

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION
FIRST APPEAL NO.1870 OF 2008**

Madhusudan S.Podddar & anr .. Appellant
vs
Shreeprakash Apoddar & ors .. Respondents

Mr P.J.Thorat with Mr.P.B.Gujar, Mr.M.S.Poddar for Applicant
Mr.S.Periastav for Respondent nos.1,3 and 4.

CORAM : K.K.TATED, J
DATE : 29th MARCH, 2019

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Not on board. At the request of learned counsel for the appellant, matter is taken on board.

2. Heard learned counsel for the parties.

3. Both learned counsel submits that the matter is settled out of Court. They tender consent terms dated 29.3.2019 duly signed by the appellant nos. 1 and 2 on one hand and respondent nos.1,2,4 and 5 on the other hand alongwith their respective advocates.

4. Both the learned counsel submit that all the parties are present before this Court. They enter the witness box. They admit the contents in the consent terms as well as the execution thereof. Hence, consent terms are taken on record and marked 'X' for identification. Undertakings given by the parties in para 7, 8, 12, 23 and 27 are accepted. Consent terms reads thus :

CONSENT TERMS

“That the Respondent Nos. 1 & 2 had filed S.C. Suit No.2447 of 2006 against the Appellants before the City Civil Court at Mumbai seeking a declaration that the Appellants have no right to stay in the suit premises i.e. flat No.25, 4th Floor, Shreyas Building, Opp. Air India Building, Nariman Point, Mumbai 400020 and for mandatory Injunction directing the Appellants to remove themselves from the suit premises.

That by Judgement and Decree dated 6th August, 2008 the City Civil Court at Mumbai is pleased to decree S.C. Suit No.2447 of 2006 filed by the Respondent Nos.1 & 2. Being aggrieved and dissatisfied by the Judgement and decree dated 6th August, 2008 passed in Suit No.2447 of 2006, the Appellants have filed the present First Appeal.

That this Hon'ble Court by Order dated 29th September, 2008 is pleased to Admit the present First Appeal and the same is now pending for Final Hearing.

That during the pendency of the present First Appeal the parties have decided to resolve their disputes amicably on the following terms and conditions.

1. That by consent of all the parties Mrs. Sarika Manish Poddar is added as Respondent No. 5 to the above Appeal.
2. That by consent of all the parties hereto, the impugned Decree and Judgment passed on 6th August 2008 by the City Civil court, Bombay in Short Cause Suit No.2447 of 2006 is quashed and set aside, and the parties have arrived at settlement on following terms:

3. It is agreed, declared and confirmed by and between the parties that each of the Appellants have undivided 1/6th ownership share, right in the suit flat viz. Flat No. 25, "Shreyas", 4th , Floor, Opp. Air India Building, Nariman Point, Mumbai- 400020, meaning thereby both the Appellants jointly have 1/3rd undivided ownership share, right, title and interest in the suit flat, as stated in the Arbitration award dated 30/8/1990 and decree dated 31/8/1990 (hereinafter referred to as the said Award). A copy of the Arbitration Award dated 30/8/1990 is annexed hereto as **Annexure- 1.**
4. It is agreed, declared and confirmed that the Respondent No. 1 has undivided 1/3rd ownership share, right, title and interest in the suit flat and the parties agree and confirm that originally under the said Award the Respondent No. 1 and the original deceased Respondent No. 2 Mrs. Sushiladevi Poddar were each having 1/6th ownership share and her share was bequeathed and devised by her to Respondent No. 1 by virtue of her last will and testament dated 11th October, 2009, and thereby the Respondent No. 1 has become entitled to the Estate of the said original deceased Respondent No. 2 Mrs. Sushiladevi Poddar. These consent terms will be accepted and binding on all the legal heirs of the parties hereto for the purposes mentioned herein under.
5. That the parties agree and confirm that Respondent No. 3 along with his wife, the newly added Respondent No.5 viz. Mrs. Sarika Manish Poddar each have undivided 1/6th ownership share, right, title and interest in the

suit flat No.25, “Shreyas”, 4th floor, Opp. Air India Building, Nariman Point, Mumbai- 400020, as per the said Award meaning thereby both the Respondent No.3 & 5 jointly have 1/3rd undivided ownership share, right, title and interest in the suit flat.

6. That the parties hereto agree, declare and confirm that they have not signed any documents and papers or entered in to any arrangement with regard to the suit flat or the tenanted office premises at 1st floor, Rathi Bhavan, at 357, Kalbadevi Road, Mumbai-400002 which would prejudice the rights of the parties hereto. It is understood, agreed, declared and confirmed that in respect of the suit flat, (i) the Appellants No. 1 and 2 jointly have 1/3rd ownership share, (ii) the Respondent No.1 has 1/3rd ownership share and (iii) the Respondent No.3 & 5 jointly have 1/3rd ownership share. It is also further understood, agreed, declared and confirmed that in respect of the said tenanted premises, the Appellant Nos. 1 & 2 and Respondent No. 3 & 5 each individually have 1/6th share and Respondent No.1 has 1/3rd share.
7. The Respondent No. 1 agrees, declares, confirms and undertakes to pay a total sum of Rs.50,00,000/- (Rupees Fifty lakhs only), comprising of Rs.25,00,000/- (Rupees Twenty five lakhs only) each to Ms. Mansi Madhusudan Poddar and Ms. Nitika Madhusudan Poddar, both being daughters of Appellant Nos. 1 & 2, as gift to the above named two grand-daughters of Respondent No. 1 by executing a Gift confirmation letter for

each of the above respective gifts. This amount of Rs.50,00,000/- is to be paid by the Respondent no. 1 out of his 1/3rd share in the sale proceeds of the suit flat.=

8. The parties hereto undertake that within 30 days from the date hereof they shall make an application to the Society viz. Shreyas Co operative Housing Society limited for change, transfer and transmission of the six Share Certificates bearing Nos. 172 to 177 and bearing distinctive Nos. 1711 to 1770 comprising of total 60 shares of Rs. 50 each, in the names of Respondent No.1, Appellants Nos. 1 & 2 and Respondents Nos. 3 & 5, in accordance with these consent terms and so that the Respondent No. 1, Appellants No. 1 & 2, and Respondent Nos.3 & 5 are all made members of the said Society.
9. That the parties hereto agree, declare and confirm that for all purposes and intents (i) the Appellants Nos. 1 & 2 jointly (ii) Respondent Nos. 1 and (iii) Respondents no. 3 and 5 jointly have equal right, title and interest to use, occupy and possess the commercial premises viz. tenanted premises situated on the 1st floor, Rathi Bhavan, at 357, Kalbadevi Road, Mumbai-400002.
10. The Appellants hereby willingly relinquish their tenancy rights, share, title and interest in the commercial premises viz. tenanted premises situated on the 1st floor, Rathi Bhavan, at 357, Kalbadevi Road, Mumbai-400002 subject to completion and fulfillment of all these presents by the

Appellants and Respondents. That in lieu of the relinquishment of the rights of the Appellants in the said commercial tenanted premises the Respondent No.1 shall pay an amount of Rs.3,00,000/- (Rupees Three Lakhs only) to Appellants in equal proportion. That only after receipt of the said amount of Rs.3,00,000/-, the Appellants shall be deemed to have relinquished their tenancy rights, share title and interest in this commercial tenanted premises. The Appellants agrees to vacate and remove all their records and belongings from the said premises within 45 days after receiving the amount of Rs.3,00,000/- (Rupees Three Lakhs only) and subject to fulfillment and completion of these Consent Terms.

11. That the Respondent No. 4 agrees, declares and confirms that she does not and/or shall not claim any right, title and interest or possession in respect of suit Flat No. 25, " Shreyas", 4th Floor, Opp. Air India Building, Nariman Point, Mumbai-400020 and in the tenanted premises situated on the 1st Floor, Rathi Bhavan, at 357, Kalbadevi Road, Mumbai-400002, even if Respondent No. 1 predeceases the sale of the suit flat.
12. That the parties hereto agree, declare, confirm and undertake to co-operate with each other and to effectively implement the terms of this consent terms and agree and undertake to sign all necessary documents, papers, writings and further undertake to attend the office of the Sub-Registrar of Assurances or any other department or competent authority for the purpose of registration of all such documents if required or called upon to

do so and all the parties hereto agree that the expenses incurred for implementing this consent terms shall be equally borne by Appellant Nos.1 & 2 on one side, the Respondent No. 1 on second side and Respondent Nos.3 & 5 on third side.

13. That since the parties have already decided and agreed upon their respective shares in the said suit flat thereof, it is further decided between the parties that the said suit flat is to be sold and disposed off within a period of four (4) months from the date hereof or at the earliest possible and not later than one year from the date of filing of the present Consent Terms, at the best possible price by private bidding, and confirming the sale to the highest bidder. The parties, declare and confirm that the sale proceeds / consideration received from the prospective purchaser due to the sale of the suit flat shall be distributed in three parts/ratio as follows:

- a) $\frac{1}{3}^{\text{rd}}$ to the Appellants jointly.
- b) $\frac{1}{3}^{\text{rd}}$ to the Respondent No. 1 (subject to compliance with clause 7 & 14) and
- c) $\frac{1}{3}^{\text{rd}}$ jointly to Respondent Nos.3 & 5.

Provided that for avoidance of doubt it is clarified that the Appellants, Respondent no. 1, 3 & 5 shall each be responsible to discharge their individual tax liability in respect of the sale of the said suit flat.

14. That the Parties hereto have further agreed that the $\frac{1}{3}^{\text{rd}}$ share of the

Respondent No.1 in the sale proceeds of the suit flat shall be utilized in the following manner :

- a. Rs.50,00,000/- to be paid by the Respondent No.1 to Ms. Mansi Madhusudan Poddar and Ms. Nitika Madhusudan Poddar as mentioned in Clause No.7 above.
- b. 50% of the balance amount of consideration received by the Respondent No.1 after payment of the amount as mentioned in 14(a) above shall be given by Respondent No.1 to Respondent No.3 Mr.Manish Shreeprakash Poddar.
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- c. Out of the remaining 50% of the balance amount of consideration received by the Respondent No.1 after payment of the amounts mentioned in 14(a) & (b) above, he would retain with himself an amount of Rs.30,00,000/- for his own use and the Respondent No.1 will also invest an amount of Rs.50,00,000/- in Fixed Deposit or Tax Saving bonds in the joint names of the Respondent No.1 and his daughter Mrs. Bandana Navin Jhajharia i.e. Respondent No.4. That after the demise of the Respondent No.1 the Respondent No.4 Mrs. Bandana Navin Jhajharia will be exclusively entitled to receive the amount of Rs.50,00,000/-. That during the lifetime of the Respondent No.1 he will be entitled to receive the interest that would be accrued on the aforesaid Fixed Deposit/Tax Saving Bonds.
That, after retaining the amount of Rs.30,00,000/- with himself and after investing the amount of Rs.50,00,000- in Fixed Deposit or Tax Saving Bonds the residual amount shall be paid over to Mrs.Bandana Navin Jhajharia i.e. Respondent No.4 exclusively.

15. In the event the Respondent No. 1 predeceases the sale of the suit flat, the parties hereto have further agreed that the Purchaser of the suit flat will make the payment of the sale consideration in the following manner:

- a) 1/6th consideration to the Appellant No.1
- b) 1/6th consideration to the Appellant No.2

- c) 1/6th consideration to the Respondent no. 3
- d) 1/6th consideration to the Respondent no. 5
- e) Rs. 25,00,000/- (Rupees twenty five lakhs) each to Ms. Mansi Madhusudan Poddar and Ms. Nitika Madhusudan Poddar
- f) 50% of the balance consideration after payment of amounts as per clause 15 (a), (b), (c), (d) and (e) above along with an additional amount of Rs. 30,00,000/- (rupees thirty lacs only) to the Respondent no. 3
- g) remaining balance consideration after payment of amounts as per clause 15 (a), (b), (c), (d), (e) and (f) above to Respondent No. 4.

Provided that for avoidance of doubt it is clarified that all the parties hereto excluding Respondent No.1 and including daughters of Appellants shall each be responsible to discharge their individual tax liability in respect of the consideration received on sale of the said suit flat.

- 16. It is further agreed that in the event the Respondent No. 1 predeceases the sale of the suit premises, then, Respondent No. 3 and Appellant No.1 jointly shall be authorized on behalf of all the legal heirs of Respondent No.1 to execute the sale deed in respect of Respondent No.1's share of the said premises.
- 17. The parties hereto agree that the expenses which may be incurred for undertaking the sale of the suit flat by such mode as aforesaid would be equally shared in their respective ratio of 1/3rd each, i.e., Appellants jointly on one side, Respondent No. 1 on the other side and Respondents Nos. 3

& 5 jointly on the third side and thereafter no dispute shall take place, however subject to accountability of such expenses.

18. That the parties agree that there should be an arrangement and understanding made with such prospective proposed Purchaser of the suit flat that the sale proceeds/ consideration is directly paid to the Appellant Nos.1 & 2 to the extent of their 1/3rd share and to the Respondent No.1 of his 1/3rd share and the balance 1/3rd share to the Respondent Nos.3 & 5.
19. The Sale Deed of the suit flat shall have all the parties hereto above mentioned other than Respondent no. 4 as Vendors of the said suit flat and the Vendors shall hand over clear and vacant possession of the suit flat on completion of the transaction of sale. The Parties agree that the sale proceeds/consideration received from the prospective purchaser on the sale of the suit flat shall be distributed accordingly in five parts/ ratio
1/6th in the name of Appellant No. 1
1/6th in the name of Appellant No. 2
1/3rd in the name of Respondent No.1
1/6th in the name of Respondent No. 3
1/6th in the name of Respondent No. 5
20. That the parties agree, declare and confirm, that each of the Appellants no. 1 & 2, and Respondents No. 1, 3 & 5 can look for prospective buyers of the said flat. That upon a prospective buyer bidding a price for the said flat, the same would be binding on the Appellants and Respondents.

However, if either, the Appellants on one part or the Respondents on the second part feel the quoted price mentioned by the prospective buyer does not reflect the true value of the suit flat, they would be entitled to find a buyer for the said flat for a consideration above the consideration value quoted by the prospective buyer within a period of 30 days from the receipt of the offer made by the prospective buyer brought by either party. That in the event the other party fails to find a buyer at an amount higher than the amount of consideration offered by the prospective buyer within the period of 30 days the other Party shall not object to the sale of the flat in favour of the prospective buyer at the offered price. The Respondents, other than Respondent No. 4, who only are at present occupying the suit flat undertake that they will permit the prospective buyers to inspect the suit flat as and when called upon to do so. The parties have agreed that in the interest of all, a value of Rs.8.00 crores (Rupees Eight Crore Only) be fixed as a Reserve Price for the suit flat below which no offer from prospective buyers of either of the parties involved herein shall be considered unless it is mutually agreed by the Appellant Nos.1 & 2, Respondent No.1 and Respondent Nos.3 & 5, in consultation with Shri. Sri Prakash Kanudia, being the mediator, as mentioned and appointed in Clause No.21 herein under.

21. The parties hereto agree and confirm that they have appointed Shri. Sri Prakash Kanudia, resident of 365, Harish Ganj, Kanpur 208004, to act as a

mediator to assist them in execution of these consent terms and sale of the said suit flat in accordance with these presents. It is also agreed and confirmed by all the parties hereto that in the event the suit flat cannot be sold for value of Rs.8.00 Crores or more within 4 months then Shri. Sri Prakash Kanudia shall have authority to decide a revised minimum sale price, for the purpose of sale of suit flat, which shall be final and binding on all the parties. Shri. Sri Prakash Kanudia will have the authority to decide the revised sale price more than one time and till such time the suit flat is sold within a period of one year from the date of filing of the present Consent Terms. The decision conveyed by him in writing to all concerned signatories to these presents, will be final and binding on all the parties unless the Appellants, Respondent No.1 or Respondent Nos.3 & 5 bring a Purchaser who is willing to offer a price over and above the revised price that may be fixed by Shri. Sri Prakash Kanudia.

22. The parties hereto agree and confirm that during the performance of obligations contained in these Consent Terms, the Respondents Nos. 1, 3 & 5 will continue to remain in exclusive possession and occupancy of the suit premises, flat no.25, "Shreyas", 4th floor, Opp. Air India Building, Nariman Point, Mumbai- 400020.-
23. The parties hereto agree, declare and undertake to abide by terms of these Consent terms. The parties further agree that they shall not create any confusion or obstruction and hurdles in implementing and enforcing the

terms and conditions referred herein and shall also see that respect and dignity of Poddar family would be maintained and no further litigation are invited. The parties hereto hereby agree that the death of any of the parties hereto will not affect the implementation of these presents. The parties hereto also agree and declare that in the event of demise of any of the parties hereto, after execution-of these presents and before sale of suit flat, the legal heirs of the respective parties, will abide by the terms and condition of these presents and be entitled to the said benefits accordingly and shall not be entitled to any other claim by way of inheritance or otherwise, as also mentioned at Clause 30 hereunder.

24. The Appellants and the Respondents have represented to each other and have assured each other that they have not created any third party right, title and interest with regard to the suit flat No.25 "Shreyas", 4th Floor, Opp. Air India Building, Nariman Point, Mumbai-400020, or the said commercial tenanted premises situated on the 1st Floor, Rathi Bhavan, at 357, Kalbadevi Road, Mumbai-400002 or any part and parcel thereof.
25. Further that the parties agree that any other pending litigation amongst each other initiated by either of them in respect of the said suit flat No.25, "Shreyas", 4th Floor, Opp. Air India Building, Nariman Point, Mumbai-400020 and the said commercial tenanted premises situated on the 1st Floor, Rathi Bhavan, at 357, Kalbadevi Road, Mumbai-400002 are settled by this consent terms and they respectively undertake to withdraw such

proceedings including the following suits viz.

- (a) S.C. Suit No.535 of 2008 before the City Civil Court at Mumbai.
- (b) Appeal No.A/0186/18 of 2018 before the Divisional Joint Registrar, Co-operative Societies, Mumbai

26. That the parties hereto agree and confirm that the amount of Rs. 4,00,000/- (Rupees four lacs only) deposited by Respondent No. I under the Orders of Hon High Court in the Suit No. 2447 of 2006 including Interest thereon shall be received by Respondent No. 1 only and Appellants No. 1 & 2 and Respondents No. 3, 4 & 5 shall have no claim on it whatsoever.
27. That the parties hereto agree and undertake to dissolve all the firms / trusts in which they are currently joint Partners / trustees with immediate effect. It is also mutually agreed that no distribution of assets and liabilities will accrue to any of the parties on dissolution of such firms/trusts or other entities. It is hereby agreed that no liability shall be fastened or shall accrue to the account of any of the signatories to these Consent Terms pursuant to the dissolution or otherwise of such firms / trusts as mentioned hereunder. Viz.
- a. Manish & Co.,
 - b. Gwa-Tex Enterprise,
 - c. Shree Maharashtra Trading Company
 - d. Jaypee Enterprises

- e. Espee Enterprises
- f. Nitika Enterprises
- g. B. S. Enterprises
- h. Shivram Shreeprakash
- i. Indo Asia Exim
- j. Creative Expressions
- k. Shivram Shreeprakash Poddar Charitable Trust

Provided that it is further expressly agreed between the parties, all inter se liabilities and /or obligations of whatsoever nature, subsisting in between the above said entities are also hereby settled and discharged and no amounts shall be payable by any entity to other entity.

28. It is agreed upon that from the date of these presents, each party hereto shall fully and forever, release and discharge all other parties from any/all claims, demands, liens, actions, agreements, suits, causes of action, obligations, controversies, debts, costs and liabilities of whatever kind, sort or nature in law, equity or otherwise whether now known or suspected which have existed or may have existed, or which do exist, or which hereafter can, shall or may exist, based on any facts, events or omissions, occurring from any time in respective of the assets / liabilities allocated to each party under this settlement subject to the compliance of the present Consent Terms.
29. All parties hereto agree not to institute any court cases or complaints of

any kind against each other and all cases, petitions or complaints, if initiated will be withdrawn as per the terms set out herein.

30. It is agreed that from the date of fulfilling and completing the obligations under the present Consent Terms each of the parties hereto shall not be entitled to claim any right by any means whatsoever including by way of inheritance or otherwise, over the movable and/or immovable assets, which are received or have come into the hands/share of Respondent No. 1. The said Respondent No. 1 will be solely entitled to deal / bequeath his assets in the manner he so desires.
31. In view of the aforesaid, the order and decree dated 6th August 2008 stands set aside and the First appeal is disposed off accordingly.”
5. Consent terms accepted.
6. First Appeal stands disposed of in terms of consent terms.
7. Consent terms to be treated as part of decree.
8. No order as to cost.

{K.K.TATED, J}