

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

WRIT PETITION NO. 10664 OF 2014

Chairman/Secretary,
Zakaria Industrial Premises Co-op. Soc. Ltd. ..Petitioner

v/s.

Mr. Nalikumar M. Patel & Ors. ..Respondents

Ms. Seema Sarnaik for the Petitioner.
Mr. Yatin N. Shah for the Respondent No. 3.
Mr. S.D.Rayrikar, AGP for the Respondent Nos. 4 to 6.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 14th JANUARY, 2019.**

P.C.

1. The petitioners, by this petition filed under Article 227 of the Constitution of India have challenged the legality of the judgment and order dated 3rd September, 2013 passed by the Joint Registrar, Co-operative Societies, Mumbai in Appeal No. 83 of 2012.
2. Ms. Seema Sarnaik, the learned Counsel for the Petitioner and Mr. Shah, the learned Counsel for the Respondent no.3, as well as the learned AGP for the Respondent nos.4 to 6 have submitted that the parties have resolved the dispute amicably. They have placed on

record the Consent terms signed by Mr. L.Y.Bhide, Mr. Khanolkar- the Secretary of the Petitioner society, and by the Respondent no.3 who is the contesting Respondent, and by the learned Counsel for the respective parties. The learned Counsel for the Petitioner has also placed on record copy of the letter of Authority, forwarded to her by the Secretary of the Petitioner society. By the said letter the Secretary of the petitioner society has authorized one L.Y.Bhide to represent the society in the present petition. The said Letter of Authority and the forwarding letter are taken on record and marked Exhibit "X" colly.

3. The consent terms read thus:

"The petitioner and Respondent No.3 hereto have settled the disputes amicably on the following terms and conditions:

(i) The Respondent No.3 declares that the Respondent No.1 has expired on 16.07.2018. The Petitioners accept the said statement. The Respondent No.3 has supplied the death certificate of Respondent No.1 and Respondent No.2, receipt of which has been acknowledged by the Petitioners.

(ii) The Respondent No.3 declares and undertakes that

save and except for himself there are no other legal heirs of Respondent Nos.1 and 2.

(iii) The parties hereto agree that upon the death of Respondent Nos.1 and 2, the petitioners have transferred Galas No. 3-GF and 4-GF in the name of the Respondent No.3 on 23.10.2018. The Respondent No.3 has given indemnity bond dated 27.09.2018 to the satisfaction of the Petitioners which the Petitioners have accepted.

(iv) The Respondent No.3 as of 19.11.2018 has paid and cleared all the arrears of dues whatsoever and payable to the Society, up to and including the month of November, 2018 towards Gala No. 3-G.F., 4-G.-F and 15-F-F and which has been acknowledged by the Petitioners.

(v) The Respondent No.3 agrees and undertakes that he shall pay the monthly maintenance of the three galas 3-G.F., 4-G.-F and 15-F-F on receipt of the bills by e-mail and or by post as per the rules of the society.

(vi) The Respondent No.3 agrees and undertakes that in the event of any 3 consecutive month defaults of payment of maintenance of any of the three Galas 3-G.F, 4-G.-F and 15-F-F; he shall not object if the Petitioners take any steps under Co-operative Societies Act or as per bye-laws for recovery of the same. The Petitioners will give Respondent No.3, 15 days' notice to clear the default. In the absence of such clearing of the default the Petitioners

will take any recourse of any Court of Law. The Respondent No.3 further agrees and undertake to pay the interest as applicable on the defaulted amount as per the rules of the society.

(vii) The Petitioners agree and undertake to issue a No Objection Certificate and any other necessary documents to the Respondent No.3 if and when Respondent No.3 applies for the same upon his intention to give any of his Gala No.3-G.F, 4-G.F. and 15-F.F on leave and license.

(viii) The Respondent No.3 agrees and undertakes that he shall provide the registered agreement executed with the persons/entities if any, and also comply with the required formalities under any law or rules and regulations of the society, occupying Gala No.3-G.F., 4-G.F. and 15-F.F on the execution of these consent terms and shall pay the Non-Occupancy charges thereof.

(ix) The Respondent No.3 agrees and undertakes that he shall ensure that the person/entities inducted in the galas 3-G.F; 4-G.F and 15-F.F shall abide by the rules, regulations of the Petitioner society and that there shall be no obstructions and nuisance caused by them in the day to day functioning of the Petitioner society.

(x) The Petitioners and Respondent No.3 agree and undertake to withdraw all the ongoing complaints, proceedings filed by Petitioner and Respondents 1 to 3

before all the authorities and Courts of law within 15 days of the order passed on these consent terms failing which copy of the consent terms with the order shall be produced by any one of the parties for the disposal of the complaints and/or proceedings before any Authority and/or Court of Law.

(xi) The Petitioners and Respondent No.3 agree and undertake to withdraw all the allegations made by the Respondent No.1, 2 and 3 and Petitioners against each other.

(xii) The parties agree to (I) set-aside the judgment and order dated 03.09.2013 passed by learned Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai in Appel No. 83 of 2012 (Exhibit M) (ii) Set-aside the judgment and order dated 10.01.2012 passed by Dy. Registrar Co-operative Societies K (East) Ward, Mumbai in application No.1 of 2011 (Exhibit H).

(xiii) In view of the above terms and conditions, the resolution dated 22.01.2011 passed by the Society expelling Respondent No.1 to No.3 is set aside and the Petitioner society agrees and undertakes to accept Respondent No.3 as member of the Society with respect of Galas 3-G.F. and 4-G.F. and continue to accept Respondent No.3 as "by transmission" as reflected by entry dated 7.11.2009 in respect of Gala 15-F.F.

Furthermore, the Petitioners agrees and undertakes to issue a No Objection Certificate and any other document to the Respondent No.3 at such time in the future when the Respondent No.3 intends to sell or transfer his Gala No.3-G.F and 4-G.F. only as per the rules and regulations of the Society.

(xiv) In view of the above terms and conditions the above writ petition be disposed off. The Petitioners authorize Shri L.Y.Bhide to represent them at the time of filing consent terms in the Hon'ble High Court.

(xv) No Order as to Costs.”

4. The consent terms are agreeable to the petitioner and the respondent no.3. The same are taken on record and marked Exhibit “Y” for identification. The undertakings made in the consent terms are accepted as undertaking to the Court. The petition stands disposed of as per the consent terms.

(ANUJA PRABHUDESSAI, J.)