

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

**FIRST APPEAL NO. 1309 OF 2017**

Sai Sneh Mansi Co-operative Housing  
Society Ltd. & Ors.

... Appellants

**V/s.**

Mr. Laxman Sahebanna Mehetre

... Respondent

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Mr. Akhilesh Dubey a/w Uttam Dubey I/b M/s. Law Counsellors for the  
Appellants.

Mr. Vaibhav Gaikwad for the Respondent.

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

**DATED : 19/10/2018**

**P.C.:**

- . Heard learned Counsel for the parties.
- 2 Both the Counsel submit that the matter is settled out of the Court.  
They tendered the Consent Terms dated 19.10.2018.
- 3 Both the Counsel submit that on behalf of Appellants, Appellant No.3  
Mr. Nitin Kanhaiyalal Bhansali and Appellant No.4 Mr. Bhausahab Sopanrao  
Bhoir are present in the Court and Respondent Laxman Sahebanna Mehetre  
is present. All these three persons entered into the witness box. They admit  
the contents of the Consent Terms as well as the execution.
- 4 Advocate for the appellant submits that Appellant No.3 is the Power of

Attorney holder of Appellant Nos. 5 and 6. The Consent Terms are taken on record and marked as “X” for its identification.

5 Consent Terms reads thus:

**CONSENT TERMS AS AGREED BETWEEN THE APPELLANTS  
AND RESPONDENTS ABOVE NAMED**

1. *The Respondent had filed the suit being Special Civil Suit No. 108 of 2014 before the Hon’ble Civil Judge Senior Division, Pune at Pune for Declaration, Specific Performance of Agreement i.e. Memorandum of Understanding dated the 25/02/2010 with respect to the Suit Property which are more particularly described in “**Schedule-I**” herein.. The said suit being Special Civil Suit No. 108 of 2014 came to be decreed by the Ld. 7<sup>th</sup> Civil Judge Senior Division, Pune at Pune by judgment and decree dated 29/04/2017 and decree for specific performance and possession was passed. As per the judgment and decree dated the 29/04/2017 the Respondent deposited an amount of Rs. 5,27,65,056/- (Rupees Five Crore Twenty Seven Lakhs Sixty Five Thousand Fifty Six Only) on 27/06/2017 by DD No. 520353 dated 29/05/2017 drawn on Corporation Bank before the Trial Court. The Respondent subsequently filed execution proceeding being Regular Darkhast No. 108 of 2017 before the Ld. Civil Judge Senior Division, Pune at Pune for execution of Judgment and decree dated 29/04/2017 as passed in Special Civil Suit No. 108 of 2014.*
2. *The Appellants herein have filed present First Appeal being First Appeal No. 1309 of 2017 on 19/08/2017 assailing the Judgment and Decree dated the 29/04/2017 as passed in Special Civil Suit No. 108*

of 2014 by the Ld. 7<sup>th</sup> Civil Judge Senior Division, Pune at Pune. The Appellants had filed a Civil Application No. 3785 of 2017 seeking the stay to said execution proceeding being Regular Darkhast No. 108/2017 as pending before the Ld. 7<sup>th</sup> Civil Judge Senior Division, Pune at Pune. This Hon'ble Court by an order dated the 19/03/2018 was pleased to stay the Regular Darkhast No. 108/2017 subject to certain terms and conditions and was further pleased to direct the Trial Court to invest/deposit an amount of Rs. 5,27,65,056/- (Rupees Five Crore Twenty Seven Lacks sixty five Thousands fifty six only) in any nationalized bank initially for period of one year.

3. The parties submit that since the parties herein explored the possibility of the settlement amongst themselves by way of mediation of one Mr. Sandeep Shinde and others, who happens to be the common friends of Appellants and Respondent herein, Accordingly, the Appellants/Applicants and Respondent have amicably settled their disputes out of court. After the negotiations between both the parties, it is agreed that Appellants shall convey to the Respondent the Suit land and hand over it's actual physical possession along with their rights, title and interest in respect of suit land. It is hereby agreed between the parties that in addition to the suit land the Appellants shall convey to the Respondent additional area admeasuring 300 Sq. mtrs. in S. No. 168/2 and additional area admeasuring 225 Sq. mtrs. in S. No. 168/4 of Revenue Village Wakad, Taluka Mulshi, District Pune and hand over its actual physical possession along with their rights, title and interest therein. The total area to be conveyed to the Respondent shall be 8500 Sq. Mtrs. which is more particularly described in **"Schedule-II"** herein.

4. *It is further agreed between the parties that the Appellants shall retain S. No. 168/3 (Part) admeasuring 700 Sq. Mts. from and out of the suit lands. The said retained land is hereinafter referred as Retained Land and demarcated in red colour and more particularly described in **Schedule-III** herein. The Respondent hereby undertakes that he shall not claim any rights, title or interest with respect to S. No. 168/3 (Part) admeasuring 700 Sq. Mts.as described in “**Schedule-III**’ herein.*
5. *The Parties state that all of them have mutually decided to settle the dispute by accepting relevant portions of the suit property as well as additional properties as mentioned hereinabove. Accordingly,the Respondent has agreed to acquire all the rights, title and interest in respect of the Said land admeasuring 8500 Sq. Mtrs mentioned in the **Schedule-II** from the Appellants/Applicants herein for a lump sum consideration of Rs.15,77,36,335/-(Rs. Fifteen Crores Seventy Seven Lakhs Thirty Six Thousand Three Hundred and Thirty Five Only).*
6. *By this amicable settlement between the Appellants and Respondent they have agreed to amicably settle the present dispute by filing the present consent terms in the above mentioned Appeal. The parties hereby agree and undertake as follows:*
  - a. *That the Appellants shall convey, transfer, alienate and sell the said lands area admeasuring 8500 sq. Mtrs. more particularly described in **Schedule-II** along with their rights, title, interest and possession unto and in favor of the Respondent and in pursuance thereof the Appellants shall execute and register an Indenture of conveyance of the said Schedule II lands. The Appellants hereby undertakes that the Appellants as well as their agents, heirs, servants shall not claim any*

rights, title or interest with respect to properties mentioned in **Schedule-II** admeasuring 8500 Sq. Mts. And an Indenture of Conveyance / transfer shall be registered by the Appellants unto and in favor of the Respondent within a period of 8 days from the date of disposal of Regular Darkhast No. 108 of 2017. The Appellants have simultaneously with the execution of the Indenture of Conveyance, shall execute an “after sale” Special Power of Attorney in favor of the respondent granting thereby the necessary authority and powers to represent the Appellants before the Revenue Authorities for the purposes of carrying out the mutation entries in the record of right and for other matters incidental thereto. The Appellants hereby undertakes that the Appellants as well as their agents, heirs, legal representatives shall not claim any rights, title or interest with the respect to the properties mentioned in Schedule II admeasuring.

- b. That the Appellants shall retain land bearing S. No. 168/3 (Part) area admeasuring 700 Sq. Mts. (hereinafter referred as Retained Land) more particularly described in **Schedule-III**. The Respondent hereby undertakes that he shall not claim any rights, title or interest with respect to S. No. 168/3 (Part) admeasuring 700 Sq. Mts. described in “Schedule-III” herein.
- c. Appellants and Respondent have agreed and decided that the said lands admeasuring 8500 sq. mtrs would be transferred to the Respondent by the conveyance deed which is more particularly described in **Schedule II** and hereinafter referred as the “Said Land”.
- d. The Appellants undertake to release their respective rights, title and interest in respect of the Said land admeasuring 8500 Sq. Mtrs. more

particularly described in Schedule-II in favour of the Respondent for total Consideration of Rs.15,77,36,335/- (Rs. Fifteen Crores Seventy Seven Lakhs Thirty Six Thousand Three Hundred and Thirty Five Only).

- e. It is hereby agreed and understood by the Appellants that out of the total consideration of Rs. 15,77,36,335/- an amount of Rs.4,99,50,414/- has been already paid to the appellants and the appellants do hereby accept and acknowledge the receipt thereof and acquit, release and discharge the Respondent from the same and every part thereof. In the other words now the Appellants are entitled to receive from the Respondent the balance amount of Rs. 10,77,85,921/0(Rs. Ten Crores Seventy Seven Lakhs Eighty Five Thousand Nine Hundred and Twenty One only)
- f. It is agreed that balance amount of Rs.10,77,85,921/- (Rs. Ten Crores Seventy Seven Lakhs Eighty Five Thousand Nine Hundred and Twenty One only) shall be paid by the Respondent to the Appellants in the following manner:
  - a) Rs. 5,27,65,056/-(Rupees Five Crore Twenty Seven Lakhs Sixty Five Thousand Fifty Six Only) which is already deposited by the Respondent before the Trial Court and the said amount shall be withdrawn by the Respondent after disposing of present Appeal and for that purpose the Appellants shall give their consent before the executing court for enabling the Respondent the said amount and the said amount of Rs. 5,27,65,056/- shall be paid by the Respondent to the Appellant No.2 on and at the time of execution and registration of the Conveyance Deed. It is hereby further agreed that the interest

accrued on the said sum of Rs. 5,27,65,056/- (Rupees Five Crore Twenty Seven Lakhs Sixty Five Thousand Fifty Six Only) shall be exclusively payable to the Respondent and the Appellants shall not claim the same or any part thereof.

b) Rs. 40,00,000/- (Rupees Forty Lakhs Only) to be paid to the Appellant No.2 on execution and registration of the Conveyance Deed.

c) Rs.2,60,20,865/- (Rupees Two Crores Sixty Lakhs Twenty Thousand Eight Hundred Sixty Five Only) to be paid to the Appellant No.2 within 6 months from the date of this present consent term.

d) Rs.2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) to be paid to the Appellant No.2 within 9 months from the date of this present consent terms.

- g. It is further agreed and understood between the parties that as per the MOU dated 25.02.2010 the total area agreed to be conveyed was 8675 Sq. mtrs. and the same has been now agreed to be novated to the extent of 8500 Sq. Mtrs. more particularly described in **Schedule-II** mentioned herein under and out of which a land more particularly described in **Schedule – III** is retained by the Appellant and further the Appellant have by the terms and conditions of these Consent Terms have agreed to convey and transfer the additional lands area admeasuring 300 Sq. mtrs. in S. No. 168/2 and additional area admeasuring 225 Sq. mtrs. in S. No. 168/4 of Revenue Village Wakad, Taluka Mulshi, District Pune

- h. *That it is hereby assured, represented and warranted by the Appellant to the Respondents that the said additional area admeasuring 300 Sq. mtrs. in S. No. 168/2 and additional area admeasuring 225 Sq. mtrs. in S. No. 168/4 of Revenue Village Wakad, Taluka Mulshi, District Pune are free from all charges and encumbrances and the Appellant hold a free, clean, clear and marketable right, title and interest to the same and further the Appellants assure that there are no defects of whatsoever nature in respect of the same and the Appellants hereby undertakes to indemnify the Respondent for all such damage, costs and consequences as may arise owing to the defects in title of the said additional lands agreed to be conveyed to the Respondent by the Appellants.*
- i. *It is agreed and undertaken that the Conveyance Deed and a special power of attorney for completely effectuating the sale and get name of Respondent recorded and for the purpose of representing the Appellants before the Revenue, Planning and other statutory authorities in respect of said 8500/- sq. mtr. agreed to be conveyed shall be registered by Appellants in favour of Respondent within a period of one week from the disposal of Regular Darkhast No. 108 of 2017 and Respondent shall immediately do all required activities for due registration of such instruments viz. sale deeds and special power of attorney.*
- j. *It is hereby agreed and undertaken between the Appellants and Respondent that the Sakhli road passes through the lands mentioned in Schedule-II. The Respondent undertakes to maintain the width of*

*the said road to the extent of 12 mtrs. through the lands mentioned in the Schedule-II and demarcated in **“Annexure-D”** annexed herein. The Respondent or his successors shall not create any objection or hindrance for usage of the said road by the Appellants or their successors-in-title. It is further agreed that the Appellant and their successor – in – title shall have a mere right of way to use the said 12 meter wide road and the right, title and interest and ownership thereof shall all the time exclusively vest in the respondent, his legal heirs, assigns, nominees and successor – in – interest and further the Respondent alone shall have a right to claim the F.S.I. of the said road at the time of sanctioning of the building plans in respect of the said Schedule – II lands and also a right to claim the T.D.R. / D.R.C. if the said road is required to be handed over to the local planning authority and the Appellants shall not claim any right in the same or any part thereof and further the Appellants agree and undertake to contribute equally to all the expenses and costs on account of the maintenance and upkeep of the said sakhali road.*

- k. It is agreed between the Appellants interse that the Appellant No. 1 has already received the consideration of the Suit Property being land from the Appellant No.2 and its partners Appellant No. 3 to 6 and hence Appellant No. 1 is not entitled to receive any part of the consideration, which is to be received by the Appellant No. 2 from the Respondent herein. The Appellant No. 1 agrees and undertakes not to make any claim in that regard against the Respondent No. 1 and the Appellant No. 1 shall join the Indenture of Conveyance to be executed in favor of the respondent.*

- l. The parties hereto agree that on filing of the present consent term in the above matter the Regular Darkhast No. 108 of 2017 which is pending before the Hon'ble 7th Civil Judge Senior Division Pune at Pune shall stand disposed-off with immediate effect and the Respondent shall entitled to withdraw the amount of Rs. 5,27,65,056/-(Rupees Five Crore Twenty Seven Lakhs sixty Five Thousand Fifty Six Only) as deposited by the Respondent before the Hon'ble Trial Court with entire accrued interest on said amount.*
- m. It is agreed between the parties hereto that the Stamp Duty and registration fees for all the instruments which are required to be executed between the parties to convey the Lands mentioned in the Schedule-II shall be paid by the Respondent and further each party shall pay to their respective consultants, Advocates, etc.*
- n. It is hereby agreed and understood between the parties that the terms agreed herein shall supersedes all the covenants, agreements, promises between the parties herein and the present terms shall be treated as undertaking to this Hon'ble Court.*
- o. The Appellants agree and undertake that hereinbefore they have not executed any agreement for sale nor executed any other documents in respect of said Schedule – II land with any other third party. In case after filing of the present consent terms any third party would claim any right in the said land in such case the Appellants will be ultimately responsible and the Appellants undertakes to reimburse and indemnify the said third party. During the pendency of Special Civil Suit No. 108 of 2014, the Memorandum of Understanding dated 25/2/2010 was impounded under Section 35 of Maharashtra*

*Stamp Act and accordingly the Respondent had paid stamp duty of Rs. 51,35,700/- on the amount of Rs. 10,27,15,470/- as mentioned in the said Memorandum of Understanding. By the present consent terms the total consideration in respect of said land was agreed for amount of Rs. 15,77,36,335/-(Rs. Fifteen Crores Seventy Seven Lakhs Thirty Six Thousand Three Hundred and Thirty Five Only). As such it agreed that the Respondent at the time of registration of sale deed will be required to pay additional stamp duty on the amount of Rs. 55,020,865/- excluding the stamp duty paid on amount of Rs. 10,27,15,420/-*

- p. Both the parties have entered into and executed these consent terms out of their free will, without any force, fraud, fear or undue influence of whatsoever in nature and after obtaining appropriate advice from their own legal consultants. Both the parties declare that in addition to their own signatures, they have fully authorized and empowered their Advocates appearing in the present matter to sign these consent terms on their behalf and that these consent terms shall be binding on them, their successors, heirs and legal representatives, assigns.*

- 7. In light of the aforesaid agreement between the parties, since the dispute has been amicably settled between them, it is hereby prayed that this Hon'ble Court may be pleased to dispose off the present appeal in terms of the present consent terms by necessary order and decree, without recording any reasons on the rival claims and contentions of the parties and this Hon'ble Court be further pleased to direct that the court fees may be refunded to the Appellants as per*

rules.

8. Decree be drawn up accordingly.

### **SCHEDULE-I**

#### **(DESCRIPTION OF THE SUIT LAND)**

*All that property bearing Survey No.168/3 area admeasuring 0H 07 R out of total area 0H 52R, Survey No 167/6 area admeasuring 0 H 09 R out of total area 0H 18R, Survey No. 168/4 area admeasuring 0H 12.75 R out of total area 0H 49 R, Survey No. 168/2 area admeasuring 0H 17 R out of total area 0H 66 R, Survey No.167/5 area admeasuring 0 H 19 R out of total area 0H 19 R, Survey No. 167/7 area admeasuring 0 H 22 R, totally admeasuring about 8675.00 sq. mtrs., lying and situated at Village Wakad, Tal Muishi, Dist Pune which is more particularly delineated on plan annexed hereto as **“Annexure- A”**.*

### **SCHEDULE-II**

#### **(DESCRIPTION OF THE SAID LAND)**

*All that property admeasuring area 00 Hectare 20 Ares i.e. 2000 sq.mtrs. out of Survey No.168/2 admeasuring area about 00 Hectare 66 Ares, 00 Hectare 15 Ares i.e. 1500 Sq.Mtrs. out of Survey No.168/4 admeasuring area about 00 Hectare 49 Ares, 00 Hectare 09 Ares i.e. 900 Sq.Mtrs. out of Survey No.167/6 admeasuring area about 00 Hectare 18 Ares, i.e. 1800 Sq. Mtr. Survey No.167/5 admeasuring*

area about 00 Hectare 19 Ares, Survey No. 167/7 admeasuring area about 00 Hectare 22 Ares, Total area under transaction 00 Hectare 85 Ares, i.e. 8500 Sq.Mtrs. situated at Village Wakad, within the Registration District Pune, Sub-registration District Haveli, Taluka Mulshi and within the limits of PimpriChinchwad Municipal Corporation and which is sub divided into two parts as under:-

The Eastern Area admeasuring 00 Hectare 66 Ares i.e. 6600 Sq.mtrs.which is bounded as follows:-

**On or towards the East -**

Survey No.167/6P,7P,

168/2P,4P :- By area of Sai Sneh Mansi Co.op.Hsg.Soc.Ltd. of Survey No.168/2 (part),4 (part)

Survey No.167/5 :- by of Survey No.168/3Part

**On or towards the South -**

Survey No.167/6P,7P, :- By Survey No.168/5Part and 168/2P,4P

Survey No.167/9 Part

Survey No.167/5 :- By Survey No.167/6Part

**On or towards the West :-** By Survey No.167/5 (part),6 (part),7 (Part)

**On or towards the North -**

Survey No.167/6P,7P,

168/2P,4P :- By Survey No.168/3Part  
and Survey No.167/6Part  
Survey No.167/5 :- By Survey No.167/2Part

The aforesaid area admeasuring 00 Hectar 66 Ares i.e. 6600 Sq.mtrs. is more particularly delineated by **“Zebra Strips”** on plan annexed hereto as **“Annexure-B”**.

**AND**

The Western Area admeasuring 00 Hectare 19 Ares i.e. 1900 Sq.mtrs. is bounded as follows:-

**On or towards the East** :- By Survey No.167/5(part),6(part),7 (Part)

**On or towards the South -**

Survey No.167/6P,7P, :- By Survey No.167/9 Part

Survey No.167/5 :- By Survey No.167/6 Part

**On or towards the West:-** By Survey No.167/2 Part

**On or towards the North** :-

Survey No.167/5Part :-By Survey No.167/2Part

Survey No.167/6Part& 7P :- By Survey No.167/6Part

The aforesaid area admeasuring 00 Hectar 19 Ares i.e. 1900 Sq.mtrs. is more particularly delineated by **“Honeycomb”** on plan annexed hereto as **“Annexure-B”**.

Together with all F.S.I., T.D.R. & all types buildable potential under whatsoever head permissible and right to receive F.S.I., T.D.R. or compensation in terms of Money

*against area under D. P. Road in light of Development Control Rules applicable to the Pimpri Chinchwad Municipal Corporation from time to time and along with all easement right of way, water, drainage, etc.*

**SCHEDULE-III**  
**(DESCRIPTION OF THE RETAINED LAND)**

*Retained land by Appellants out of the suit land having S. No. 168/3 ( Part) admeasuring 700 Sq. mtrs. which will not be a part of the proposed conveyance which is more particularly delineated on plan annexed hereto as **“Annexure-C”.***

6 First Appeal is disposed of in terms of Consent Terms. Consent Terms be treated as part and parcel of the decree.

7 No order as to costs.

**(N.J.JAMADAR,J.)**

**(K.K.TATED, J.)**