

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

FIRST APPEAL NO.1303 OF 2014

Mrs. Yasmeen Fakir Mohammed ..Appellant

v/s.

Anib Anthony D'Monte & Ors. ..Respondents

Mr. Omar K. Shaikh for the Appellant.
Mr. Anthony Marques for the Respondent No.3.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 7th JUNE, 2022.**

P.C.

1. The Appellant herein has challenged the Order dated 13.10.2014 whereby the learned Judge, City Civil Court, Bombay had dismissed the Chamber Summons No. 770 of 2010 and Notice of Motion No. 4620 of 2013 and 1630 of 2013 in Execution Application No.433 of 2006.

2. Learned Counsel for the Appellant and the Respondents state that during the pendency of the Appeal, the Respondent No.1 has expired leaving behind Respondent No.3 as the sole legal representative. Necessary amendment to be carried out in the cause title as against the name of Respondent No.1.

3. Learned Counsel for the Appellant and Respondent No.3 state that

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the parties have settled the matter. They have placed on record the consent terms which read thus:

CONSENT TERMS

1. *The Parties hereto namely the Appellant and the Respondent No.3 have arrived at a settlement and have agreed to end all their disputes by filing the present Consent terms recording the following terms and conditions:*

2. *In the light of settlement arrived at between the parties, the Appellant has become the absolute owner of all that piece and parcel of land admeasuring 264 Sq. yards equivalent to 220.7 sq. meters bearing Old Survey No.87, CTS No. B/199 of Village Bandra, Taluka Andheri in the Mumbai Suburban District together with House standing thereon bearing House No.43 within the Municipal limits of H/W Ward and assessed to taxes under No. H – 648 – 0174 –003 and comprising Ground + one upper floor (the subject premises);*

3. *The Respondent No.3 declare that she and her family namely, her husband – Mr. Sayed Asad and her minor child are the only persons in possession of the entire first floor admeasuring 1500 sq. feet (approx.) comprising three rooms, and save and except for persons named herein above, there is nobody else in possession of the entire first floor;*

4. *That the Respondent No.3 admit and acknowledge that she has received an amount of Rs. 47,00,000/- (Rupees Forty Seven Lacs Only) as mentioned in the schedule mentioned hereunder, on or before execution of these Consent Terms.*

5. *The Respondent No.3 therefore, pursuant to payment received by her from the Appellant, declares that she, or her heirs or her legal representatives or anybody claiming by/through or under her, shall have no right, title and interest in the subject premises or any part thereof.*

6. *The Respondent No.3 admits that she has surrendered possession of the entire first floor on or before execution of the present Consent Terms to the Appellant and has also removed all her articles, belongings, furniture, fixtures etc from the First Floor. The Appellant declares and acknowledges that she has received vacant possession of the entire first floor from the Respondent No.3 and that the Appellant is now in exclusive possession thereof.*

7. *The Respondent No.3 hereby declares that she has not, prior to execution hereof, executed any writing/deed/indenture or document thereby relinquishing/assigning/transferring her right in the subject property or any part thereof in favour of anybody.*

8. *The parties agree that the Respondent No.3 claims to be the 50% owner in the suit premises on the basis of a Gift Deed dated 5th October 2009 and registered with the Sub – Registrar of Assurance under Sr. No.BDR – 1/6226/2013 dated 12th June 2013, executed by Rev. Bishop Bosco D’Penha and Sister Margaret D’Penha in favour of the Respondent No.3.*

9. *The Appellant claimed to be the 100% owner of the suit premises, having purchased the same from Mrs. Phyllis De’Penha who claimed to be 100% owner, under registered Agreement for Sale dated 24th December 1991 registered with the Joint Sub - Registrar of Assurance at Sr. No. P-7273/1991;*

10. The parties however, without going into the dispute any further have agreed as under:

- a. That the Respondent No.3 has handed over possession of the entire first floor, to the Appellant on or before execution of the present Consent Terms;
- b. The Respondent No.3 shall sign and execute **the Supplementary Deed of Conveyance which is annexed hereto and marked as Exhibit – “A”** for the purpose of extinguishing her **undivided** right title and interest in the suit premises created in her favour pursuant to the Gift Deed;
- c. The Respondent No.3 also undertakes to attend the office of the Sub – Registrar of Assurance, as and when called upon by the Appellant, to admit execution of supplementary Deed of Conveyance.
- d. The parties agree that they shall withdraw all complaints, application, writings etc. wherever filed and undertake not to file hereinafter complaints, applications, writing etc. before any authority.

11. In view of the above, the parties agree that the abovesaid First Appeal be disposed of in terms of these consent terms. The decree dated 30th April 1997 passed in S.C. Suit No. 955 of 1982 be treated as satisfied. The Execution Application No. 433 of 2006 filed in the City Civil Court will therefore not survive and be disposed of as such.

12. The Respondent No.3 has informed that the original Gift Deed dated 5th October 2009 registered with the Sub – Registrar of Assurance under Sr. No.BDR – 1/6226/2013 dated 12th June 2013 is with her. The Respondent No.3 undertakes to this Hon’ble Court not to misuse the same in any manner whatsoever.

13. The Respondent No.3 has deposited in the Execution proceedings in the Hon'ble City Civil Court at Bombay, a certified copy of the abovesaid Gift Deed. The Respondent No.3 shall have no objection whatsoever to the Appellant applying to the Hon'ble City Civil Court and taking the said certified copy of the Gift Deed in her possession.

14. The parties hereto agree that in the light of these consent terms, there will be no order as to cost and the parties shall bear their own legal expenses.

The schedule above referred to:

<u>Sr. No</u>	<u>Mode</u>	<u>Details</u>	<u>Date</u>	<u>Amount</u>
1.	Cheque	259209 Bank of Maharashtra, Khar West Br.	29/12/2021	2,00,000/-
2.	Cheque	259218 Bank of Maharashtra, Khar West Br	7/1/2022	7,00,000/-
3.	Cheque	259219 Bank of Maharashtra, Khar West Br	7/1/2022	7,00,000/-
4.	DD / Banker's cheque	027745 Bank of Maharashtra, Khar West Br	4/1/2022	5,00,000/-
5.	DD/	027748	5/1/2022	9,00,000/-

	Banker's cheque	Bank of Maharashtra, Khar West Br.		
6.	DD/ Banker's Cheque	027749 Bank of Maharashtra, Khar West Br.	6/1/2022	4,00,000/-
7.	DD/ Banker's cheque	515771 Bank of Maharashtra, Khar West Br.	7/1/2022	4,00,000/-
8.	DD/ Banker's cheque	027750 Bank of Maharashtra, Khar West Br.	6/1/2022	9,00,000/-
Total: (Rupees Forty-Seven Lakhs Only)				47,00,000/-

4. The Consent terms are signed by the Appellant, Respondent No.3 and their respective Counsel. The Appellant and the Respondent No.3 who are present before the Court have confirmed the contents of the Consent Terms. The Consent Terms are taken on record and marked "X" for identification. The statements made in the Consent Terms are accepted as undertaking to the Court.

5. Learned Counsel for the Appellant states that the Appellant shall withdraw the execution proceedings within a week from the date of the Order. Statement is accepted.

6. Appeal stands disposed of in the light of the consent terms.

Consent decree be drawn.

(ANUJA PRABHUDESSAI, J.)