

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 269 OF 2016
WITH
INTERIM APPLICATION NO. 937 OF 2023

Sushilabai Nirmalkumar Rungta
(since deceased) through legal heirs
Nirajkumar Nirmalkumar Rungta & Anr. .. Petitioners
Versus
Sitaram Agarwal & Anr. .. Respondents

WITH
COURT RECEIVER'S REPORT NO. 4 OF 2023

Sushilabai Nirmalkumar Rungta
(since deceased) through legal heirs
Nirajkumar Nirmalkumar Rungta & Anr. .. Petitioners
Versus
Sitaram Agarwal & Anr. .. Respondents

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- Ms. Milind Chandnani i/by Mr. Jaiwant S. Chandnani for Petitioner
 - Mr. Ranjeev Carvalho i/by Mr. Jitendra Jain for Respondent Nos. 1(a) to 1(d) and proposed Respondent No. 3
 - Mrs. Rekha Rane, IInd Assistant to Court Receiver, Bombay High Court
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2023

P.C.:

1. Heard Ms. Chandnani, learned Advocate for Petitioner; Mr. Carvalho, learned Advocate for Respondent No. 3 and Mrs. Rane, IInd Assistant to Court Receiver, Bombay High Court.

2. By consent of the parties, prayer for amendment to implead M/s. Radha International to the present Writ Petition is granted. Amendment to be carried out forthwith. Re-verification is dispensed with. Suit before the Trial Court shall also be amended accordingly and the newly impleaded Respondent No. 3 herein shall also be impleaded and made a proper and necessary party in the pending suit.

3. Court Receiver Report No. 4 of 2023 has been filed on record, copies of the same have been give to the learned Advocates for the parties. The same has been perused. According to the Court Receiver, the amount lying in the suit account is Rs. 49,95,673.00 whereas the total outstanding property tax and other dues in respect of the subject properly are Rs. 79,94,484.00. Plaintiffs undertake to deposit the balance outstanding property tax, repair cess and land revenue demand in respect of the subject property with the authorities within a period of 90 days from today. In so far as the amount lying in the suit account is concerned, Court Receiver is directed to transfer and deposit the said sum directly with the concerned authorities and place the receipt on record of the case and also give an authenticated copy of the receipt to the Plaintiffs within a period of two weeks from today. This shall however be subject to payment of costs of the Court Receiver as directed by this order.

4. Court Receiver shall calculate the costs and charges and inform the Plaintiffs who are directed to pay the same within a period of two weeks from the date of the information being conveyed to them. Court Receiver is discharged without passing of accounts upon and subject to payment of costs and charges as mentioned above by the Plaintiffs.

5. Apart from the above, Plaintiffs have submitted draft Minutes of Order in addition to the aforementioned directions and urged the Court that the Writ Petition be disposed of. The draft minutes of the order have been signed by the learned Advocates for the parties. The parties were present before me on 10.02.2023 when the draft minutes were submitted in Court and they have confirmed to what is stated in the same. However, considering that the Court Receiver's Report was not ready, this Court had to keep the matter today and the parties were therefore exempted from their personal presence / appearance today. The said draft minutes of order dated 13.02.2023 taken on record and marked "**X**" for identification. For convenience, the said draft minutes of order is scanned and reproduced herein under:-

Tendered in Court
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 269 OF 2016

DIST - MUMBAI

SushilabaiNirmalkumarRungta (Since Deceased)

Through Legal Heirs

Mr. NirajkumarNirmalkumarRungta&Anr ...Petitioner

V/s

Sitaram Agarwal (Since Deceased)

Through LRS

Pushpadevi Agarwal &OrsRespondents

DRAFT MINUTES OF ORDER

1. The present Writ Petition was filed by the Petitioners i.e. Original Plaintiffs in Suit bearing Suit No. 8280 of 1984("Suit") before the City Civil Court, Mumbai,("Trial Court") challenging the Order dated 29th October, 2015 passed in Trial Court in the said Suit. The Trial Court vide order dated 20th August, 1985 appointed Court Receiver in the said matter.

2. By an Order dated 25th April, 2016 passed by this Hon'ble Court in the above Petition, the proceedings in the said Suit were stayed.
3. The parties have now arrived at an amicable settlement and entered into Consent Terms dated 10th February, 2023 ("Consent Terms"). A copy of the Consent Terms is taken on record marked as "X" for identification to this Order.
4. Pursuant to the Consent Terms it is inter alia agreed that:
 - (a) The Petitioners have agreed to pay a sum of Rs.3,75,000/- (Rupees Three Lacs Seventy Five Thousand Only) to each of the Respondent Nos.1 (a) to (d) i.e. totalling to Rs.15,00,000/- (Rupees Fifteen Lacs Only). The same has been paid by way of Demand Drafts No.967543, 967544, 967542 and 967545 drawn on Bank of Baroda, Nariman

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Point Branch dated 8th February, 2023, in the name of the respective Respondents/ Org./ Defendant Nos.1 (a) to (d).

- (b) The Petitioners have also executed a Deed of Transfer in respect of Room No.52, admeasuring 31.02 sq. mtrs. i.e. 333.7 sq. ft., situated on the 4th Floor of the structure standing on 16, Anant Rishi Wadi, Kalbadevi Road, Mumbai – 400 002, in favour of M/s. Radha International.
- (c) However, since M/s. Radha International is not a party to the said Suit, it is agreed that Petitioners and Respondent shall join M/s.Radha International as party defendant to the said Suit, and seek necessary orders from this Hon'ble Court. A copy of the executed Deed of Transfer is annexed to the Consent Terms (which is already marked as X for identification).

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5. The Petitioners/Org. Plaintiffs undertake to admit execution of the Deed of Transfer before the Registrar of Sub-Assurances as and when called upon to do so by the Respondent Nos.1 (a) to (d), or on before 9th April, 2023. In the event, that or on before 9th April, 2023, the Petitioners do not remain present to admit execution before the Registrar of Sub-Assurances, the Respondent Nos.1 (a) to (d) shall be at liberty to approach the Registrar of this Court who shall depute an authorized officer to admit execution on behalf of the Petitioners/Org. Plaintiffs, who endeavour to do so within a period 2 weeks from such approach.
6. With Consent of the parties, it is directed that M/s. Radha International be added as party to the present Writ Petition and amendments in terms of the schedule of amendments tendered by the Petitioners are allowed to be carried out forthwith in the course of the day.
7. The parties have tendered across the schedule of the amendment to be carried out in the suit, the Hon'ble City Civil Court is therefore directed to allow the said

schedule of amendment to be carried out in the said suit expeditiously. The Parties hereby undertake to file the said consent terms before the Hon'ble City Civil Court within a period of one week from the date of this order. As the parties are present before this Hon'ble Court and have tendered copy of the said consent terms, the personal presence of the all parties is dispensed with before the Hon'ble City Civil Court. Further it is also directed that the re-verification of the parties while carrying out the amendment to the said suit be dispensed with.

8. In this backdrop, at the request of the parties, by Consent the present Writ Petition and all pending applications are disposed off in terms of this Order.
9. However, it is clarified that the Petitioner i.e. Original Plaintiff shall be at liberty to institute proceedings against third parties such as MCGM, in accordance with law. The parties have inter alia agreed not to claim any relief of any nature whatsoever by it against the Respondents in relation to the present subject matter and

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also since, all the rents, cess, taxes and all other recoveries from the tenants pending till date of Consent Terms and in future to be collected by Petitioners i.e. Original Plaintiffs and also to be paid to the MCGM, MHADA and other concerned authorities and they shall be solely liable and responsible in respect thereof and the Respondents/ Org. Defendants and/or their legal heirs are not be liable to pay any amount in respect of the said Suit Property or the said Premises, as set out in the Consent Terms.

10. The statements and undertakings given by the parties herein and in the Consent Terms are accepted as undertakings to this Court. All Interim Orders in the present Writ Petition shall stand vacated.
11. The following parties are present here before us:
 - (a) Petitioner No.1/ Og. Plaintiff No.1 –Mr. NirajkumarNirmalkumarRungta
 - (b) Petitioner No.2/ Og. Plaintiff No.2 –Mrs. Bharti Saraf

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- (c) Respondent/ Org. Defendant No.1 (a) – Mrs. Pushpadevi Agarwal
- (d) Respondent/ Org. Defendant No.1 (b) – Mr. Tarunkumar S. Agarwal
- (e) Respondent/ Org. Defendant No.1 (c) – Mrs. Mamta Sanjay Jain
- (f) Respondent/ Org. Defendant No.1 (d) – Mrs. Mrs. Renu Shailesh Narang
- (g) Respondent No.3 (a) – M/s. Radha International – through its partner – Mrs. Pushpadevi Agarwal.


Advocates for the Plaintiffs


Advocates for the Respondent Nos.1 (a) to (d) and 3

6. Since the draft minutes of order contemplate that the Consent Terms would be filed before the learned Trial Court, the parties are at liberty to file the same before the learned Trial Court.

7. Liberty to apply.

8. In view of the above, Writ Petition is disposed. Pending Interim Application is also disposed. Court Receiver's Report No. 4 of 2023 is also disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2023.02.14
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