

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

**FIRST APPEAL NO.1219 OF 2011
WITH
CIVIL APPLICATION NO.3891 OF 2018
IN
FIRST APPEAL NO.1219 OF 2011
WITH
FIRST APPEAL NO.1227 OF 2011
WITH
CIVIL APPLICATION NO.1229 OF 2018
AND
CIVIL APPLICATION NO.3932 OF 2018
IN
FIRST APPEAL NO.1227 OF 2011**

Lalubhai Amarchand Chhabria ...Appellant
Versus
Raju Babulal Chhabria and Anr. ...Respondents
.....
Mr. Vijay M. Vaghela for the Appellant.
Mr. Sahil Mahajan for the Respondent Nos.1 and 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 4th MARCH, 2019.

P.C.:-

At the outset the learned counsel for the Appellant in First Appeal Nos.1219 of 2011 and 1227 of 2011 seeks leave to delete the name of the Respondent Nos.3 and 4. Leave is granted. Cause title be amended forthwith.

2. The learned counsel for the Appellant and the learned

counsel for the Respondent Nos.1 and 2 submit that the Appellant and the Respondent Nos. 1 and 2 have settled the dispute amicably. They have placed on record the consent terms, which are signed by the Appellant and by the Respondent Nos.1 and 2 and by their respective counsel. Said consent terms read thus :-

- “1. By way of present Consent Terms, an amicable settlement has been arrived between the parties. Thus, the Appellant irrevocably and unconditionally withdraws the Appeal against the Respondent Nos.3 and 4 in the above matter.
2. That the Appellant and Respondent Nos.1 and 2 have settled all their disputes amicably and permanently forever as more particularly set out in the Deed of Family Arrangement entered into on 1st June, 2017. A copy of the Deed of Original Family Arrangement is annexed and marked “Exhibit- “A” herein.
3. The Appellant and Respondent Nos.1 and 2 undertake to perform their part performance as per Family Arrangement at Exhibit- “A” hereto.
4. Both the parties have settled their disputes as per the present consent terms and Family Arrangement at Exhibit “A” hereto and have given up any other claim, demand or dues if may be found in future.
5. The Appellant has agreed to release their undivided right, title and interest and Share i.e. 50% share of entire land and building viz “land and building situated at Village Amli, Dadra Nagar-Haveli, under Survey No.126/P, Plot No.8” in favour of Respondent No.1 and 2 against full and final consideration of Rs.71,00,000/- (Rupees Seventy One Lakhs only).

6. That the Appellant and Respondent No.1 and 2 agree and undertake to lodge the Deed of Release with the Registration Office of Dadra Nagar Haveli for the immovable properties viz. the factory-land and building situated at survey No.126/P, Village Amli, Dadra and Nagar Haveli, Silvassa after the Respondent Nos.1 and 2 pay the Stamp Duty, Registration Fee of Deed of Release within seven days of this consent terms filed in this Hon'ble High Court, Bombay. A copy of the Release Deed is annexed herewith at Exhibit-"B" hereto.
7. That Appellant is the owner of one flat being Flat No.11, Building No.C-5, 2nd Floor at Bassera Co.op. Housing Society Ltd. Silvassa. That flat is presently in use, occupation and possession of one Mr. Panjwani. Appellant agreed to gift said Flat to Shri Ajay Babulal Chhabria the Respondent No.2 herein and further agreed to execute registered Gift Deed within a period of seven days from the date of filing of consent terms. The Stamp duty, registration charges and gift tax shall be borne by the Respondent No.2. A copy of the Release Deed is annexed herewith at **Exhibit- "C"** hereto.
8. The Respondent No.1 and 2 have agreed to hand over to Appellant Demand Draft bearing No.159090 dated 20.02.2019 drawn upon Syndicate Bank, Sunder Nagar, Malad (West) Branch for Rs.71,00,000/- in favour of the Appellant at the time of registration of the Release Deed. A copy of the said Demand Draft is annexed herewith at Exhibit-"D" hereto.
9. The Appellant agree and undertake to give consent Affidavit in the legal proceedings Petition proposed to be filed by the Respondent No.2 in the Hon'ble Bombay High Court for quashing of Criminal Complaint No.1435/PW/2005 pending before of Metropolitan Magistrate 32nd Court at Bandra Mumbai filed against the Respondent No.2 by

Appellant after realisation of aforesaid Rs.71,00,000/- in Bank Account of 1st Appellant abovenamed.

10. That undertaking of both the parties i.e. the appellant and Respondent No.1 and 2 be accepted.
11. That all pending Civil Applications be treated as withdrawn and Appeal be ordered to be disposed off in terms of this Consent Terms.
12. That the Appellant and Respondent nos.1 and No.2 are withdrawing all the allegations made against each other and shall perform their part of performance faithfully in which shall benefit both the parties including sign, seal and execute such other and further documents as may be required in future for performance of Exhibits "A", "B" and "C" annexed hereto only after realization of Rs.71,00,000/- in Bank Account of Appellant abovenamed. The exhibits form an integral part of these Consent terms and both parties undertake to strictly abide by the terms therein.
13. That the Appellant prays to withdraw the First Appeal No.1227 of 2011 and the same may be allowed by this Hon'ble Court upon realization of Rs.71,00,000/- in Bank Account of the Appellant abovenamed.
14. The First Appeal No.1867 of 2013 and First Appeal No.147 of 2014 filed by Respondent No.1 and 2 be treated as withdrawn in view of the Exhibit-A hereto and as per agreed terms of this Consent Terms and parties be allowed to get Refund of the Court fees as per law/Rules.
15. In case of any breach committed by any of the Party Consent Terms, "the party not in breach" shall give a 15 days notice to the "other party in Breach" to fulfill its performance under these Consent terms/rectify the breach. However, if the breach continues even after the aforesaid notice period the parties will have to suffer consequences breach of undertaking given to this Hon'ble Court.

16. Both the parties agree that they have agreed to file these Consent Terms voluntarily and without any threat/coercion from any person.

17. No order as to costs.

3. The Appellant Nos.1 and 2 are present before this Court. They are identified by their respective counsels. The Respondent Nos.1 and 2 have signed the said terms and admits that the said terms are agreeable to them. The terms are taken on record and marked 'X' for identification. Statements made in paragraphs 3, 6, 9 and 10 are accepted as undertaking to the Court.

4. Appeals stand disposed of in view of the consent terms. Decree be drawn up accordingly.

5. In view of above, the civil applications do not survive and hence stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)