IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1657 OF 2018

Akshay Bhansali .. Petitioner

V/s.

ICICI Bank Ltd. and Anr. .. Respondents

Mr.Sheelang Shah a/w Mr.Pankaj Uttaradhi for the petitioner

Mr.Santosh Bhide I/b M/s.Bhide and Associates for the respondent no.1

CORAM: K.K. TATED &
SANDEEP K. SHINDE, JJ.

DATED : OCTOBER 11, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 Both the counsel submit that as the matter is settled out of court, they tendered Consent Terms dated 11.10.2018.

3 Advocate for the Respondent bank submits that on behalf of Respondent bank, Mr.Santosh Bhide is present in court. He entered into the witness box. He admits the contents of the Consent Terms and execution thereof.

4 The learned counsel for the Petitioner submits that because

of personal difficulty, Petitioner is not present in court. He submits that Petitioner executes these Consent Terms in front of him and he identified his signature. Statement is accepted.

5 In view of these facts, Consent Terms dated 11.10.2018 are taken on record and marked 'X' for identification. The said Consent Terms reads thus:

"CONSENT TERMS

1. *By the consent of parties it is hereby agreed that in full and final settlement of all disputes and differences between the Petitioner and the Respondent No. 1 as follows:*

   (a) *The Petitioner agrees and undertakes to pay an aggregate amount of Rs. 2,90,74,000/- to Respondent No. 1 to regularise the loan accounts viz.(1) Loan Account No. LBMUM00002054599 and (2) Loan Account No. LBMUM00002053134 by 31st January 2019 in the following manner:*

Sr. No.	Date	Amount (Rs.)
1	12th October 2018	10,00,000/-
2	19th October 2018	10,00,000/-
3	26th October 2018	10,00,000/-
4	2nd November 2018	10,00,000/-
5	9th November 2018	10,00,000/-
6	16th November 2018	10,00,000/-
7	23rd November 2018	10,00,000/-
8	30th November 2018	10,00,000/-
9	7th December 2018	10,00,000/-
10	14th December 2018	10,00,000/-
11	21st December 2018	10,00,000/-
12	28th December	10,00,000/-

	2018	
13	5th January 2019	10,00,000/-
14	12th January 2019	10,00,000/-
15	19th January 2019	10,00,000/-
16	31st January 2019	1,40,74,000/-
	Total	**2,90,74,000/-**

(b) *The Petitioner has furnished17post-dated cheques commencing from 12th October 2018 till31st January 2019 on or before execution of the Consent Terms as tabulated at* ***Annexure 1*** *hereto.*

(c) *The Petitioner agrees and undertakes to handover over physical possession of the secured premises viz.Flat no. 1601, 16th Floor, Solitare Building, Off. AdiShankaracharya Marg, Village Kopri Powai, Mumbai - 400 076 ("**Secured Flat**")on or before 19th October, 2018..*

(d) Respondent No. 1agrees and undertakes to appropriate the money received as per clause a by Respondent No. 1 to both the said Loan Accountsviz. (1) Loan Account No. LBMUM00002054599 and (2) Loan Account No. LBMUM00002053134.

(e) Respondent No. 1 agrees and undertakes to first appropriate all money received as per Clause 1(a)by Respondent No. 1 towards the overdue amount i.e. Rs. 2,90,74,000/- in both loans accounts.

2. *In the event of default by the Petitioner in payment of any of the amounts mentioned in Clause1(a)the Respondent No. 1 shall:*

   a. *Permit the Petitioner to remedy and cure the default within a period of 5 days from the date of default;*

   b. After expiry of 5 days and the Petitioner failing to remedy the default, the Respondent No. 1 shall be permitted to sell the Secured Flat in terms of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

   c. Respondent No. 1 agrees and undertakes to return all post-dated cheques within a period of 10 *daysafter such default;*

d. *Respondent No. 1 agrees and undertakes that in the event of sale of the Secured Flat in terms of Clause 2(b)Respondent No. 1shall agree to refund the excess amount after deducting pending principal outstanding and pending interest (excluding penal interest and other charges)as on the date of such sale within a period of 30 days without any interest. In case subsequent to the realisation and appropriation of Sale proceeds as mentioned hereinabove if there is any shortfall towards Principal and Interest (excluding penal interest and other charges)Respondent No. 1 is at liberty to initiate appropriate action/proceeding against the borrowers to recover such amount.*

3. *The Respondent No. 1 undertakes and agrees that it shall permit the Petitioner to:*
   a. *Take steps to sell the Secured Flat to any prospective purchasers and in the event that the Petitioner is able to secure a prospective purchaser, the Respondent no. 1 shall take all steps and execute all documents as deemed necessary in law and/or otherwise to sell the Secured Flat and handover physical possession to the said prospective purchaser upon the receipt of the pending principal outstanding and Pending interest (excluding penal interest) as on the date of such sale.*
   b. *In the event, the Secured Flat is sold to any such prospective purchaser in terms of Clause 3 (a) above Respondent No. 1 shall pay any amount received in excess of pending POS and pending interest (excluding penal interest) as on the date of such sale within a period of 30 days without interest. The Respondent No. 1 agrees and undertakes to permit the Petitioner along with prospective purchasers to inspect the Secured Flat till 31st January 2019. The Petitioner shall give prior intimation and notice of 2 working days to the Respondent No. 1 of its intention to take*

inspection of the Secured Flat. Respondent No.1 upon receipt of such intimation/notice will appoint an officer to inspect the Secured Flat at the time as intimated in the said notice.

c. *In the event of sale in terms of clause 3 (a) above the Respondent No. 1 agrees and undertakes to return all post-dated cheques Post receipt of the amount mentioned in clause 3(a).*

4. *The Respondent No. 1 undertakes and agrees that the Respondent no. 1 or its agents, servants and/or assigns shall not to deal with and/or dispose of and/or transfer and/or, alienate and/or create any third party rights and/or part with possession of any of the Secured Flat or any part thereof until full payment or complete satisfaction of the amounts due under Clause 1(a) above.*

5. *In the event of Petitioner making payment in accordance with Clause 1(a) above, Respondent No.1 agrees and undertakes that it shall immediately handover physical possession of the Secured Flat on 31st January 2019 to the Petitioner subject to clearance of the last cheque.*

6. *Pursuant to the compliance of Clause 1 (a) above, the Petitioner agrees and undertakes to pay the EMI's regularly thereafter and in the event any default is committed in payment of EMI's the respondent shall without the intervention of the court take the Physical possession of the Mortgaged property or the Petitioner may handover the peaceful possession of the property as the case may be with a period of 7 days from such default. The Respondent No. 1 would thereafter proceed in accordance with the procedure laid down under SARFAESI Act. It is agreed that the aforesaid settlement shall be null and void in the event of any single default committed by the Petitioner and as such the Bank would be at liberty to recover entire dues from the Petitioner*

including the penal charges by disposing off the property in accordance with the provisions of law.

7. *All allegations, claims and contentions made by parties against each other are withdrawn and stand settled.*

8. *The present Writ Petition stands disposed of in terms of the present consent terms."*

6 Undertaking given by both the parties is accepted.

7 Writ Petition stands disposed of in terms of Consent Terms. Consent Terms be treated as part and parcel of decree.

8 Both the counsel submit that in view of filing of Consent Terms, Securitisation Application No.151 of 2018 pending before the DRT-II filed by Petitioner Akshay Bhansali stands disposed of.

9 Advocate for the Petitioner submits that he will place appropriate Application and copy of this order before the DRT-II within 15 days from today.

10 Undertaking is accepted.

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