

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

First Appeal NO. 1412 OF 2017

Manish Narendra Parekh

..Appellant.

Versus

M/s. Doshi Industries,
And Ors.

...Respondents

....

Mr. Susmit Phatale, Advocate for the Appellant.

Mr. Chetan R. Shah, Advocate i/b. R.L. Shethia, Advocate for the Respondents.

....

**CORAM : K.K. TATED &
SARANG V. KOTWAL, JJ.**

DATE : 18th DECEMBER, 2019

P.C.

1. 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 across the bar.
3. The appellant as well as respondent No.4 Partner of respondent No.1 as also on behalf of respondent Nos.2 & 3 entered into the witness box. Both of them admitted execution of the consent terms as well as the contents thereof. They also admitted the undertakings given by them in the consent terms. The consent terms dated 18.12.2019 are taken on record and marked 'X' for identification, which reads thus :

“ IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1412 OF 2017

IN

BCCC SUMMARY SUIT NO. 6494 OF 2006

IN

H.C. SUMMARY SUIT NO. 1658 OF 2006

DIST.: MUMBAI

Manish Narendra Parekh	]
S/o Late. Narendra B. Parekh	]
Adult, of Mumbai, Indian Inhabitant	]
Residing at Ambaji Building,	]
Flat no. 25/26, 7 th floor, factory	]
Lane, Nr. Gokhale School,	]
Borivali (West), Mumbai- 400092.	]...Appellant
	[Orig. Defendant]

Versus

1. M/s. Doshi Industries,	]
A registered partnership firm	]
Having its principal place of business at	]
116, Princess Street, 53-54, Keshav	]
Baug, 3 rd Floor, Mumbai – 400 002.	]
2. Sunil Dhirajlal Doshi	]
A partner of the Plaintiff No.1 firm,	]
Residing at 303 Viraj Kunj,	]
Vallabhbhai Road, Vile Parle (W),	]
Mumbai – 400 056.	]
3. Jyotiben Dhirajlal Doshi	]
A partner of the Plaintiff No.1 firm	]
Residing at 303, Viraj Kunj,	]
Vallabhbhai Road, Vile Parle (W),	]
Mumbai – 400 056.	]
4. Dhirajlal Babulal Doshi	]
A partner of the Plaintiff No.1 firm,	]
Residing at 303, Viraj Kunj,	]
Vallabhbhai Road, Vile Parle (W),	]
Mumbai – 400 056.	]...Respondents
	[Orig. Plaintiffs]

CONSENT TERMS

1. The Summary Suit was filed by the above-referred original Respondent abovenamed i.e. the original

Plaintiffs against the Appellant for a Principal claim of Rs.5,44,860/- along with interest @ 18 % per annum.

2. The Bombay City Civil Court passed a Judgment in the said Summary Suit on 31.03.2017 thereby the Bombay City Civil Court Decreed the Suit with cost & directed the original Defendant to pay a sum of Rs. 5,44,860/- along with interest thereon at the rate of 9 % per anum to the Plaintiff. The Original Appellant challenged the said Judgment dated 31.03.2017 by filing the Present First Appeal.

3. The Appellant and Respondents after the mutual discussion and understanding have now arrived at an Amicable Settlement.

4. That in accordance to the settlement arrived between the Parties, it is hereby mutually agreed between the present Appellant & Respondents as follows:

- a. The Respondent hereby confirm and accept a sum of Rs. 11,11,000/- (Rupees Eleven Lakhs and Eleven Thousand Only) towards full and final settlement towards its claim under the decree dated 31.03.2017 passed in Summary Suit no. 6494 of 2006.
- b. The Appellant has already paid an amount of Rs. 11,11,000/- (Rupees Eleven Lakhs and Eleven Thousand Only) to the Respondent towards the full and final settlement towards Respondent's Claim. The Respondents hereby willingly accept and acknowledge the receipt of the said amount in entire satisfaction of claim under the decree dated 31.03.2017 passed in Summary Suit no. 6494 of 2006. The Appellant has paid the said amount by way of four Pay Orders dated 29.11.2019, 29.11.2019, 29.11.2019 & 10.12.2019, bearing nos. 064196, 064195, 064194 & 346493 respectively. Enclosed herewith are the copies of the Pay Orders.

- c. The Respondents i.e. the original Plaintiffs hereby declares that it has no claim whatsoever against Defendants, in respect of and / or arising out of the subject matter of the Summary Suit no. 6494 of 2006 and decree dated 31.03.2017. The Respondent i.e. the Original Plaintiff hereby undertakes to withdraw the execution proceedings filed in the Bombay City Civil Court bearing no. 539 of 2017 immediately after the execution of the present consent terms.
 - d. The Respondents i.e. orig. Plaintiffs, in lieu of having received the aforesaid amounts hereby states that, it shall not make any further claims or raise any disputes against the Appellant herein-above and/or their Successors, legal heirs and legal assigns, pertaining to the cause of action and the subject matter mentioned in the Summary Suit no. 6494 of 2006.
 - e. The Original Defendant has furnished the security of Rs. 4,50,000/- in this Hon'ble Court by way of Fixed Deposit Receipts of Bank Of India of Rs. 4,50,000/- (Four lakhs and Fifty Thousand). In terms of the present settlement, the Appellant is entitled to receive back the original Fixed Deposit Receipt of Bank of India from the Court. The Appellant in view of the present settlement is entitled to withdraw the amount of said Fix Deposit from the Bank of India. The Prothonotary and Senior Master is directed to return the Fixed Deposit Receipts to the Appellant.
 - f. The Parties to the present Consent Terms and the Summary Suit hereby declare and understand that every representation given by them respectively herein-above, shall be an Undertaking to the Hon'ble Court and they shall strictly abide by their respective undertaking.
5. No Orders as to Costs and Refund of Court Fees as per rules.

6. That in view of the above consent terms, the present First Appeal & Civil Application no. 4225 of 2017 stands Disposed off.

Dated this 18th day of December, 2019.

Sd/-
Advocate for the Appellant

Sd/-
Appellant

Sd/-
Advocate for the Respondents

Sd/-
Partner of Respondent No.1
Respondent No.3 and on
behalf of all the Partners.”

4. First Appeal stands disposed of in terms of the consent terms.
5. Decree to be drawn in terms of consent terms.
6. Parties to act upon the authenticated copy of this order.

(SARANG V. KOTWAL, J.)

(K.K. TATED, J.)

Deshmane (PS)