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

WRIT PETITION NO.9088 OF 2023

Mr. Paresh R. Tapiawala & Anr. ...Petitioners

V/s.

The Chairman/Secretary ...Respondents
Gurukripa CHS Ltd. & Anr.

Mr. Saurav N. Katkar for Petitioner.

Mr. Waseem Khan for Respondent No. 1 – Society.

Mr. A.P. Vanarase, AGP for Respondent-State.

CORAM: MADHAV J. JAMDAR, J.

DATE: 3rd November 2023

P.C.:

1. Heard Mr. Katkar, learned Counsel appearing for the Petitioners, Mr. Khan, learned Counsel appearing for Respondent No. 1 and Mr. A.P. Vanarase, learned AGP appearing for Respondent Nos. 2 and 3.

2. Mr. Katkar, and Mr. Khan, the learned Counsel state that the parties have settled the dispute and accordingly tenders the consent terms. The consent terms are signed by the Petitioner No.1 and Mr. Ramdas Ware, Secretary of Respondent No. 1-Society.

3. Mr. Paresh Ramesh Tapiawala i.e. Petitioner No.1 and Mr.

Ramdas Nana Ware, Secretary of the Respondent No.1- Society are personally present in the Court. They confirm that the signatures appearing on the Consent Terms are their respective signatures. Both the learned Counsel respectively identifies the signatures of their clients i.e. of Petitioner No. 1 and Mr. Ramdas Nana Ware, Secretary of Respondent No. 1- Society. Photocopies of Adhar cards duly signed by the respective parties are annexed to the Consent Terms. Both of them state that the dispute between the parties is settled in terms of the Consent Terms.

4. Both the learned Counsel state that as the dispute is concerning order passed under Section 88 of the Maharashtra Co-operative Societies Act and as the said order is passed only against Petitioner No.1, the Petitioner No.2 has not signed the consent terms. It is further stated by learned Counsel appearing for the Petitioners that in any case the Petitioner No. 2 has also accepted the consent terms and accordingly the consent terms are signed by the Petitioner No.1 on his behalf and on behalf of Petitioner No.2.

5. Accordingly, the consent terms are taken on record and marked 'X' for identification. The consent terms reads as under:

1. The abovementioned matter is amicably settled between the parties.
2. The petitioner is ex -managing committee member of the Respondent No: 1 society. The respondent no.2

passed order under section 88 of the Maharashtra Co-operative society act and thereby appointed enquiry officer to initiate enquiry u/s 88 r/w rule 72 for the amount of Rs.14,10,425/- and in the said enquiry the petitioner is one delinquent out of 12 managing committee members.

3. Pending the finality of enquiry the petitioner have sold his flat no: A-2/1-1 in the respondent no: 1 society and have sort NOC from the respondent No.1 to sell/mortgage his flat.
4. The respondent No: 1 is basically concerned with the security of the amount which can be fixed by the enquiry officer to be paid by the Petitioner, therefore assuming that the liability of petitioner will not be more than Rs.2,00,000/- (Rupees Two Lakhs) individually, the Petitioner agrees to pay the Respondent No.1 society an amount of Rs: 2,00,000/- without prejudice to the rights and contentions of the Petitioners and Respondent No.1.
5. The Respondent No.1 shall keep the said amount of Rupees 2,00,000/- in fixed deposit for the period of 2 years, which fixed deposit will be in the name of Respondent No.1.
6. It is agreed between the parties that, if the liability is fixed by the enquiry office against the Petitioner, the Respondent No: 1 shall be at liberty to close the Fixed Deposit Account after 60 days i.e Completion of Appeal period to challenge the order of the enquiry officer and in case the liability of the petitioner is less then value of the fixed deposit the Respondent No: 1 shall after completion of 60 days i.e the appeal period shall close the fix deposit and refund the difference amount to the petitioner from closing the fixed deposit account and in case the liability of the petitioner individually is more then value of fixed deposit, the petitioner shall pay the difference amount after the appeal period i.e 60 days from the date of order of enquiry officer.
7. It is agreed between the parties that if there is no liability fixed individually against the petitioner u/s 88 of M.C.S. Act 1960, and/ Quashing Order u/s 88 or else otherwise if there is any order of Quashing the enquiry in favor of the petitioner, the petitioner shall make an application for refund of the amount of fixed deposit and thereafter the respondent No.1 society shall close the Fixed deposit and shall within 60 days i.e after completion of the Appeal period from the date of application refund the said entire fixed deposit amount

to the petitioner.

8. All points on merits of the case shall remain open, as soon as the payment of Rupees 2,00,000/- is received by the Respondents No.1, NOC will be issued to the petitioner subject to the present consent terms.
9. It shall further be noted that present consent terms is without prejudice to the rights of the petitioner and Respondent No.1.
10. After the filing of this consent terms the Petitioner will transfer the said amount of Rs.2,00,000/- to the account of the Respondent No.1 society and after receipt of the said amount from the Petitioner, the Respondent No.1 society shall issue the N.O.C. subject to the present consent terms within one week.

The Writ Petition stands disposed off in terms of consent terms, all contentions of the parties on merits are kept open. "

- 6.** The undertakings in the consent terms given by respective parties are accepted.
- 7.** Accordingly, the Writ Petition is disposed of in terms of the consent terms and in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)