

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

WRIT PETITION NO.11964 OF 2018

Smruti N. Shah & Anr.

.. Petitioners

V/s.

Union of India and Ors.

.. Respondents

Mr.Sidharth Samantaray I/b Mr.Akash S. Acharya for the petitioners

Mr.Rafeeq Peermohideen, Mr.Vinod Kothari, Ms.Gauri Joshi i/b M/s.Apex Law Partners for the respondent no.2

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

DATED : OCTOBER 30, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 Advocate for the Petitioners and Respondent no.2 submit that matter is settled out of court. They tendered Consent Terms dated 30.10.2018 duly signed by the Petitioners and Respondent no.2. Same is taken on record and marked 'X' for identification.

3 Advocate for the Petitioner submits that Petitioner no.1, Smruti Shah signed present Consent Terms on behalf of herself as well as Petitioner no.2. He submits that Petitioner no.1 is present in court. She entered into the witness box. She admits the contents of the same as well as execution thereof.

4 The learned counsel for the Respondent no.2 submits that on behalf of Respondent no.2, Mr.Vinod N. Sanojkar, Manager is present in court. He entered into the witness box. He admits the contents of the same as well as execution thereof. Undertaking given by both the parties in Consent Terms are accepted. Consent Terms reads thus:

“CONSENT TERMS

1) The parties herein by consent have agreed to the execution of the following consent terms, being;

a) The Petitioners do hereby agree and undertake to hand over possession of the secured assets i.e., Flat No. 4, on the 2nd Floor of Dwadesh Co-operative Housing Society, Gazzdar park Scheme, 17th Road , Near Rajesh Khanna garden, Santacruz (W), Mumbai - 400 054 on 1st November , 2018 at 4.00 p.m. to Respondent No. 2, solely for the purpose of creating an agency for seeking compliance of these consent terms.

b) Respondent No.2 after being put in possession of the aforesaid secured asset, shall immediately permit the Petitioners or its assignees to enter and occupy the said secured asset on 1st November , 2018 as their “agents”.

- c) Respondent No. 2 states that, as of date, the Petitioners need to pay 3 (three) E.M.I.s i.e. a sum of Rs. 7,20,642/- (Rupees Seven lakhs twenty thousand six hundred and forty two only) to regularize their loan account bearing No. HHLLPM00120098. The said sums excludes the EMI of the months of October, 2018 against the EMI of the months of October 2018 cheque No. 131031 dated 22/10/18 for a sum of Rs. 2,40,214/- drawn on Bank of India has been tendered in court.
- d) The Petitioner agrees and undertakes to pay a total sum of Rs. 16,81,498/- (Rupees Sixteen Lakhs Eighty One Thousand Four Hundred and Ninety Eight only) being the corresponding monthly E.M.I.s due and payable to Respondent No. 2 as well as the amount payable for regularizing the account in four tranches on or before 5th January 2019 in the following manner;

<i>Installment</i>	<i>Date</i>	<i>Amount In Rs./-</i>
<i>1st</i>	<i>On or before 22nd October, 2018</i>	<i>2,40,214/-</i>
<i>2nd</i>	<i>On or before 02nd November, 2018</i>	<i>2,40,214/-</i>
<i>3rd</i>	<i>On or before 05th December, 2018</i>	<i>2,40,214/- + 4,80,428/- +2,20,000/-</i>
<i>4th</i>	<i>On or before 5th January, 2019</i>	<i>2,40,214/- + 2,40,214/- + 2,20,000/-</i>

2) *It is agreed between the parties that on payment of the aforementioned four tranches mentioned in clause 1 (d), the agency created as per Clause 1 (b) herein shall stand terminated and further, Respondent No. 2 shall cease to be in possession of the said secured asset.*

3) *In the event if the Petitioner's default in complying with the aforementioned payment schedule, the Petitioners agree and undertake to handover peaceful, vacant and physical possession of the secured asset to Respondent No. 2 immediately.*

4) *Upon the Petitioners completing the payment of the amounts mentioned in clause 1 (d) hereinabove in the timeline stipulated therein, Respondent No. 2 agrees and undertakes to issue a letter to the Petitioners herein stating that the Petitioner's loan account i.e bearing No. HHLLPM00120098 stands regularized and ceases to be a Non-Performing Asset.*

5) *The Respondent No.2 agrees to withdraw all proceedings, if any, initiated by the Respondent No.2 before any court / Arbitrator / Tribunal for recovery of the amounts in the above Loan account against the petitioners on compliance of the payment terms as*

set out in 1 (d).

6) The Respondent No. 2 agrees and undertakes that within a week from the date of executing these consent terms, Respondent No. 2 will withdraw the proceeding being Case No. 7273 of 2018 initiated by it under section 138 of the Negotiable Instrument Act, 1881 against the Petitioners herein pending before the Magistrate Court At Gurgaon.”

5 Writ Petition stands disposed of in terms of Consent Terms.

6 No order as to costs.

(N. J. JAMADAR, J)

(K.K. TATED, J.)