

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2757/2018

Evergreen Tenant CHS Ltd.

... Petitioner

V/s.

Commissioner for Cooperative
Societies & Ors.

... Respondents

Ms. Usha R. Tiwari for the Petitioner

Mr. Rahul S. Kadam for Respondent Nos.4 and 5.

Ms. Uma Palsuledessai, AGP for State.

**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. They tendered consent terms dated 26.10.2018. Same are taken on record and marked "X" for identification.

2 Both the counsel submit that the respective parties to the Consent Terms are present in court. They entered into witness and admit the contents and execution of the Consent Terms.

3 The learned counsel for Respondent Nos.4 and 5 submits that Respondent No.5 Mukund Kanhyalal Mehta is present in court. He submits that Respondent No.4 Kanhyalal V. Mehta is not keeping well. He submits that Respondent No.5 has authority to sign on behalf of Respondent No.4. The statement is accepted.

Said Consent Terms read thus:

“CONSENT TERMS

So far as present Writ Petition, it is agreed between the Petitioner - alleged Tenants Co-operative Housing Society Ltd. and Respondent Nos. 4 and 5 that to file present consent terms as follows:-.

1. That, it is Clarified that Respondent Nos. 4 and 5 are not accepting the Petitioner - Evergreen Tenants Co-operative Housing Society Ltd. through whom they have filed Petition i.e. Ravindra J. Vora as valid Managing Committee and Committee Member. It is also clarified that Petitioner do not agree and accept the Present Clarification.
2. It is Clarified that the Respondent Nos.4 and 5 are not accepting the total amount of due calculated by the alleged Petitioner society i.e. RS.32,72,506/-. It is also clarified that Petitioner do not agree and accept the Present Clarification.
3. It is Clarified that, Respondent No.4 and Respondent No.5 are disputing the said amount calculated by the Petitioner. However, the Respondent No 4 and Respondent No.5 as directed and transpired before this Hon'ble Court are ready and willing to deposit with Petitioner an amount without prejudice to their rights and contentions in following manner:

- a) Rs.4,00,000/-(Rs. Four Lakh Only) on or before 31.10.2018.
 - b) Rs.1,00,000/-(Rs. One Lakh Only) per month paid on or before 15th day of every month effecting from 15th December, 2018 till the entire sum of Rs.32,72,506/- along with further interest @ 21% Per annum accrued on the reducing amount is paid to the Petitioner society.
4. The Respondent Nos. 4 and 5 agree and undertake to handover vacant and peaceful possession of Flat No.7, to Petitioner Society within a period of one month in case of any two defaults in the payment of aforesaid amount are occurred and/or if bills towards the maintenance & other outstanding raised by the Petitioner Society are not paid.
 5. That, the Respondent Nos. 4 and 5 agreed to make payment of bills raised towards the maintenance & other outstanding of the alleged Petitioner Society and delay in the said payment will constitute as default.
 6. That, in case of any two defaults on part of Respondent Nos. 4 and 5, the Respondent No.3 Deputy Registrar of Co-operative Societies, D Ward, on being communicated of defaults, is directed to take possession of Flat No.7, removing the respondent Nos. 4 and 5 and any other Person found therein & the

vacant possession of the said Flat will be given to the Petitioner.

7. That the Respondent Nos.3-Deputy Registrar of Co-operative Societies, D Ward, Mumbai, take assistance of Senior Police Inspector (Gaumdevi Police Station, Mumbai), in taking possession of the Flat No.7 from the Respondent Nos.4 and 5, if required.
8. That the Petitioner Society undertakes to return amount to the Respondent Nos. 4 and 5, if there is any order passed by Court regarding refund /Excess of any amount to the Respondent Nos. 4 and 5 in any proceedings or order.
9. It is agreed that, the amount of Rs. 14,000,00/- (Rs. Fourteen Lakhs only), out of said sum of Rs. 32,72,506/-, deposited by the Respondent Nos. 4 and 5 will be withdrawn by the Petitioner and Committee members and Remaining amount will be deposited in the Fixed Deposit which will be withdrawn after the decision of Writ Petition No.7537/2011 and three disputes bearing Dispute Nos. 372/2006, 378/2010 & 170/2012.
10. It is agreed between the Parties that the three Disputes bearing Old Dispute Nos. CC/II/372/2006, CC/II/378/2010 & CC/II/170/2012, presently pending before the Co-Operative Court-1, Mumbai would be decided within time bound period of six months and

both parties have agreed that, this Court can issue necessary directions to the said Court for the same.

11. It is clarified that the amount, which is calculated by the present petitioner, alleged Managing Committee and the Society i.e. of RS.32,72,506/-, the Respondent Nos. 4 and 5 are disputing and therefore, after succeeding in the Disputes and various proceedings, they are intending to file, if the amount is calculated is lesser than RS. 32,72,506/-, the same will be adjusted or will be refunded to the Respondent Nos. 4 and 5.
12. It is agreed after full and final payment of RS. 32,72,506/-, with further interest @ 21% Per Annum accrued thereon on the reducing amount, the order dated 05/04/2016 Passed by Respondent No. 3-The Deputy Registrar CS D-Ward, Mumbai, or any further orders under Sec.100 of The Maharashtra Co-operative Societies Act or any further orders of transferring share, right, title and interest in Flat No. 7 in favor of Petitioner Society shall stand withdrawn /stand Cancelled Automatically.
13. That thus the above referred Writ Petition is disposed off in terms of above consent terms with liberty to apply this court in case of any doubt or ambiguity.

Hence these consent terms.

This Consent terms are signed at Bombay on

26/10/2018 .

Respondent No.4
(Kanhaylal V. Mehta)

Respondent No.5
(Mukund Kanhyalal Mehta)

I have read entire Consent Terms same are as per my instructions

Evergreen Tenants Co-op Housing
Society ltd .Through its
(Ravindra J. Vora)

(Rahul S. Kadam)
Advocate For The Respondent No.4 & 5

Usha Tiwari
Advocate For The Petitioner”

4 The Writ Petition stands disposed of in terms of the Consent Terms.

5 The undertakings given by the parties in the Consent Terms are accepted.

6 Hearing of Writ Petition No.7537/2011 is expedited.

7 Office to place the Writ Petition no.7537/2011 for final hearing in the weekly board commencing from 04.02.2019.

8 Parties to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(K. K. TATED, J.)