

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 83 OF 2022

IN

COMMERCIAL EXECUTION APPLICATION NO. 101 OF

2017

IN

SUIT NO.802 OF 2014

ECL Finance Ltd.

..Applicant

Vs.

Harikishan Shankarji Gudipati Alias

Dr. Gogikar Harikishan & Ors.

..Respondents

WITH

INTERIM APPLICATION NO. 696 OF 2022

IN

COMMERCIAL EXECUTION APPLICATION NO. 101 OF

2017

IN

SUIT NO.802 OF 2014

Mahendra Vrajlal Sheth

..Applicant

IN THE MATTER BETWEEN

ECL Finance Ltd.

..Petitioner

Vs.

Harikishan Shankarji Gudipati & Ors.

..Respondents

WITH

CONTEMPT PETITION NO. 17 OF 2016

IN

SUIT NO. 802 OF 2014

ECL Finance Ltd.

..Petitioner
(Org. Plaintiff)

Vs.

Harikishan Shankarji Gudipati & Ors.

..Respondents
(Org. Defendants.)

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H. N. Thakore with Naser Ali Rizvi i/b. M/s. Thakore Jariwala &
Associates for the Applicant in IA 83/2022.

Dashmeet Kaur Thandhi i/b. Lex Conseiller for the Applicant in IA
696/2022.

Uday Bobde i/b. Robin Thomas for Respondents.

S. K. Dhekale, OSD, Court Receiver is present.

Harikishan S. Gudipati Respondent No.1 is present.

Mahalaxmi Subramaniam Vadakantara is present.
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CORAM:- B. P. COLABAWALLA,J.
DATE :- MARCH 22, 2022.

P. C.:

1. Interim Application No.83 of 2022 is filed seeking the
following reliefs:

“(a) that this Hon’ble Court be pleased to permit/direct the Court Receiver, High Court Bombay to conduct the sale of the suit flat being flat No.14 admeasuring 590 square feet carpet area situated at 4th Floor, Sagar Mandir Co-operative Housing Society Limited, 215, Shivaji Park, Road No.15, Dadar (West), Mumbai-400 028; through private treaty in favour of the interested purchaser(s) as more particularly identified by the Applicant in the Proposal Letters annexed Exhibit – I and/or K hereto, upon such terms and conditions as this Hon’ble Court may deem fit and necessary;

(b) that appropriate Order/direction be passed directing the Court Receiver, High Court Bombay to hand over the said proceeds from such sale to the Applicant, after deducting the fees/charges as may be fixed by this Hon’ble Court.

(c) that this Hon’ble Court be pleased to direct the Court Receiver, High Court, Bombay to execute the Sale Agreement in favour of the intended purchaser as identified by the Applicant upon receipt of the sale proceeds;”

2. As can be seen from these prayers, what the Applicant seeks is for the Court Receiver to conduct the sale of flat No. 14, admeasuring 590 sq.ft. carpet area situated on the 4th Floor, Sagar Mandir Co-operative Housing Society Ltd. 215, Shivaji Park, Road No. 15, Dadar (West), Mumbai-400028 (for short the “**suit Flat**”) through private treaty in favour of the interested purchasers as more particularly identified by the Applicant in the proposal letters annexed at Exhibit-I and/or K to the Interim Application. This Interim Application is filed because the Consent Decree dated 14th August 2015 passed in the above Suit has remained unsatisfied.

3. After the matter was argued for some time, the parties have agreed to the following terms:

- (a) the Respondents confirm the Consent Decree/Consent Terms dated 14th August 2015 filed in the above Suit.
- (b) As and by way of settlement and as a concession, the Applicants have agreed to accept a sum of Rs.2,17,00,000/- (Two Crores Seventeen Lacs only) in a full and final settlement. The sum of Rs. 2,17,00,000/- shall be paid by the Respondents to the Applicants in the

following manner:

- (i) A sum of Rs. 90 Lakhs on or before 30th March 2022;
 - (ii) A sum of Rs. 50 Lakhs on or before 30th June 2022; and
 - (iii) A sum of Rs. 77 Lakhs on or before 31st August 2022.
- (c) If the aforesaid payments are made without any default, then the decree shall be marked as fully satisfied and the suit Flat (which in the possession of the Court Receiver) shall be handed over by the Court Receiver to Respondent No.1 on 5th September 2022 at 12.00 p.m. In the event the entire amount of Rs.2,17,00,000/- is paid before 31st August 2022, the Respondents are at liberty to apply to the Court for directing the Court Receiver to hand over possession of the suit Flat to Respondent No.1 on an earlier date.
- (d) In the event a single default is committed in the payment of the installments as set out above, the entire decretal amount under the Consent Decree/Consent Terms dated 14th August, 2015 shall become forthwith due and payable and the Court Receiver shall be entitled to sell the suit Flat by public auction and/or private treaty for recovery

of the decretal amount. The Respondents have undertaken that if any default is committed, they shall not object to the sale of the suit Flat by the Court Receiver on any ground whatsoever. If any part payments are made before the default is committed, the same shall be first adjusted towards the interest due under the Consent Decree/Consent Terms dated 14th August 2015.

- (e) As long as there is no default in payment of any installment, all pending criminal proceedings filed by the Applicants against the Respondents (under Section 138 of the Negotiable Instruments Act, 1881) shall be kept in abeyance. If any default is committed, the Applicants shall be at liberty to prosecute the said proceedings. Similarly, Contempt Petition No. 17 of 2016 shall also be kept in abeyance till no default is committed in the payment of the above installments. In the event any default is committed, the Applicants are also at liberty to prosecute the aforesaid Contempt Petition.

4. Considering that the first installment of Rs.90 Lakhs is payable on or before 30th March 2022, place the above two Interim Applications as well as the above Contempt Petition on board for

directions on 1st April 2022.

5. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)