

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION**

SUIT NO.1716 OF 1980

Kirandip Singh Swani and Ors.Plaintiffs

Vs.

Earnest John and Co. Pvt. Ltd.Defendant

Mr. Gobinda Mohanty a/w. Mr. Yatish Pandya and Ms. J. Lokhandwala i/b. Pandya and Poonawala for plaintiffs.

Mr. Kirandip Singh Swani, plaintiff no.1 present.

Mr. C.S. Balsara a/w. Mr. Akshay Doctor and Mr. Aman Arora i/b. Desai and Diwanji for defendant no.1.

Mr. Christopher John, Director of defendant no.1 present.

CORAM : K.R.SHRIRAM, J.

DATE : 2nd MAY 2019

P.C.:

1 Parties have settled the matter and entered into consent terms dated 26th April 2019. The consent terms signed by four plaintiffs, director of defendant no.1 and their respective advocates is taken on record and marked "X" for identification. Plaintiff no.1 and director of defendant no.1 are present in Court and identified by their advocates. Plaintiff no.1 and Mr. Yatish Pandya, partner of Pandya and Poonawala Advocates for plaintiffs state that plaintiff nos.2,3 and 4, who are not present in Court, had gone to the office of Pandya and Poonawala and signed the consent terms after reading the consent terms and understanding the contents thereof. Mr. Yatish Pandya states that plaintiff nos.2,3 and 4 expressed their no objection for the pay order referred to in paragraph 4 of the consent terms being issued in the name of plaintiff no.1. Statements accepted.

2 Order in terms of the consent terms. All statements and undertakings are accepted. Mr. Mohanty states that he has received the pay order as referred to in paragraph 4 of the consent terms.

3 For convenience, the consent terms is scanned and reproduced hereinbelow :

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 1716 OF 1980

1. Khandip Singh Swani)
2. Balidip Singh Swani)
3. Anjali Kuldip Singh Swani,)
all of Bombay Indian Inhabitants)
residing at No. 4, Harinivas)
C-Road, Churchgate, Bombay)
400 020 And)
4. Manbeena Gulzar Singh Swani)
also of Bombay Indian Inhabitant)
a minor, under the age of 18 years)
by her next friend and father)
Gulzar Singh Swani residing)
at No. 4, Harinivas, C-Road,)
Churchgate, Bombay 400 020.)
..... Plaintiffs

Versus

1. Earnest John & Company Private)
Limited, a private limited company)
incorporated and registered under)
the Companies Act, 1955 having its)
registered office at 501, Jolly)
Bhavan No. 2, 51 New Marine Lines,)
Bombay - 400 020)
2. Messrs. Maharashtra Savings, a)
Partnership Firm, carrying on)
Business at Empire Building,)
2nd Floor, Dr. D. N. Road, Fort,)

Bombay - 400 001	)	
3. Jagdish Ram Thaper,	)	
4. Ashok Kumar Thaper and	)	
5. Vinay Kumar Thaper	)	
Indian Inhabitants, residing at	)	
236, A-Charan Ghar, Meerut,	)	
State of Uttar Pradesh	)	... Defendants

CONSENT TERMS

AGREED, ORDERED, DECLARED AND DECREED as follows:

1. The Plaintiffs have made a claim under an alleged Agreement dated 27th August 1973 ("Agreement") entered between the Plaintiff No.1 and the Defendant No.1, wherein the Plaintiffs had agreed to purchase from the Defendant No. 1, office premises bearing No. 5, on the 10th floor of the building known as Earnest House situated on the plot of land bearing No. 194, Block No. III of the Backbay Reclamation Estate, Mumbai - 400 021 ("Suit Premises"). Certain disputes and differences arose between the Plaintiffs and Defendant No. 1 and subsequently, the Agreement was terminated by the Defendant No. 1 vide letters dated 19th May 1976, 31st March 1980 and 1st April 1980 respectively ("Termination Notice").
2. The present Suit is filed by the Plaintiffs *inter alia* seeking specific performance of the Agreement and in the alternative claiming for Damages and challenging the Termination Notice issued by the Defendant No. 1. The Defendant No. 1 vide its Written Statement dated 30th September 2002 ("Written Statement") filed in the present Suit, has claimed a Set-off for the losses incurred on account

of defaults committed by the Plaintiffs in payment of instalments under the Agreement.

3. Pursuant to the aforesaid, the Plaintiffs and Defendant No. 1, have arrived at these Consent Terms after a mutual discussion and with a view to fully resolve the disputes between them with respect to the subject matter of the Suit in the manner as stated hereinafter.

4. The Defendant No. 1 shall pay to Plaintiffs a total settlement amount of Rs.3,15,00,000/- (Rupees Three Crores Fiftteen Lakhs only) towards their entire claim in suit as and by way of a Demand Draft bearing no. 25096 dated 22/01/2019 issued by SBI Bank Pratapnagar Branch, in favour of Plaintiff no.1, which shall be handed over to the Plaintiff no.1 upon execution of these consent terms and the Plaintiffs acknowledge the receipt of the said Demand Draft.

5. Against receipt of the above said settlement/consideration amount, the parties hereby agree as follows :

- (a) All disputes and issues between the Plaintiff's and Defendants with respect to the Suit Premises are settled fully and finally and the Plaintiffs jointly and severally agree, declare and confirm that they have no right, title or interest in the said Suit Premises or any other claim whatsoever against any of the Defendants.

- (b) The Plaintiffs jointly and severally agree, declare and confirm that on receipt of the said amount of Rs 3,15,00,000/- as stated hereinbefore:-
- (i) the Plaintiffs do not have, nor they will claim any right, title or interest of any nature whatsoever in the Suit Premises against any of the Defendants.
- (ii) The Plaintiffs jointly and severally agree, declare and confirm that they have no claim of any nature whatsoever whether monetary or otherwise against Defendant no.1 or any of its Directres.
6. Defendant No. 1 agrees declares and confirms that it is withdrawing its claim for Set-off, as set out in its Written Statement.
7. The parties hereto withdraw all their allegations made against each other in the correspondence between parties and/or their respective pleadings in the Suit and confirm that they have no claim against each other in respect of the Suit Premises and/or the disputes involved in the Suit.
8. It is agreed and understood between the Plaintiffs and Defendant No. 1 that the above constitutes the entire settlement of all the disputes between the parties with respect to the suit premises.

9. Ad-interim/interim orders stand vacated.
10. The suit is dismissed as withdrawn against all the Defendants, the set off against the Plaintiff is also disposed in terms of the Consent Terms.
11. No order as to costs.

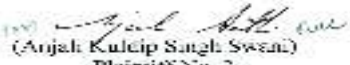
Dated 28th of April, 2013

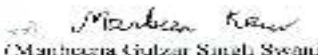
For Pandya & Poonawala


Partner,
Advocate for the Plaintiffs


(Kuldeep Singh Swami)
Plaintiff No. 1


(Balbir Singh Swami)
Plaintiff No. 2


(Anjali Kuldeep Singh Swami)
Plaintiff No. 3


(Manheera Gulzar Singh Swami)
Plaintiff No. 4


Advocate for Defendant No. 1



For Easwari John & Co. Ltd.


Director/Kuldeep Singh Swami
Defendant No. 1

4 Suit dismissed as withdrawn. All interim applications stand disposed and all interim orders also stand vacated.

(K.R. SHRIRAM, J.)