

Pallavi

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

SECOND APPEAL NO.803 OF 2001

Nozer Sheriyar Mazda and Ors. ... Appellants

Versus

Gulab Shankar Dangat and Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.1386 OF 2013
IN
SECOND APPEAL NO.803 OF 2001**

M/s. Kalpa Construction through its Proprietor ... Applicants
Shri Ramsingh Kohali Rajput and Ors.

Versus

Nozer Sheriyar Mazda and Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.510 OF 2013
IN
SECOND APPEAL NO.803 OF 2001**

Nozer Sheriyar Mazda and Ors. ... Applicants

Versus

Gulab Shankar Dangat and Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.988 OF 2001
IN
SECOND APPEAL NO.803 OF 2001**

Nozer Sheriyar Mazda and Ors. ... Applicants

Versus

Gulab Shankar Dangat and Ors. ... Respondents

Mr. Surel S. Shah a/w Mr. Agnel Carneiro, Mr. Vaibhav Shah i/b. Mulla & Mulla & C.B.C. for the Appellants/Applicants in CAS/510/2013 and CAS/988/2001.

Mr. Vishal Kanade a/w Mr. Nitesh Mohite i/b. Satyavrat Joshi for Respondent No.1.

Dr. Birendra Saraf, Senior Advocate a/w Mr. Pravin V. Kamble, Mr. Abhishek Karnik and Anmol Panikkar i/b. Pravin Kamble for Respondent Nos.2A, 2C, 2D and 2E.

Mr. Anup Lahoti for Respondent Nos.2B(1) to 2B(3).

Mr. Mohan B. Jadhav for Respondent Nos.3 to 6B and Applicant in CAS/1386/2013.

Mr. Maroof M. Khan for Respondent No.7.

Mr. Ankit Dinesh Chhajed, Power of Attorney of Respondent No.7.

Mr. Ashish Kamat a/w Mr. Kunal Mehta, Mr. Robin Fernandes and Mr. Sukrit Parashar i/b Vesta Legal for Respondent Nos.9 and 10 in C.P/288/2008.

CORAM : MADHAV J. JAMDAR, J.

DATE : 5th DECEMBER 2022

PC. :

1. Leave to amend cause title of the Second Appeal by impleading M/s. White Marbles Realities Private Limited, as Respondent No.7. Amendment to be carried out forthwith.
2. Mr. Surel Shah, learned counsel for the Appellants, Mr. Vishal Kanade, learned counsel appearing for Respondent No.1, Dr. Birendra

Saraf, learned Senior Advocate for Respondent Nos.2A, 2C, 2D and 2E, Mr. Mohan Jadhav, learned counsel appearing for Respondent Nos.3 to 6B, Mr. Anup Lahoti, learned counsel for Respondent No.2B(1), 2B(2) and 2B(3) and Mr. Maroof M. Khan, learned counsel appearing for proposed Respondent No.7 tender the Consent Terms. The Consent Terms arrived between all the parties to the Second Appeal are taken on record and marked 'X' for identification. The said Consent Terms read as under :

“CONSENT TERMS

- 1.** The Appellants and the Respondents No. 1 to 6B have agreed to amicably settle the entire dispute involved in this Second Appeal in relation to the suit land bearing Survey No. 87 situated at Village Warje, Taluka Haveli, District Pune (herein after referred to as “the suit land”) which was the subject matter of Special Civil Suit No.179 of 1987 filed by the Appellants in the Court of Ld. CJSD, Pune, the Regular Civil Appeal No.15 of 2001 filed by the Appellants in the District Court at Pune, in terms of these Consent Terms.
- 2.** By Consent the cause title of the above Memo of Appeal be amended as follows :-

M/s. WHITE MARBLES REALTIES PRIVATE LIMITED be added as Party Respondent no. 7.
- 3.** The Parties have agreed and undertake as under: -
 - a) It is agreed and declared that parties hereto are filing these

Consent Terms without prejudice to the rights of the Appellants to prosecute the Contempt Petition No. 288 of 2008 which is admitted and pending on its own merits.

- b) With a view to amicably resolve the controversy involved in the aforesaid Second Appeal and to bring an end to the litigation which is pending from the year since 1987, the Appellants and Respondents No. 1 to 6B have agreed to jointly execute a Conveyance of the suit land in favour of Respondent no.7 i.e., M/s. White Marbles Realities Private Limited by agreeing to share the consideration in the manner hereinafter indicated, in terms of the clauses of the Sale Deed/s.
- c) The Respondent no.7 i.e., M/s. White Marbles Realities Private Limited agree and undertake to purchase area admeasuring 20,700 sq.mtrs out of the suit land totally admeasuring 20,700 Sq. Mts situated at Survey No. 87 situated at village: Warje Taluka: Haveli, District: Pune on "As is where is basis" by way of Sale Deed and Power of Attorney. Draft copies of the Sale deeds & POA are annexed herewith as Annexures (A),(B),(C),(D),(E),(F),(G),(H),(I) within 45 days of execution hereof.
- d) The Respondent No.7 i.e., M/s. White Marbles Realities Private Limited agree and undertake to pay Respondent nos. 1 to 3 the consideration & construction area as mentioned or agreed upon in the Sale Deed/s. The Respondent No.7 i.e., M/s. White Marbles Realities Private

Limited agree and undertake to pay an amount of **Rs 4,61,00,000/- (Rupees Four Crores Sixty One Lakhs only)** including applicable TDS over the same to the Appellants i.e. Dinshaw Mazda, Dilkash Mazda alias Dilkash Falahati and Fareeza Mazda alias Fareeza Raja. The Respondent No.7 i.e., M/s. White Marbles Realities Private Limited agree and undertake to pay the Appellants Rs.2,28,19,500/- (Rupees Two Crores Twenty Eight Lakhs Nineteen Thousand Five Hundred only) by Demand Draft no. 129125 dated 29/11/2022 drawn on Kotak Bank on or before execution of this Consent Terms. The Respondent No.7 i.e., M/s. White Marbles Realities Private Limited agree and undertake to pay the Appellants balance consideration amount of Rs.2,28,19,500/- (Rupees Two Crores Twenty Eight Lakhs Nineteen Thousand Five Hundred only) by Demand Draft no. 129141 dated 29/11/2022 drawn on Kotak Bank on execution of the Sale Deed/s and POA's. The Said Balance consideration amount of Rs.2,28,19,500/- (Rupees Two Crores Twenty Eight Lakhs Nineteen Thousand Five Hundred only) by Demand Draft no. 129141 dated 29/11/2022 drawn on Kotak Bank is to be kept in custody with M/s. Mulla and Mulla and Craige Blunt and Caroe till execution of all Sale deed/s and POA's annexed herewith.

- e) It is agreed and undertaken between the parties that, all the parties (Appellants and Respondent nos.1 to 6B) in the present appeal shall withdraw all their claims, suits,

petitions & applications filed before any court of law save and except the Contempt Petition No.288 of 2008. It is further agreed and undertaken by Respondent no. 2B1 to 2B3 i.e., Smt. Chaitrali Dangat along with her two sons shall withdraw the Civil suit bearing Regular Civil Suit no.411/2013 pending before Civil Court Pune and shall file necessary application/ Pursis for the same. It is further agreed and undertaken that, if required all the parties hereto shall file joint Pursis/ application for the present settlement cum consent terms in the Civil suit i.e Regular Civil Suit no. 1952/2013 and shall support the developer/Purchaser i.e., Respondent no.7 i.e M/s. White Marbles Realities Private Limited in the same and if required the said M/s. White Marbles Realities Private Limited shall be added as a party to the said suit and shall conduct the future proceedings of the same on the cost and obligation/s of Respondent No.3 through its Proprietor **Ramsingh Kohali Rajput** and Dangat Family i.e Respondent Nos. 1, 2A, 2C to 2E, 2B1 to 2B3.

- f) The Respondent Nos. 1, 2A, 2C to 2E, 2B1 to 2B3 agree and undertake to execute the Sale Deed/s of the Suit land in favour of the Respondent no.7 i.e., M/s. White Marbles Realities Private Limited as Land Owners/Vendors in which, the Appellants shall join as Consenting Party No.1, Respondent No.3 through its Proprietor **Ramsingh Kohali Rajput** will join as Consenting Party No.2 and Respondent

No.4A to 6B through their duly Constituted Attorney Mr. Ramsingh Kohali Rajput will join as Consenting Party No.3.

- g) It is agreed that, the Respondent no's. 1,2A, 2C to 2E, 2B1 to 2B3 are in physical possession of the said land which has also being confirmed by the Hon. High Court in the order dated 18th April 2013 in the present appeal. And it is agreed by all the parties hereto and their legal heirs of the parties to the consent term shall hand over vacate and peaceful Possession of the entire suit land in favour of M/s. White Marbles Realities Private Limited upon filing of the present consent term before Hon'ble High Court, Bombay and receipt of full payment as agreed herein.
- h) It is agreed and undertaken that, all the Appellants and the Respondent/s herein have agreed to the consent terms out of their own will and wish and accordingly wilfully, voluntarily and mutually settled all their claims and disputes mentioned hereinabove in all cases pending in all the courts pertaining to the suit land save and except the above Contempt Petition.
- i) The Respondent No.7 i.e., M/s. White Marbles Realities Private Limited agree and undertake to pay the entire stamp duty and registration charges in respect of the said Sale Deed/s & POA's. It is agreed that the respective parties shall bear their respective obligations relating to income tax arising out of the capital gain, if any, under the provisions of Income Tax Act, 1961.

- j) It is agreed and undertaken that, all the Appellants and all the Respondents shall enter into Sale Deed/s in favour of Respondent no.7 i.e., M/s. White Marbles Realities Private Limited after filing this consent terms and shall transfer all their marketable Right, Title and Interest in the said Land and hand over vacant and peaceful possession of the said property to Respondent no.7 i.e., M/s. White Marbles Realities Private Limited without any hardship, as per the agreed terms mentioned in Consent terms, Sale deed/s and POA's within 45 days of filing this consent terms.
- k) It is agreed and declared that Parties will bear their respective costs of the entire litigation.
- l) It is further agreed and declared that in view of these Consent Terms, save and except the right of the Appellants to prosecute the Contempt Petition No. 288/2008 on its own merits, and all other disputes between the parties hereto have been amicably settled in terms of these Consent Terms.
- m) In the circumstances the Parties pray that the above Second Appeal no.803 of 2001 be decreed as it is amicably settled between the parties as per the terms and conditions mentioned in the present Consent Terms and Sale deed/s draft of which is annexed to the present Consent Terms.
- n) It is further agreed that parties to the Appeal will share the consideration as per the area of construction and monetary consideration as mentioned in the Sale Deeds. The copies of

the sale Deeds are annexed herewith.

- o) It is further agreed and undertaken between the Respondents nos. 1, 2A, 2C to 2E, 2B1 to 2B3 that, they have today at the time of filing these consent terms have divided their respective holdings in the following manner and the same has been mentioned in the sale deeds and the same has been mutually agreed upon by the Respondents nos. 1, 2A, 2C to 2E, 2B1 to 2B3 and the other parties have no objections for the same. The Division of the 02H 07R i.e 20700 sq.mtrs area is as under :-

- (I) An area admeasuring 01H 3.50R i.e 10350 sq.mtrs shall be kept in the name of Respondent no.1 i.e., Mr. Gulab Shankar Dangat & Family.
- (II) An area admeasuring 00H 82.80R i.e 8280 sq.mtrs shall be kept in the name of Respondent no. 2A, 2C, 2D and 2E i.e., Smt. Kamal Dattatray Dangat, Mrs.Sharda Ganesh Tingre alias Manda Dattatray Dangat, Mrs.Manisha Arvind Dhaygave alias Manisha Dattatray Dangat, Mrs. Deepali Mahesh Kumbhar alias Deepali Dattatray Dangat respectively.
- (III) An area admeasuring 00H 20.70R i.e 2070 sq.mtrs shall be kept Area collectively in the name of Respondent nos. 2B1, 2B2 and 2B3 i.e., Smt. Chaitrali Sunil Dangat, Mr. Deepak Sunil Dangat, Mr. Ketan Sunil Dangat respectively.

- 4.** It is agreed and undertaken upon between the Respondents nos. 1, 2A, 2C to 2E, 2B1 to 2B3 that, they shall assign all their

respective holdings to M/s. White Marbles Realities Private Limited and all the parties have no objection for the same and shall not raise any objection for the same before any authorities. It is further agreed upon between the parties of the Respondents nos. 1, 2A, 2C to 2E, 2B1 to 2B3 that, if required they shall record the same on revenue records of the said land and further shall assist and aid the said M/s. White Marbles Realities Private Limited to effect their name on the revenue records of the said land.

- 5.** It is further agreed and undertaken upon by all the parties hereto, after filing of the present consent terms, they shall immediately register all the Sale Deed/s and POA's in favour of the Respondent no.7 i.e., M/s. White Marbles Realities Private Limited.
- 6.** It is agreed that since Respondent Nos. 2B2 and 2B3 are minors and are represented by their mother and natural guardian, Respondent No. 2B1, so according to the law, if any amount payable to the minor shall be accepted in separate Fixed Deposit wherein the Respondent Nos.2B2 and 2B3 would be first holder respectively and Respondent No. 2B1 would be joint holder with a specific condition that only after the Respondent Nos. 2B2 and 2B3 attain the age of majority, the amounts so invested in Fixed Deposit along with interest accrued thereon shall be paid over to them individually. It is further agreed by Respondent no. 2B1 represented as the mother and natural guardian of minors 2B2 and 2B3, that they shall not raise any objection or consent

regarding the said land.

- 7.** After filing of the present consent terms, all the Appellants and Respondent nos.3 to 6B has no right left over on the said land and all their previous agreements, POA's or any such deeds and documents shall stand cancelled and no person through them has no right in the said land or on the basis of the so called cancelled deeds and agreements and if any person claiming through them any right, title or interest then it shall be sole responsibility of them to clear the same on their own cost and said Respondent no.7 i.e., M/s. White Marbles Realities Private Limited shall not be held responsible for the same.
- 8.** The Vacant and peaceful possession of the said land having area adm 20700 sq.mtrs shall be with Respondent no.7 i.e., M/s. White Marbles Realities Private Limited and all the parties have confirmed the same and shall not raise objection for the same and the said M/s. White Marbles Realities Private Limited is free to enjoy all its benefits over the said land by developing the same on their own choice.
- 9.** The Appellant and Respondent Nos.1 to 6B pray that this Hon'ble Court may be pleased to accept and take on record the Statements, Declaration and Undertaking incorporated herein and to pass an Order disposing the above Second Appeal and all the pending Civil Applications and petitions connected and filed with this Second Appeal in terms of these Consent Terms.
- 10.** The Parties hereto agree and undertake that time is an essence of this Consent Terms.

- 11.** Respondent no.3 i.e., Mr. Ramsingh Kohali Rajput hereby undertakes and declares that the Power of Attorney dated 15/06/2001 vide Doc. No.2520/2001 executed by Respondent Nos.4A to 6B in his favour is still valid and subsisting and all the said Respondents are alive and none of them have either orally or in writing terminated the said Power of Attorney till the time of execution and signing of these Consent Terms.
 - 12.** Out of the Appellants i.e., Dilkash Nozer Mazda alias Dilkash Falahati and Fariza Nozer Mazda alias Fariza Raja have executed Power of Attorney on dated 23/12/2016 registered at Haveli No-1 Mumabi City-1 vide Doc No. 9697/2016 in favour of their mother Smt Aban Mazda. Hence Smt Aban Mazda represent them in the present as their power of attorney holder.”
3. Parties have also tendered Minutes of Order. The said Minutes of Order are taken on record and marked ‘X1’ for identification. The relevant paragraph of the Minutes of Order reads as under:

“2) The Respondent Nos.2B2 and 2B3 are minors and so Respondent No.2B1 i.e., their mother and natural guardian, since their father and husband of Respondent No.2B1 have died, so in terms of Order 32 Rule 3 & 4 of the Code of Civil Procedure, 1908, the Respondent No.2B1 is appointed as Guardian of Respondent Nos.2B2 and 2B3 and in terms of rule 7 of Order 30 of the said Code, the Respondent No.2B1 is permitted to sign and execute the Consent Terms in the Second Appeal for and on behalf of

minor Respondent Nos.2B2 and 2B3.”

4. Parties to the consent terms viz. Appellant No.2, Appellant Nos.3 to 4 through their constituted attorney Aban Mazda, Respondent No.1 Mr. Gulab Shankar Dangat, Respondent Nos.2B(1) and 2B(2) and 2B(3) through their natural guardian Respondent No.2B(1), Respondent Nos.2C to 2E and Respondent No.3 for himself and as Constituted Attorney of 4A to 6B are present in Court. Mr. Ankit D. Chhajed, one of the Director of added Respondent No.7 – White Marbles Reality Pvt. Ltd. is personally present in Court. He has been authorised by Respondent No.7 - Company to enter into compromise in the present dispute. He states that the terms mentioned in the Consent Terms are agreeable to the Respondent No.7. Mr. Maroof M. Khan, learned Advocate appearing for Respondent No.7 tenders certified true copy of resolution passed in the meeting of the Board of Directors of Respondent No.7 on 30th November 2022. The same is taken on record and marked ‘X2’ for identification.

5. The learned Advocates who have filed their respective vakalatnama for respective parties have produced copies of Aadhar Card of respective parties signed for identification purpose by the respective parties as well as their respective Advocates. Such copies are also taken on record and

marked '**X3**' for identification. Copies of power of attorneys are taken on record and marked as '**X4**' and '**X5**' for identification.

6. Dr. Birendra Saraf, learned Senior Advocate appearing for Respondent Nos.2A to 2E states that Respondent No.2A is not in a position to walk and therefore, she is not present in the Court. However, she has confirmed about the Consent Terms and has put her thumb impression on the Consent Terms, which has been identified by Advocate of Respondent No.2A. Dr. Birendra Saraf tenders certificate issued by Minerva Hospital and medical papers about health condition of Respondent No.2A. The same are taken on record and marked '**X6**' for identification.

7. Mr. Kamat, learned Counsel appears for Respondent No.9 and 10 in the Contempt Petition No.288 of 2008. He states that he is not a party to these Consent Terms and Minutes of Order and therefore, the same are not binding on him. It is clarified that this order, Consent Terms as well as Minutes of Order at '**X**' and '**X1**' will not affect contentions raised by the Respondent Nos.9 and 10 in Contempt Petition No.288 of 2008 or in Suit No.1952 of 2013 pending before the Civil Court, Pune and all contentions in that behalf are expressly kept open. It is further clarified that this order and the said Consent Terms and Minutes of Order will not bind the

Respondent Nos.9 and 10 in Contempt Petition No.288 of 2008.

8. In view of the aforesaid, the Second Appeal is disposed of in terms of the Consent Terms at 'X' and Minutes of Order at 'X1'. All the undertakings in the Consent Terms of the respective parties are accepted.

9. In view of disposal of Second Appeal, nothing survives in the Civil Application and all Civil Applications are disposed of.

(MADHAV J. JAMDAR, J.)