

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

WRIT PETITION NO. 7679 OF 2022

Shobha Rasiklal Dhariwal and anr ... Petitioners

vs.

Catalyst Trusteeship Limited and ors ... Respondents

Mr. Vishwajeet Sawant, senior Advocate a/w Mr. Nikhil Patil,
Aniket Nikam i/b. Mr. Ashish P. Pawar for Petitioners.

Dr. Birendra Saraf, A.G. a/w Mr. Rajeev Carvalao, Mr. Sachin
Chandarana, Mr. Aagam Mehta i/b. M. K. Ambalal & Co. for
Respondent No.1.

CORAM : SANDEEP V. MARNE, J.

DATED : 23 JANUARY, 2023

P.C. :-

1. When this Petition was called for admission on 13
January 2023, the following order was passed;

- “1. Heard Mr. Sawant, learned Advocate for Petitioners and Dr. Saraf, learned Advocate for Respondent No.1 for some time.
2. *Prima facie* it seems that the issue can be resolved amicably. The parties did make an attempt earlier. Minutes of Order were drawn up. Court has requested both the learned Advocates for the parties to exchange Minutes of Order and arrive at an amicable settlement / compromise if possible.
3. In the meanwhile, proceedings before the learned Trial Court shall be deferred till the next date.
4. Stand over to 18th January, 2023.”

2. Today, Mr. Sawant, the learned senior advocate
appearing for Petitioners and Dr. Saraf, the learned senior
advocate appearing for Respondent No.1 have placed before me

their respective versions of minutes of order. The learned counsels would fairly submit that they would leave it to the Court to pass an appropriate order and further submitted that both parties would be agreeable to the arrangement that will be made by an order of this Court. After hearing the learned counsels, I am of the view that entire issue involved in the present Petition can be put to an end by passing the following order;

:: ORDER ::

- (i) It is hereby clarified that the Suit Proceedings bearing, Special Civil Suit No.1084 of 2021 before the learned Joint Civil Judge, Senior Division, Pune against Respondent No.1 herein - the Original Defendant No.2 in the said Suit stands withdrawn unconditionally against Respondent No.1 herein and Respondent No.1 shall be treated as deleted from the array of Defendants therefrom.
- (ii) It is further clarified that the consent decree dated 30 December 2021 passed by the learned Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.1084 of 2021 ("the said decree) by and between Petitioners and Respondent Nos.2, 2A and 2B herein, will not be binding upon Respondent No.1 herein - the Original Defendant No.2 in the said Suit and will not affect its rights under

the two separate Indenture of Mortgage dated 31 December 2018 and dated 19 July 2021 respectively executed by Respondent Nos.2, 2A and 2B herein – the Original Defendant No.1, 1A and 1B in the said Suit. Respondent No.1 herein (erstwhile L&T Finance Ltd. And now Phoenix ARC Pvt. Ltd and or Trustee) is entitled to deal with including sell the mortgaged property to any party/ies in respect to the above referred Indenture of Mortgage dated 31 December 2018 and 19 July 2021, in accordance with the law without any recourse to and/or permission of the Petitioners.

- (iii) It is further clarified that “the said decree”, and the rights of the Petitioners thereunder shall remain unaffected and therefore binding upon Respondent Nos.2, 2A and 2B herein i.e. Original Defendant Nos.1, 1A and 1B in the said Suit subject to direction in para no.2 of the above.
- (iv) The Civil Misc. Application No.11 of 2022 (seeking clarification) filed by Respondent No.1 herein, which is pending before the learned Joint Civil Judge, Senior Division, Pune stands disposed of in terms of this order.
- (v) The Writ Petition is disposed of accordingly with no order as to costs.

(SANDEEP V. MARNE, J.)