

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

CIVIL REVISION APPLICATION NO.268 OF 2019

Nikhil Dharamdas Shah

...Applicant

Versus

Fali Pesi Heerjee and Ors.

...Respondents

...

Mr. Amit Mehta with Mr. Hitesh Mishra, Vinayak Shukla i/b. Mr. Amit Mehta for the Applicant.

Ms Bhumika Chulani with Ms Nehha Rukhana i/b. M/s. FZB & Associates for the Respondents.

Mr. Nikhil Shah, Applicant, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 18th NOVEMBER, 2022.

P.C. :-

1. The Applicant herein had challenged orders dated 26/09/2004 passed by the Small Causes Court, Mumbai and order dated 03/01/2019 passed by the learned Appellate Bench of the Small Causes Court, Mumbai in Appeal No.99 of 2007. During the pendency of the appeal, parties have arrived at amicable settlement. On 19/10/2022 the Applicant as well as Respondents had filed consent terms, which were taken on record and marked 'X' for identification. The said consent terms were signed by Respondent No.3 on her behalf and as Power of Attorney on behalf of Respondent Nos.2 and 4. Since

the Power of Attorney was not place on record, matter was adjourned for further orders.

2. Learned counsel for the Applicant as well as learned counsel for Respondent Nos.1 to 4 state that parties have made some changes in Clause 8 of the consent terms filed on 19/10/2022. They have placed on record revised terms, which read thus:-

“1.**AGREED, CONFIRMED AND DECLARED THAT** the premises is Flat No.1, Nikhil Villa, First Floor, admeasuring 1856 square feet carpet area comprising of two bedrooms with attached bathroom, one hall, one dining room, one pantry, one kitchen, one servant with bathroom, one service balcony and one large veranda and a fire exit at the rear of the apartment going straight into the compound of the said property along with one enclosed garage admeasuring 180 square feet in the compound of Nikhil Villa. The premises occupied by the Respondents shall hereinafter referred to as the ‘*suit premises.*’ The said premises are delineated in green outline on a plan. During the course of the hearing, the parties have mutually decided to arrive at an amicable settlement by entering into the present Consent Terms. The Applicant has decided to enter present Consent Terms to obviate any hardship that may be caused to the Respondents consequent to the Respondents relinquishing their tenancy rights including obtaining alternate accommodation for

their own use and enjoyment and accordingly the Respondents have agreed to accept the compensation from the Applicant.

2. AGREED, CONFIRMED AND DECLARED THAT the Respondents upon receipt of the hardship compensation as set out in Clause 8 below have submitted to the decree in Suit No.511/2232 of 1977 (Exhibit 'A' to Civil Revision Application).

3. AGREED, CONFIRMED AND DECLARED THAT save and except for Respondents, no one else is claiming to be in possession of the said premises or claiming to be the tenant of the said premises.

4. AGREED, CONFIRMED AND DECLARED THAT the Respondents have till date of filing the present Consent Terms not created any third party rights or any other rights and/or interest, which are prejudicial to the interest of the Applicant. **FURTHER AGREED, CONFIRMED AND DECLARED THAT**, Respondents shall pay and continue to pay including, but not limited to utility charges, their servants' remuneration, electricity charges for the end of the month in which vacant possession of the said premises is handed over to the landlord – Applicant.

5. AGREED, CONFIRMED AND DECLARED THAT the Applicant is ready and willing to provide the

Respondents the hardship compensation as agreed. It is agreed between the Applicant and the Respondents that upon receiving the compensation on or before 20th December 2022 as stated in the present Consent Terms, the Respondents shall vacate the said premises simultaneously with the receipt of the compensation. In any event, the Respondents undertake to this Hon'ble Court to deliver quiet, vacant and peaceful possession of the said premises free from all encumbrances to the Applicant on or before 20th December 2022 i.e. scheduled date for surrender of the said premises provided that by that date the Applicant has paid to the Respondent Nos. 1 and 3 the sum mentioned in Clause 8 below, failing which the Respondents undertaking and liability to vacate the said premises stands withdrawn. Further, the Respondents undertake to this Hon'ble Court to deposit the Letter of Possession dated 20th day of December 2022 with their Advocates D. M. Harish & Co. On the scheduled date of surrender of premises, the Applicant simultaneously upon payment of compensation as mentioned in Clause 8 below shall be entitled to claim the letter of possession in respect of the said premises from the Advocate of the Respondents. **FURTHER, UNDERTAKEN THAT** upon execution of the present Consent Terms and the Respondent Nos. 1 and 3 receiving the aggregate balance amount of Rs. 11,89,00,000 (Rupees Eleven Crores Eighty Nine Lakhs Only) subject to TDS if any, on or before 20th December 2022 the relationship of the landlord and the

tenants between the Applicant and the Respondents will cease to exist and as such the tenancy shall be extinguished.

6. AGREED, CONFIRMED AND DECLARED THAT the Respondents simultaneously upon execution of the present Consent Terms issue NOC in favour of the Advocate for the Applicant to cause a public notice to be published in two daily newspapers having wide circulation, one in English and one in Marathi to invite claims in respect of the said premises or part thereof. That Respondents undertake to this Hon'ble Court, at their cost and efforts, to satisfy all or any claims made pursuant to the public notice being issued by the Advocate for the Applicant before the scheduled date of surrender of the premises.

7. AGREED, CONFIRMED AND DECLARED THAT simultaneously with the execution of the present Consent Terms, the Respondents shall deposit with their Advocate suitable letters, *inter alia*, to the effect of withdrawing from all actions brought against the Applicant either individually or collectively with other tenants of the said Nikhil Villa and which includes withdrawing from:

- (a) the Writ Petition No. 594 of 1996 (Nirvana Co-operative Housing Society Proposed Vs State of Maharashtra & Ors) pending on the Original Side of the Hon'ble Bombay High Court;
- (b) Police Complaint filed with Gamdevi Police Station, which also includes appropriate written

- intimation to be given to Gamdevi Police Station;
- (c) Mumbai Repairs and Reconstruction Board under the Maharashtra Housing and Area Development Act;
 - (d) Letter to various other statutory authorities such as UIDAI (Aadhar), Passport authorities, BEST, Election Commission (Voter ID), etc. intimating them about the change of address of Respondents and transfer to the Applicant, wherever necessary;
 - (e) Settlement of all dues with residential staff of the tenants and their remuneration.

That simultaneously upon payment of the balance compensation as set out in Clause 8 below the Applicant shall be entitled to claim the original letters of the aforesaid from the Advocate of the Respondents.

8. AGREED, CONFIRMED AND DECLARED THAT in order to mitigate any hardship that may be caused to the Respondents, the Applicant has agreed to pay to the Respondent No.1 a sum of Rs. 6,50,00,000 (Rupees Six Crores Fifty lakhs Only) subject to TDS and Rs. 6,50,00,000 (Rupees Six Crores Fifty lakhs Only) to Respondent No.3 subject to TDS if any, out of which a sum of Rs. 1,11,00,000 (Rupees One Crore Eleven Lakhs Only) is already paid to the Respondent No. 3 as earnest money deposit prior to the execution of the

Consent Terms. **FURTHER, AGREED, CONFIRMED AND DECLARED THAT** the Respondent No.1 upon receiving the amount of Rs. 6,50,00,000 Less TDS and Respondent No. 3 upon receiving balance sum of Rs. 5,39,00,000 (Rupees Five Crores Thirty Nine Lakhs Only) subject to TDS, if any, hand over vacant and peaceful possession of said premises to the Applicant free from all encumbrances on 20th December 2022. The Applicant agrees to make the balance payment of Rs. 6,50,00,000 subject to TDS, if any, vide RTGS to Respondent No. 1. The Applicant agree to make the balance payment of Rs. 5,39,00,000 (Rupees Five Crores Thirty Nine Lakhs Only) subject to TDS, if any vide RTGS to the Respondent No.3. The Applicant shall be entitled to deduct TDS for such amount as may be required under the Income -Tax Act, 1961 from the amount of Rs. 6,50,00,000 (Rupees Six Crores Fifty lakhs Only) to Respondent No.1 and Rs. 6,50,00,000 (Rupees Six Crores Fifty lakhs Only) to Respondent No.3. The Respondents assure that there is no tax liability of Respondents in respect of the said premises or part thereof. The Respondent No. 2 and 4 have undertaken to this Hon'ble Court that neither of them are entitled to receive any compensation from the Applicant and they shall not make any claim against the Applicant or against the said premises or part thereof for any reason whatsoever. **FURTHER AGREED, DECLARED AND CONFIRMED THAT** on the scheduled date for surrender of the said premises, the Applicant shall be entitled to a fix his additional locks

on the front gate of the said premises along with the existing lock. Thereafter the Applicant shall proceed to the relevant bank for making payment towards the compensation of Rs. 6,50,00,000 to Respondent No.1, Less TDS and Rs. 5,39,00,000 (Rupees Five Crores Thirty Nine Lakhs Only) to: Respondent No.3 Less TDS

(i) Respondent No. 1 a sum of Rs. 6,50,00,000 (less TDS) @ 1% balance 5,85,00,000/- in the account of Respondent No. 1 being Account No. 99380100003446____, _____ Bank of Baroda Pedder Road Branch. Mumbai.

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(ii) Respondent No.3 a sum of Rs. 5,39,00,000 less TDS @1% balance 4,74,00,000/- vide NEFT in the account of the Respondents being Account No. 583010055789, Kotak Mahindra Bank, Pedder Road Branch, IFSC Code: KKBK0001395.

Immediately when the proof of bank transfer of balance compensation of Rs. 11,89,00,000 (Rupees Eleven Crores Eighty Nine Lakhs Only) takes place, in the manner above said the Respondents shall hand over vacant and peaceful possession of the said premises to the Applicant or his nominee free from any encumbrances by removing their locks or the Applicant be expressly entitle to break open the said locks without being liable or responsible for any damage to the said premises. Once vacant possession is handed over by the Respondents to the Applicant or taken by the Applicant, then the Applicant shall be entitled to

possess and deal with the said premises in the manner he deems fit and appropriate. **FURTHER, AGREED, CONFIRMED AND UNDERTAKEN THAT** in case of delay in payment of balance consideration beyond 20th December 2022 the Applicant shall be liable to pay simple interest at the rate of 8 % per annum on the balance consideration till its realization to the Respondent No. 1 and Respondent No. 3

9. AGREED, CONFIRMED, AND UNDERTAKEN THAT after the Respondents hand over vacant and peaceful possession of the said premises to the Applicant and the Respondents receive the amount as agreed under the present Consent Terms, the Respondents (or any person claiming under them if at all) shall have have no rights of any nature whatsoever in or upon said premises and that the Respondents (or any person claiming under them) is not entitled to claim and/or demand any rights in or against the said premises. That in an untoward situation for any reason whatsoever the Respondents also nominate Mr. ROHINTON RUSTOM LAWYER as the Receiver or beneficiary of the said balance amount of Rs.6,50,00,000 (Rupees Six Crores Fifty Lakhs only) and to complete the handing over of possession formalities.

10. AGREED, CONFIRMED, AND UNDERTAKEN THAT the present Consent Terms is binding upon the Applicant as well as the Respondents and their respective heirs,

executors, administrators, representatives and all persons claiming by or under them.

11. AGREED, CONFIRMED, AND DECLARED THAT the Respondents at the time of handing over vacant and peaceful possession of the said premises shall at the cost and expenses of the Applicant enter into a Tripartite Agreement as may be required by the Applicant for inducting any other tenant in the said premises. **FURTHER, CONFIRMED THAT:** The Respondents shall not be liable and/or responsible for payment of any stamp-duty or expense for execution on such Tripartite Agreement. Further, agreed that the Respondents shall execute a Special Power of Attorney in favour of the Applicant to enable him to sign/execute such forms as may be required by him to change the name of the Respondents from the records maintained with BEST and also to address appropriate correspondence to various statutory authorities such as the office of Election Commission, Passport office, MHADA, *inter alia*, intimating them to delete the reference from their respective records of Respondents having the address at the said premises.

12. AGREED AND UNDERTAKEN THAT the Respondents have no objection of any nature whatsoever after materialization of the transaction as agreed under the present Consent Term of Applicant dealing with the said premises in any manner, he may deem fit or appropriate

and the Respondents waive all their objections thereto.

13. AGREED AND UNDERTAKEN THAT upon full and final payment of the full amount as agreed the Respondents shall not participate or continue to participate in any proceedings or be a Complainant/Applicant/Petitioner, which in any manner affects the rights of the Applicant as the owner/landlord of Nikhil Villa Building.

14. Decree of possession of the said premises to be passed and decree to be drawn up accordingly.”

3. The consent terms are signed by the Applicant and by Respondent Nos.1 and 3 on their own behalf and by Respondent No.3 as Power of Attorney of Respondent Nos.2 and 4. Copies of the Power of Attorney executed by Respondent Nos.2 and 4 in favour of Respondent No.3 are placed on record. The Applicant, Respondent Nos.1 and 3 have identified their signatures on the revised consent terms and have confirmed the contents of the revised consent terms. Revised consent terms are taken on record and marked ‘Y for identification.

4. The Civil Revision Application stands disposed of as per the

consent terms.

5. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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