt thereof for inspection.
12. It is agreed by and between the parties hereto that till the compliance of the obligation as undertaken by the Petitioners under this Consent Terms to make the aggregate payment of Rs. 80,37,988.65 by 31.12.2018 or any date prior to that, both the parties shall place a copy of this Consent Terms before the Hon'ble Debts Recovery Tribunal Pune and shall seek necessary orders by consent either to differ and / or to keep in abeyance hearing of the Original Application being Original Application No. 248/2017 till 31.12.2018 with a clear understanding that in

the event of default in payment of the entire aggregate amount of Rs. 80,37,988.65 by 31.12.2018, the Respondent Bank shall be at liberty to point out the event of default to the Hon'ble Debts Recovery Tribunal Pune and shall be entitled to get a Decree on admission / Recovery Certificate for the amount as claimed for in the said Original Application after giving credit to the amount as paid under the present Consent Terms and the Petitioners shall not object Hon'ble Debts Recovery Tribunal, Pune passing Decree on Admission / issuing Recovery Certificate in favour of the Respondent in the said Original Application.

**13.** In the event, the Petitioner makes entire payment of Rs. 80,37,988.65 by 31.12.2018 or any date prior to that as per the undertaking given herein above, the Respondent No. 3 agrees and undertakes as follows :

- i. Shall release their charge and return all the title deeds to the Petitioners in respect of mortgaged / hypothecated properties as detailed in 13(2) notice dated 02.12.2016
- ii. Shall update details of payment made in the accounts to CIBIL.
- iii. Shall withdraw Section 13(2) notice and shall surrender possession of secured assets as detailed in 13(2) notice dated 02.12.2016 to the Petitioners.
- iv. Shall withdraw unconditionally Original

Application being Original Application No. 248/2017 filed before Debts Recovery Tribunal Pune;

- v. Shall provide No Due Certificate and statement of account with NIL balance.
  - vi. Shall return all the loan / security documents including Guarantee documents duly cancelled.
  - vii. Shall inform all the concerned authorities with whomsoever they have registered their charge / lien and shall intimate discharge of their charge/ lien on their secured assets as detailed in 13(2) notice dated 02.12.2016
14. Petition to stand disposed off in terms of the Consent Term.
15. No order as to cost.

Dated this 26<sup>th</sup> day of October, 2018.

1. Mrs. Manisha Suhas Shivarkar  
The Petitioner No. 1

2. Mr. Suhas Balasaheb Shivarkar  
The Petitioner No. 2

3. Mr. Swanand Suhas Shivarkar SVC Co-operative Bank Ltd.  
By the hand of

The Petitioner No. 3

the Respondent No. 3

Mr. Sarang Satish Aradhya  
Advocate for the Petitioners

M/s. V. Deshpande & Co.  
Advocate for the  
Respondent No.3”

4 The Writ Petition stands disposed of in view of the Consent Terms. The undertakings given therein are accepted.

5 The learned counsel for the Petitioner submits that as per the Consent Terms, they shall handover possession of the suit property to the Respondent Bank on 19.11.2018. At the same time, the Respondent Bank, as per the Consent Terms, shall appoint the Petitioner as an Agent to occupy the said premises. The statement is accepted.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)