

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMM SUMMARY SUIT NO. 254 OF 2020

Varun Godha & anr. ...Plaintiffs

Versus

Balaji Enterprises & ors. ...Defendants

Mr. Mohit Advani, a/w Mr. Tejjas Shah, Mr. Abhishek Bhosle,
i/b Dhaval Vussonji & Associates, for the Plaintiffs.

Mr. Saurabh Oka, for the Defendants.

Mr. Pradeep Godha, CA of Varun Godha, interacted through
VC.

Mr. Anurag Godha, CA of Anish Godha, interacted through
VC.

**SANTOSH
SUBHASH
KULKARNI**

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CORAM: N. J. JAMADAR, J.

DATED : 5th JANUARY, 2022

(Video Conferencing)

PC:-

1. Heard the learned Counsels for the parties.
2. Mr. Advani, the learned Counsel for the plaintiffs and Mr. Oka, the learned Counsel for the defendant nos.1 to 4 jointly submit that the parties have amicably resolved the dispute and executed the Consent Terms.
3. Mr. Oka, the learned Counsel, submits that he has instructions to appear on behalf of defendant no.5 as well and undertakes to file Vakalatnama within a week's time.

The undertaking is accepted.

4. The Consent Terms are tendered.
5. The Consent Terms are executed by Mr. Pradeep Godha and Mr. Anurag Godha, the Constituted Attorneys of plaintiff nos.1 and 2 respectively, Mr. Manoj Lalwani, defendant no.4 and the partner of defendant no.1 – Balaji Enterprises, Mr. Haresh Doulatani, defendant no.2 and the proprietor of defendant no.5 - M/s. Tirupati Developers, and Mr. Anil Kursija – defendant no.3, who appeared through Video Conferencing. The parties are identified by their respective Counsels. They admit the contents of the Consent Terms and execution thereof.
6. Mr. Haresh Doulatani, upon being inquired, specifically submits that he has acknowledged the liability to pay the amount, in accordance with the Consent Terms, to the plaintiffs. He submitted that he has already issued post-dated cheques in favour of the plaintiffs. He has voluntarily entered into the settlement and there is no coercion or duress.
7. In view of the aforesaid submissions and statements before the Court, the Consent Terms are taken on record and marked “X”.
8. Paragraphs 7 to 9 of the Consent Terms read as under:

“7. After mutual discussions and deliberations between the Plaintiffs and the Defendants, the Plaintiffs have agreed to amicable settle all the disputes and

differences between the Plaintiffs and the Defendants with regard to the claims and demands of the Plaintiffs in the present suit and have accordingly arrived at the following understanding:

7.1 The Defendant No. 2 hereby agrees, confirms and acknowledges that he will take over the liability towards the Plaintiffs under the said loan even though he is retired from the Partnership Firm (Defendant No. 1). The Plaintiff in the above Suit have claimed an amount of of Rs. 1,34,50,000/- (Rupees One Crore Thirty Four Lakhs Fifty Thousand only) along with interest payable @ 18% p.a. from 1st November 2019 till the date of realization (“**the Decretal Dues**”). The Defendant No.2 agrees, confirms and acknowledges that hereafter he is personally liable to pay the Plaintiffs amount of Rs. 1,34,50,000/- (Rupees One Crore Thirty Four Lakhs Fifty Thousand only) through M/s. Tirupati Developers, the Defendant No.5 in the manner stated here under as a full and final settlement for all the claims of the Plaintiffs under the captioned matter/suit and otherwise through various post-dated cheques as more particularly mentioned paragraph 7.4.

7.2. M/s. Tirupati Developers i.e. Defendant No. 5, agrees, confirms and acknowledges that it shall discharge Defendant No. 2’s liability mentioned in paragraph 7.1 above and make payment to the Plaintiffs on behalf of Defendant No. 2 in the manner stated here in below in paragraph 7.4.

7.3. Defendant No.1, 3 & 4 shall stand discharged and released from the Decretal Dues absolutely and unconditionally.

7.4. As agreed and stated above in discharge of his liability along with Decretal Dues, Defendant No. 5 has issued to the Plaintiffs an amount of Rs. 1,34,50,000/- (Rupees One Crore Thirty Four Lakhs Fifty Thousand only) through current and post-dated cheques as mentioned here in below.:

IN FAVOUR OF	CHEQUE NO	DATED	DRAWN ON	AMOUNT (RS. IN LAKHS)
Varun Godha	001329	31 st December 2021	Karur Vysya Bank	7.5
Anish Godha	001336	31 st December 2021	Karur Vysya Bank	7.0
Varun Godha	001330	30 th June 2022	Karur Vysya Bank	10.0
Anish Godha	001337	30 th June 2022	Karur Vysya Bank	10.0
Varun Godha	001332	30 th December 2022	Karur Vysya Bank	10.0

Anish Godha	001338	30 th December 2022	Karur Vysya Bank	10.0
Varun Godha	001333	30 th April 2023	Karur Vysya Bank	10.0
Anish Godha	001339	30 th April 2023	Karur Vysya Bank	10.0
Varun Godha	001334	31 st July 2023	Karur Vysya Bank	17.0
Anish Godha	001340	30 th July 2023	Karur Vysya Bank	17.5
Varun Godha	001335	30 th December 2023	Karur Vysya Bank	13.5
Anish Godha	001341	30 th December 2023	Karur Vysya Bank	12.0
Total				134.5

7.5. Defendant No. 5 agrees, confirms and acknowledges that it has, in discharge of Defendant No. 2's liability towards the Plaintiffs in the present suit handed over the above cheques to the Plaintiffs.

7.6. Defendant No. 5 hereby agrees and undertakes to make payments for the amount as and when due and payable under clause no. 7.4 without demur or protest. Defendant No. 5 undertakes to personally discharge the aforesaid consideration mentioned in this paragraph.

7.7. In the event, for any reason whatsoever- whether attributable to/within the control of M/s. Tirupati Developers or otherwise, there is any delay in making the payments as mentioned in clause 7.4 or if any of the said cheques are dishonored upon presentation, then the balance decretal amount due to the Plaintiffs shall become due and payable to the Plaintiffs and the same shall be recoverable from Defendant No. 2 and Defendant No. 5. Defendant Nos. 2 and 5 jointly and severally acknowledges to forthwith pay to the Plaintiffs, from the date of the occurrence of such an event, the Decretal Dues along with interest thereon calculated at 22% per annum from 30th June 2021.

7.8. In such an event, Defendant No. 2 and Defendant No. 5 fails to make payment of the amount mentioned in Clause 7.4 hereinabove, then Defendant No. 2 and Defendant No. 5 agrees, acknowledges, represents, declares and undertakes to be liable to the Plaintiffs in respect of prayer clause (a) of the Complaint and admits that the Plaintiffs shall be entitled to proceed against Defendant No. 2 and Defendant No. 5 in execution towards satisfaction of the amounts mentioned in prayer clause (a) of the Complaint. Defendant No. 2 and Defendant No. 5 also undertakes to pay to the Plaintiffs the cost, including but not limited to the legal fees expended by the Plaintiffs, in executing these terms against Defendant No.2 and Defendant No. 5.

8. Upon execution of these Consent Terms, Defendant No. 2 and Defendant No. 5 agree and thus takeover the entire liabilities of Defendant Nos.1, 3 and 4 upon themselves and to that extent it is agreed between the parties that the Plaintiffs claim against Defendant Nos. 1, 3 and 4 shall stand discharged.

9. It is agreed and declared and the parties hereto confirm that the undertakings given by the parties herein are given to this Hon'ble Court and the representations made the parties herein are representations made to this Hon'ble Court. It further agreed and declared that all acknowledgments and representations made herein are acknowledgments/admissions and representations made to this Hon'ble Court."

9. In view of the settlement of the dispute and the statements made before the Court, the suit stands decreed in accordance with the Consent Terms ("X").

10. The Consent Terms ("X") shall form part and parcel of the decree.

11. Undertakings given in the Consent Terms ("X") are accepted as the undertakings to the Court.

12. The plaintiffs are entitled to refund of Court-fees in accordance with the Rule.

13. Decree be drawn accordingly.

[N. J. JAMADAR, J.]