

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

CIVIL REVISION APPLICATION NO.105 OF 2022

Kundan Shankarrao Agaskar	...Applicant
Versus	
Sanjay Jayant Kher	...Respondent

Mr. V. S. Kpase for the Applicant.
Mr. Atul Damle, Senior Advocate a/w. Mr. Vardhan, Mr. Amit Gharte & Ameya Mahajan for Respondent.

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CORAM : RAJESH S. PATIL, J.

DATED : 30 JANUARY 2024

P.C.:

1. Both the counsel jointly submit that the parties have reached into an amicable settlement and have accordingly entered into consent terms dated 30 January 2024, the same is tendered in Court. It is taken on record and marked "X" for identification. The consent terms has been signed by the authorised signatory of applicant, respondent and their respective advocates. Mr. Kapse and Mr. Damle Senior Advocate state that the signatories are present in Court and they identify their respective client.

2. Order in terms of the consent terms. All statements made in consent terms are accepted as undertaking to this Court. All undertakings are also accepted.

3. For ease of reference, the consent terms is scanned and reproduced hereinbelow :

X' *PLA*
30/12-24.

Tendant in court

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL REVISION APPLICATION NO. 105 OF 2022

Kundan Shankarrao Agaskar,)
"for himself and as the legal heirs)
of the deceased Defendant No.3 i.e.)
Hemlata Shankarrao Agaskar")
An adult of Mumbai, age not known,)
Occ: Not known, residing at 176-A,)
Vaishali Apartments, 2nd floor, Sir)
Bhalchandra Road, Hindu Colony,)
Dadar (E), Mumbai - 400 014 and)
Claiming to be residing at)
Outhouse Room No.1, 176-A,)
Vaishali Apartments, Opp.4th Lane,)
Sir Bhalchandra Road, Dadar (E),)
Mumbai - 400 014.) ...Applicant

V/s.

1) Sanjay Jayant Kher,)
Legal heir of deceased Jayant)
Anant Kher, Hindu, Indian)
Inhabitant, Aged adult, Occu:)
Professional, Residing at 79,)
Patkar Colony, M. Kelkar Marg,)
Bandra (E), Mumbai - 400 051.)

2) Unknown legal heirs of)
Smt. Mangala S. Kothari,)
Hindu, Indian Inhabitant, Expired)
earlier tenant in respect of Room)
No.1, in outhouse situated at 176A,)
Vaishali Apartments, Opp. 4th Lane,)
Sir Bhalchandra Road, Dadar (E),)

Pls *BA*

Value

Mumbai - 400 014.

)

...Respondents

Consent Terms / Undertaking to the Hon'ble High Court
by parties in the captioned CRA :-

1. In the present Civil Revision Application No. 105 of 2022, the Applicant has challenged the Order and Judgment dated 03/01/2022 passed by the Ld. Appellate Bench of the Small Causes Court, Mumbai in Appeal No. 51 of 2016 in RAE Suit No. 1488 of 2002.
2. The Applicant (i.e. Original Defendant No. 2) and his Legal Heirs, who are also signatories to this undertaking, accept the decree, judgement and findings of the Trial Court and the Appellate Small Causes Court and pursuant thereto undertake to vacate and handover vacant, peaceful, unencumbered and undamaged physical possession of the suit premise i.e. *Outhouse No. 1, Plot No. 176-A, Sir Bhalechandra Road, Hindu Colony, Dadra -East, Mumbai - 400 014* on or before 31st May, 2024 by 5:00 pm by handing over the keys of the suit premises to the Respondent i.e. *Sanjay Jayant Kher (i.e. Respondent herein / Original Plaintiff)*. The said keys shall be handed over to the said Respondent at the door step of the said suit premises.
3. The Applicant (i.e. Original Defendant No. 2) and his Legal Heirs, who are also signatories in this undertaking, state that they are the only persons in physical possession of the suit premises and hence they individually and collectively undertake to this Hon'ble Court that they have thus far not created any third party rights, and they shall not hereinafter create any third party rights whatsoever in connection with





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the suit premises, which includes not alienating in any manner whatsoever their present possession of the suit premises.

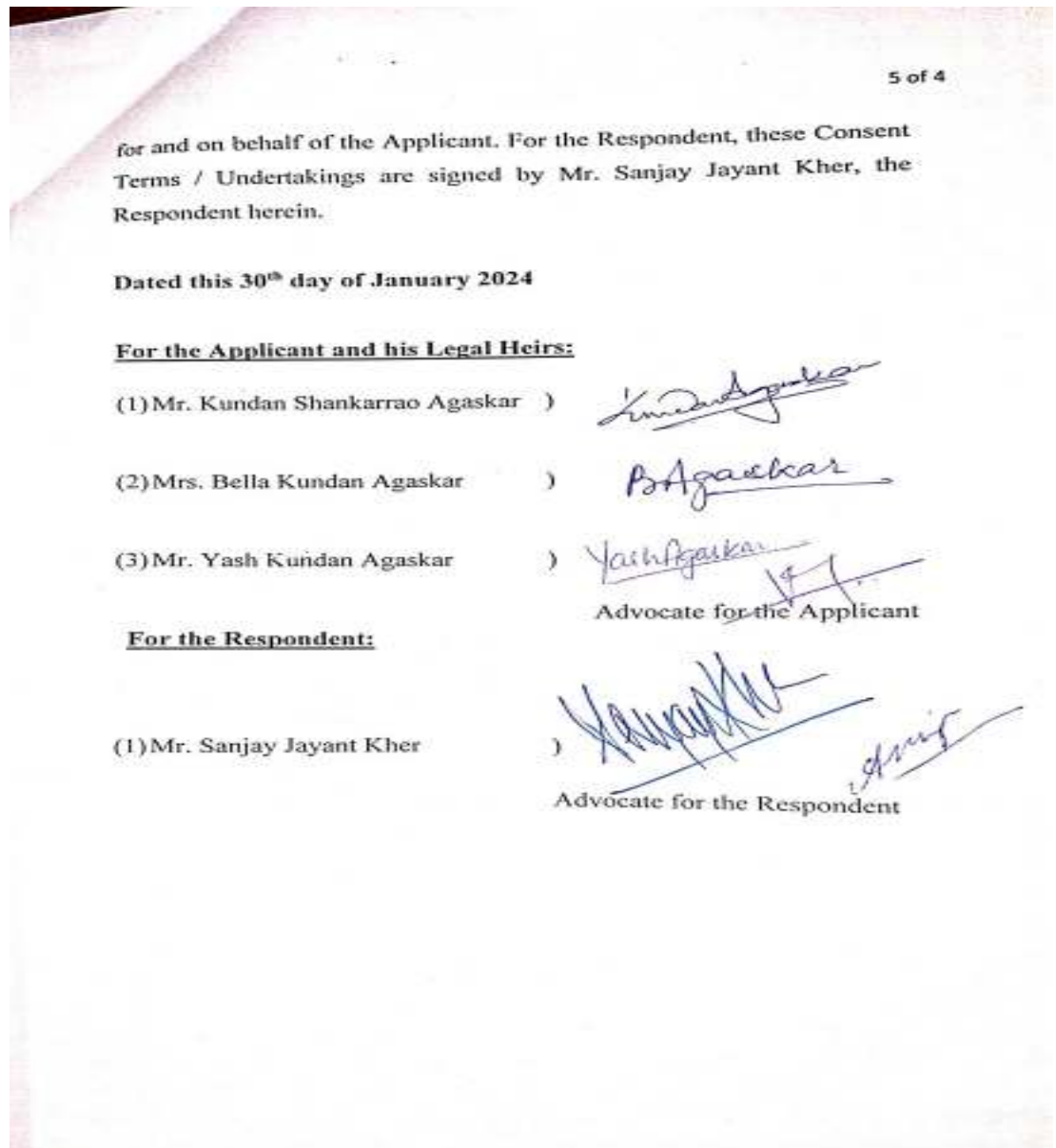
4. The Applicant (*i.e. Original Defendant No. 2*) and his Legal Heirs, who are also signatories to this undertaking, hereby undertakes to withdraw all proceedings filed before the Ld. Joint Registrar/ District Registrar of Co-operative Societies, Mumbai Division including but not limited to Revision Application No. 377 of 2022 within a period of 1 month from the date of this Undertaking.
5. The Applicant (*i.e. Original Defendant No. 2*) and his Legal Heirs, who are also signatories to this undertaking, undertake not to challenge by way of appeal or otherwise in any forum whatsoever (a) Order and Judgment dated 18/04/2015 passed by Ld. Small Causes Court, Mumbai in RAE Suit No. 1488 of 2002, (b) Order and Judgment dated 03/01/2022 passed by the Ld. Small Causes Appellate Court, Mumbai in Appeal No. 51 of 2016, (c) the present Undertaking / Consent Terms filed in the captioned Civil Revision Application No. 105 of 2022, and (d) Order passed by this Hon'ble Court in terms of the present undertaking / consent terms dated 30/01/2024.
6. The Applicant (*i.e. Original Defendant No. 2*) and his Legal Heirs, who are also signatories to this undertaking, acknowledge that in case the undertakings appearing hereinabove are not adhered to / not complied with in letter and spirit, then on an Interim Application of the Respondent herein (*i.e. Sanjay Jayant Kher / Original Plaintiff*) filed in the captioned CRA, the Court Receiver High Court Mumbai shall stand appointed for taking immediate physical possession by any means as this Hon'ble Court deems fit and proper and thereafter to hand over the

said physical possession to the present Respondent (*ie. Sanjay Jayant Kher / Original Plaintiff*). Further, the Applicant (*ie. Original Defendant No. 2*) and his Legal Heirs, who are also signatories to this undertaking, undertake that in case possession of the suit premises is not handed over as stated herein, the Respondent shall be entitled to seek compensation as per law prevailing.

7. In view of the present undertaking, the Respondent (*ie. Sanjay Jayant Kher / Original Plaintiff*) undertakes to withdraw the Marji Application No. 27 of 2020 in RAE Suit No. 1488 of 2002, being the Perjury Application filed by the Respondent before the Court Small Causes, Mumbai; within a period of 2 (two) weeks from the date of these Consent Terms / Undertakings.
8. The Respondent (*ie. Sanjay Jayant Kher / Original Plaintiff*) also undertakes to withdraw any proceedings filed against the Applicant, which are not specifically mentioned in these undertakings.
9. The Respondent (*ie. Sanjay Jayant Kher / Original Plaintiff*) also undertakes that if possession is handed over in accordance with the aforementioned undertakings, the Respondent shall not make any claim for monthly compensation from the date of filing of the said RAE suit, and shall also not file any other civil and or criminal proceedings against the present Applicant and /or his legal heirs, including any claims of *mesne profits*, cost or damages.
10. The present Consent Terms / Undertakings are signed by Mr. Kundan Shankarrao Agaskar (the Applicant), the Applicant's wife Mrs. Bella Kundan Agaskar and by the Applicant's son Mr. Yash Kundan Agaskar



The block contains three handwritten signatures. From left to right: a stylized signature of Kundan Shankarrao Agaskar, a signature of Mrs. Bella Kundan Agaskar, and a signature of Mr. Yash Kundan Agaskar.



4. Civil Revision Application is disposed of. Interim application, if any, also stands disposed.
5. No order as to costs.
6. Parties to act on authenticated copy of this order
7. Certified copy expedited.

(RAJESH S. PATIL, J.)