

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
SUIT NO. 139 OF 2017
WITH
NOTICE OF MOTION NO.407 OF 2017
WITH
NOTICE OF MOTION NO.378 OF 2019
IN
SUIT NO. 139 OF 2017**

Gaurav Murlidhar Raimalani

..Plaintiff

Vs.

M/s Parthesh Developer & Ors

..Defendants

Mr. Pradeep Thorat for Plaintiff/Applicant

Mr. Gaurav Murlidhar Raimalani Plaintiff present

Mr. Manoj Bhatia I/b Mr. Purav Damania for Defendant Nos.1 to 3

Mr. Rounk Parekh I/b Interjuris for Defendant No.4

Mr. Nirav Pravinkumar Shah-Defendant No.2, Ms Monica Nirav Shah-Defendant No.3 and Mr. Savinder J. P. Singh, Assistant General Manager of Defendant No.4 are present in court

CORAM : K.R.SHRIRAM, J.

DATE : 26th MARCH, 2019

P.C.:

1 Parties have entered into the consent terms dated 26th March 2019. The consent terms signed by plaintiff, defendant nos.1, 2, 3, 4 and their respective advocates, is taken on record and marked "X" for identification. Counsel identifies the signatories.

2 For ease of reference, scanned copy of the consent terms is reproduced herein below :



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUITE NO. 139 OF 2017

Gaurav Murlidhar Raimalati
Aged: 35 years, Occ: Business,
Having address at Flat No.1605, Rabeja Classic,
Building No.4, New Link Road,
Andheri (West), Mumbai - 400 051 PLAINTIFF

V/s.

1. M/s. Parthesh Developer,
A Partnership Firm registered under
the provisions of Indian Partnership Act,
1932, having its registered Office at:
1, Mangal Simran, 28th Road,
Bandra (West), Mumbai-400 050

2. Nitav Pravin Kumar Shah
Aged: 49 years, Occ: Business,
Residing at Plot No.124, Kamla Heritage,
A, 2nd Floor, Gulmohar Cross Road No.18,
JVPD Scheme, Mumbai - 400 049.

2. Monica Nitay Shah

Aged: 44 years, Occ: Business,

Residing at Plot No.124, Kunda Heritage,

A, 7th Floor, Gulmohar Cross Road No.10,

JVPD Scheme, Mumbai - 400 049

4. Bank of Baroda

A body Corporate constituted under

Banking Companies (Acquisition &

Transfer of Undertakings) Act, 1970

and having it's Head Office at Mandvi

Baroda, Gujarat and Branch Office at

Meghdona Building, 1st Floor, Junction

Of Linking Road & Turner Road,

Baroda (West), Mumbai - 400 050

..... DEFENDANTS

CONSENT TERMS

1. The Plaintiff has filed the present Suit for declaration that the Plaintiff is the absolute owner of the suit property and the Defendants have no right whatsoever in respect of the suit property i.e. premises being Shop No.001, on the ground floor in A-Wing, admeasuring 548 sq. ft. and Unit No.101, on the first-floor admeasuring about 1052 Sq. Ft. built up area, facing 24th road, along with 6 (six) car parking spaces in the building known as Ganga Janna Sangam, 14th & 24th Road, Khar (West), Mumbai ("suit property"). The Defendant No.4, i.e. Bank of



Baroda, had objected to contentions of the Plaintiff in its reply to Notice of Motion no. 407 of 2017 taken out by Plaintiff.

2. That in pursuance to the Order dated 7th February, 2017 passed by this Hon'ble Court [Coram: S.J.Karhawala J] in Notice of Motion No.407 of 2017 in Suit No.139 of 2017 the Plaintiff has deposited in this Hon'ble Court an amount of Rs.1,00,00,000/- (Rupees One Crore Only) on 16th February 2017.

3. The Defendant no.4 had initiated legal proceedings for recovery of its outstanding dues from Defendant No. 1 to 3 including proceedings under SARFAESI Act w.r.t. various secured assets.

4. In order to put an end to the dispute of the Plaintiff against the Defendants, the Plaintiff and Defendant no. 1 to 3 have approached the Defendant no.4 and the parties have agreed to amicably resolve the dispute in the present suit and release the suit property on the terms as recorded in this consent terms, without prejudice to rights of Defendant no.4 to recover its balance outstanding dues from Defendant no.1 to 3.

5. The parties to the present Suit have agreed in the following terms :

(i) The Defendant No. 4 i.e., Bank of Baroda, has agreed to release its charge in respect of the suit property i.e. Shop No.001, on the ground floor in A-Wing and Unit No.101, on the first floor in the building known as Ganga Jyoti Sangam, 14th & 24th Road, Khar



(West), Mumbai - 400052 and has also agreed to release its charge in respect of an unsold unit of the building Ganga Janina Sangam which is a secured asset being, Flat No. 201 on the second-floor (facing 24th Road) in the building known as Ganga Janina Sangam, 14th & 24th Road, Khar (West), Mumbai-400052 ("said flat"), upon the Defendant Nos. 1 to 3 paying an amount of Rs.4,74,00,000/- (Rupees Four Crore Seventy-Four Lakhs Only).

(ii) The Plaintiff has agreed to pay an amount of Rs.4,74,00,000/- (Rupees Four Crore Seventy-Four Lakhs Only) to the Defendant No. 4 i.e. Bank of Baroda, on behalf of the Defendant Nos.1 to 3.

(iii) That upon receiving the said sum of Rs.4,74,00,000/- (Rupees Four Crore Seventy-Four Lakhs Only) from the Defendant Nos.1 to 3 through the Plaintiff, the Defendant No. 4 (Bank of Baroda) undertakes to release its charge in respect of the mortgaged properties being the suit property i.e. Shop No.001, on the ground floor in A-Wing and Unit No.101, on the first-floor and the said flat i.e. Flat No. 201 on the second-floor all units facing 24th Road) in the building known as Ganga Janina Sangam, 14th & 24th Road, Khar (West), Mumbai - 400052.

(iv) That out of the said sum of Rs.4,74,00,000/- (Rupees Four Crore Seventy-Four Lakhs Only), the Plaintiff has already deposited in this Hon'ble Court an amount of Rs.1,00,00,000/- (Rupees One Crore Only) on 16th February 2017. By consent of parties, it is



agreed that Defendant no.4 shall be entitled to withdraw the sum of Rs.1,00,00,000/- (Rupees One Crore only) along with accrued interest deposited by the Plaintiff with Hon'ble Prothonotary and Senior Master ("said Deposit") pursuant to order dated 7th February, 2017 passed by this Hon'ble Court, which the Defendant no.4 shall endeavor to withdraw from the Hon'ble Court's department immediately upon filing of the present consent terms and shall arrange to return the amount of accrued interest on the said Deposit to the Plaintiff within 3 days of receipt of the said Deposit along with accrued interest from the Hon'ble Prothonotary and Senior Master and shall retain the said deposit amount of Rs.1,00,00,000/- (Rupees One Crore Only), for which Plaintiff and Defendant no.1 to 3 shall not have any objection.

- (v) The Balance sum of Rs.3,74,00,000/- (Rupees Three Crore Seventy-Four Lakhs Only) shall be paid by the Plaintiff on behalf of the Defendant Nos. 1 to 3 to the Defendant no.4 on or before 28th March 2019. In the event Plaintiff fails to pay the said amount of Rs.3,74,00,000/- (Rupees Three Crore Seventy-Four Lakhs Only) by 28th March, 2019, the Suit shall stand dismissed without prejudice to rights of Defendant no. 1 to recover the balance outstanding dues from Defendant no. 1 to 3 and Defendant no.4 shall be entitled to withdraw and retain the said deposit along with accrued interest and appropriate the same



towards recovery of its outstanding dues of Defendant no. 1 to 3.

The Plaintiff and defendant no. 1 to 3 agrees to co-operate with Defendant No. 4 in withdrawing the said amount of Rs.1,00,00,000/- (Rupees One Crore Only). It is also agreed that only upon the receipt of entire amount of Rs.4,74,00,000/- (Rupees Four Crore Seventy Four Lakhs Only) the above mentioned properties shall be released.



[Signature]
[Signature]

[Signature]

(vi) That in consideration of the Plaintiff having agreed to pay the said amount of Rs.4,74,00,000/- (Rupees Four Crore Seventy-Four Lakhs Only) to the Defendant No. 4 i.e. Bank of Baroda on behalf of the Defendant Nos.1 to 3, the Defendant Nos. 1 to 3 undertake to sell to the Plaintiff the aforesaid Unit No. 201, on the second floor admeasuring about 858 Sq. Ft. RERA carpet area, facing 24th road, along with 2 (two) car parking spaces in the building known as Ganga Jyoti Sagar, 14th & 24th Road, Khar (West), Mumbai along with 2 (two) car parking spaces ("said Plot") for consideration of Rs.3,25,00,000/- (Rupees Three Crore Twenty-Five Lakhs Only). The said consideration of Rs.3,25,00,000/- (Rupees Three Crore Twenty-Five Lakhs Only) is appropriated from out of the amount of Rs.4,74,00,000/- (Rupees Four Crore Seventy-Four Lakhs Only) which shall be paid by the Plaintiff to the Defendant No. 4 i.e. Bank of Baroda on or before 28th March 2019. That, after appropriation of the amount of Rs.3,25,00,000/- (Rupees Three Crore Twenty-Five Lakhs Only) towards the

[Signature]

[Signature]



[Signature]



7.

consideration for the said Unit No. 201 from the amount of Rs.1,74,80,000/- (Rupees Four Crore Seventy-Four Lakhs Only) paid by the Plaintiff to the Defendant No.4 Bank the amount of Rs.1,49,00,000/- (Rupees One Crore Forty Nine Lakhs Only) shall be treated as a loan advanced by the Plaintiff to the Defendant Nos.1 to 3 which the Defendant Nos.1 to 3 undertake to repay to the Plaintiff within a period of 6 months from the date of execution of the present Consent Terms.

(vii) The Suit be decreed as per the terms of these consent terms

(viii) The Plaintiff would be entitled to refunds of Court Fees as per Rules.

6. The present Suit is disposed of in the above terms.

7. Decree to be drawn up in terms of Consent Terms.

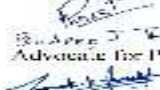
Mumbai

Dated: This 26th day of March, 2019

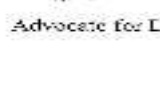

 Plaintiff
 (Ganesh Murlidhar Raimalani)

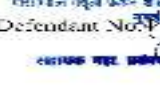


 Defendant No.1 to 3
 (Khan Shaukruddin Shah)


 Advocate for Plaintiff
 Mr. INTERIORIS


 Advocate for Defendants 1 to 3
 Mr. Jyoti Bhanu Bhanu


 Advocate for Defendant No. 4
 Mr. Jyoti Bhanu Bhanu


 Bank of Baroda
 Defendant No.4
 Mr. Jyoti Bhanu Bhanu

3 All statements accepted as undertaking to this court. The undertaking also accepted.

4 Mr. Thorat appearing for plaintiff states that by tomorrow, he will address a communication to the Prothonotary and Senior Master, High

Court, Bombay, to foreclose the fixed deposit made by Prothonotary and Senior Master of Rs.1,00,00,000/- that was deposited by plaintiff and immediately upon receiving the amount in the account of Prothonotary and Senior Master, pay over Rs.1,00,00,000/- to defendant no.4, into the account, details of which will be provided by the advocate for defendant no.4. The interest on Rs.1,00,00,000/- to be paid over to plaintiff through the advocate for plaintiff. Mr. Thorat states that he will co-ordinate with the office of the Prothonotary and Senior Master to see that the fixed deposit is foreclosed as soon as possible and the amount remitted to defendant no.4. Mr. Parekh on instructions states that within three days of receiving the amount of Rs.1,00,00,000/-, they shall hand over all documents and release all the properties as mentioned in the consent terms to plaintiff. The same is accepted as an undertaking to this court. Counsel for defendant no.4, confirms having received the amount of Rs.3,74,00,000/- as provided in paragraph 5(v) of the consent terms.

5 Suit accordingly stand decreed. Drawn up decree dispensed with.

6 All interim applications stand disposed.

7 All interim orders stand vacated.

8 Refund of court fees as per rules.

(K.R. SHRIRAM, J.)