

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

**APPEAL NO.84 OF 2024
IN
SUIT NO.134 OF 2009**

1. M/s Bhavsar Construction Co. Pvt. Ltd.
Office at 301, Sagar Mansion, 40, Bhulabhai
Desai Road, Mumbai-400 026.

2. Ghanshyam Kalyandas Bhavsar (since deceased)
Through its new/present director
Harish Kalyandas Bhavsar
Director and Representative of
M/s Bhavsar Construction Co. Pvt. Ltd.

3. Usha Ghanshyam Bhavsar (since retired)
Through its new/present Director
Dhaval Mahesh Kumar Bhavsar
Director and Representative of
M/s Bhavsar Construction Co. Pvt. Ltd.
Def. Nos.2 & 3 having their address at
301, Sagar Mansion, 40, Bhulabhai
Desai Road, Mahalaxmi Temple,
Mumbai-400 026.

... Appellants
(Original Defendant No.1 to 3)

V/s.

1. M/s Oyster Shipmanagement
Private Limited, a Company, Incorporated
Under Companies Act, 1956, having address
At 74/75, Mahendra Chambers, 02nd Floor,
D. N. Road, Fort, Mumbai-400001;

2. Tushar Shantilal Gandhi
Residing at 8, Balram Chambers,
Barrack Road, Behind Metro Cinema,
Dhobitalao, Mumbai-400020

3. Roopa Tushar Gandhi
Residing at 8, Balram Chambers,
Barrack Road, Behind Metro Cinema,
Dhobitalao, Mumbai-400020

4. Bhanumati Shantilal Gandhi (since deceased)
Through its legal heirs
4A Shilpa Ketan Mehta
Through its Legal heir of deceased
Residing at 221/22 Beas Building, Main Road,
Opp. Sion Hospital, Sion (East),
Mumbai-400022

5. Hiral Tushar Gandhi
Residing at 8, Balram Chambers,
Barrack Road, Behind Metro Cinema,
Dhobitalao, Mumbai-400 020

6. Mihir Tushar Gandhi
Residing at 8, Balram Chambers,
Barrack Road, Behind Metro Cinema,
Dhobitalao, Mumbai-400 020

7. Ajay Anoopchand Shah
Residing at Shanti Nagar "A",
19th Floor, Block No. 193/194,
98 Nepeansea Road, Mumbai-400 006.

8. Atul Anoopchand Shah
Residing at Shanti Nagar "A",
19th Floor, Block No. 193/194,
98 Nepeansea Road, Mumbai-400 006.

9. Jaya Anoopchand Shah
Residing at Shanti Nagar "A",
19th Floor, Block No. 193/194,
98 Nepeansea Road, Mumbai-400 006.

10. Charu Ajay Shah
Residing at Shanti Nagar "A",
19th Floor, Block No. 193/194,
98 Nepeansea Road, Mumbai-400 006.

11. Jagruti Atul Shah (since deceased)
through its legal heir
11A. Atul Anoopchand Shah
Husband of deceased Jagruti Atul Shah
11B. Rohan Atul Shah
Son of deceased Jagruti Atul Shah
11C. Namita Nirav Gosaliya
Daughter of deceased Jagruti Atul Shah
Both residing at Shanti Nagar "A",
19th Floor, Block No. 193/194,
98 Nepeansea Road, Mumbai-400 006.

12. Vijay Vinaychand Doshi
Residing at 25, Om Darya Mahal,
80, Nepeansea Road, Mumbai 400 006

13. Ramesh Vinaychand Doshi
(since deceased and deleted)
Residing at 25, Om Darya Mahal,
80, Nepeansea Road, Mumbai-400006

14. Hemendra Vinaychand Doshi
Residing at 25, Om Darya Mahal,
80, Nepeansea Road, Mumbai 400006

15. Asha Ramesh Doshi
Residing at 25, Om Darya Mahal,
80, Nepeansea Road, Mumbai 400006

16. Neeta Vijay Doshi
Residing at 25, Om Darya Mahal,
80, Nepeansea Road, Mumbai 400006

17. Usha Hemendra Doshi
Residing at 25, Om Darya Mahal,
80, Nepeansea Road, Mumbai 400006

18. Prakash Champaklal Shah,
Residing at 501, Dharmaji Thakur Park,
Opp. Acuerya Club, Borivali (West),
Mumbai-400092.

19. Niruben Jayant Shah,
Residing at 29 Chowpatty sea Face,
03rd Floor, Sea Castle Building,
Mumbai-400007

20. Kumud Keshavlal Shah,
Residing at 304, Shreenath Apartment,
Shankar Gall, Kandivali (W), Mumbai

21. Shailesh H. Negandhi
901, Sunrise View, Vazira
Naka, L.T. Road, Borivali (W),
Mumbai-400092

22. Dhiren Vasantraai Sheth,
Residing at Flat No.8, Ganesh Building,
Plot No.12, Subramaniyam,
King Circle, Mumbai-400019

23. Vijay Gulabrai Goradia (Since deceased)
Through its legal heirs
23A. Pravina Vijay Goradia
Wife of late Vijay Gulabrai Goradia
23B. Nishit Vijay Goradia
Son of late Vijay Gulabrai Goradia
23C. Monish Vijay Goradia

Son of late Vijay Gulabrai Goradia
All residing at A-12, Highway Apartment
Eastern Express Highway, Sion (East),
Mumbai-400022

24. Sheela Jasvant Khimani
Residing at 302, Shyam Kutir,
B Wing, Azad Road, Ville Parle(E),
Mumbai-400057

25. Arvinderpal Singh Ahuja
Residing at 21A, Sunset Heights,
Nargis Dutt Road, 59, Pall Hill,
Bandra (West), Mumbai-400050

26. Komaljit Ahuja
Residing at 21A, Sunset Heights,
Nargis Dutt Road, 59, Pall Hill,
Bandra (West), Mumbai-400050

27. Jaspal Kaur Ahuja (Since deceased)
Through its legal heirs

27A. Satinder Pal Singh Ahuja
Son of late Jaspal Kaur Ahuja

27B. Arvinder Pal Singh Ahuja
Son of late Jaspal Kaur Ahuja

27C. Sonia Amit Tandon
Daughter of late Jaspal Kaur Ahuja

All residing at 21A, Sunset Heights,
Nargis Dutt Road, 59, Pall Hill,
Bandra (West), Mumbai-400050

28. Satinder Pal Singh Ahuja
Residing at 21A, Sunset Heights,
Nargis Dutt Road, 59, Pall Hill,
Bandra (West), Mumbai-400050

29. Bhupinder Singh s/o Gopal Singh Machara
48, Ready Money Terrace, Dr. A. B. Road,
Worli, Mumbai-400018

30. Rupa Singh d/o Bhupinder singh Machara
Nee Mrs. Rupa Amrut Bir Singh Sahani
Residing at 51 Micasa, Central Avenue,
Santacruz, Mumbai-400054.

31. Chetan Vora
Residing at 5, Vraj Kunj, V. P. Road,
Vile Parle (West), Mumbai – 400056

32. Laxmidas Hargovindas Vora,
Karta of L.H. Vora HUF 5, Vraj Kunj,
V.P. Road, Vile Parle (West), Mumbai-400056

33. M/s Shree Enterprises (Chemicals) Pvt. Ltd.
Office situated at 5, Vraj Kunj, V. P. Road,
Vile Parle (West), Mumbai – 400056

34. M/s. Muskan Fero Silicon Ltd.
5, Vraj Kunj, V. P. Road, Vile Parle (West),
Mumbai – 400056

35. M/s. Pruthvi Capital Market Ltd.
5, Vraj Kunj, V. P. Road, Vile Parle (West),
Mumbai – 400056

36. M/s. Shree Sai Developers
A partnership firm, having its
Office at 164/1312, Motilal Nagar
No.1, Goregaon (West), Mumbai-4000104
at Nand Bhavan, 83 J.P. Road, Andheri (W),
Mumbai-400058

37. Kuldeep Singh Nihal Singh,
Partner of M/s Shree Sai Developers,

Residing at 604 A, Clifton Society, Near
Oberoi Complex, Off. Link Road, Near
Lokhandwala, Andheri (west), Mumbai-400058.

38. Madhavi Rane,
Partner of M/s Shree Sai Developers,
Residing at 164/1312, Motilal Nagar
No.1, Goregaon (West), Mumbai-400104

39. Adamali Shaikh
Partner of M/s Shree Sai Developers,
Residing at 02/802, Mercury, B-Wing,
Evershine's Millennium Paradise, Thakkur
Village, Kandivali (East), Mumbai-400101
Defendant Nos.5, 6 & 7 having their office
address at 164/1312, Motilal Nagar
No.1, Goregaon (West), Mumbai-400104 and
also having office at Nand Bhavan 83, J.P. Road,
Andheri (West), Mumbai-400058.

40. M/s Royal Developers,
Project developer appointed by
M/s Shree Sai Developers having address,
Brijkamal Bunglow, Gulmohar Cross Road No.7,
J.V.P.D. Scheme, Mumbai-400049

41. Kantilal Manganlal Rathod
Partner of M/s Royal Developers
Having address at Brijkamal Bunglow,
Gulmohar Cross Road No.7,
J.V.P.D. Scheme, Mumbai-400049

42. Mrs. Phalguni Purshottan Solanki
Partner of M/s Royal Developers
Having address at Brijkamal Bunglow,
Gulmohar Cross Road No.7,
J.V.P.D. Scheme, Mumbai-400049

43. Sunil Kumar Jain

44. Archana Sunil Kumar Jain

Both residing at Partner of M/s Royal Developers
Having address at Brijkamal Bunglow,
Gulmohar Cross Road No.7,
J.V.P.D. Scheme, Mumbai-400049.

45. Nilesh M. Tanna, Partner of M/s Tanna
Construction, of Mumbai, Indian Inhabitant
Having his address at 616, 06th Floor,
Building No. 1, Kamdhenu C.H.S.,
above Domino's Pizza, Lokhandwala
Complex, Andheri (W), Mumbai-400053

46. M/s Tanna Construction Co.,
a firm of Defendant No. 12, having
his address at 616, 06th Floor,
Building No. 1, Kamdhenu C.H.S.,
above Domino's Pizza, Lokhandwala
Complex, Andheri (W), Mumbai-400053

47. Mumbai Metropolitan Region Development
Authority (MMRDA), a Government of Maharashtra
Undertaking having its office at MMRDA Building,
Bandra Kurla Reclamation, Bandra (E), Mumbai-400051

48. SAFEMA, a Government of India
Undertaking, office of Competent Authority
& Administrator under Smugglers & Foreign
Exchange Manipulators (Forfeiture of Property
Act 1976) having its office at Mittal Court,
"C" wing, 03rd Floor, Nariman Point,
Mumbai-400021

... Respondents
(R-1 to 35 Original
Plaintiffs and R 36-48
original Defendants NO
4 TO 15)

**WITH
INTERIM APPLICATION NO.1263 OF 2024
IN
APPEAL NO.84 OF 2024**

Mr. Aspi Chinoy, Senior Advocate with Mr. Hitesh Vyas, Mr. Girish Paryani, Mr. S. Mukti, Mr. Vaibhav Kamble, Mr. Gulam Khan i/by A and G Legal Associates LLP for the Appellants.

Mr. Ashish Kamat, Senior Advocate, Mr. Shanay Shah, Mr. Kiran Jain, Ms. Neha Raut i/by Kiran Jain & Company for Respondent Nos.1 to 35.

Mr. Harsh Dedhia a/w Mr. Rajendra Vaingankar i/by Mr. Kumarswamy for Respondent Nos.36, 37 and 39.

Mr. Sharan Jagtiani, Senior Advocate, Mr. Rohan Sawant, Mr. Rajan Yadav, Ms. Aarti Nishad i/by Rajan Yadav for Respondent Nos.43 and 44.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

RESERVED ON : 26TH APRIL 2024

PRONOUNCED ON : 9TH MAY 2024

JUDGMENT: (PER ARIF S. DOCTOR, J.)

The present Appeal impugns an order dated 22nd February 2024, by which the Learned Judge has disposed of the captioned Suit, i.e., Suit No.134 of 2009 ("*the said Suit*") in

terms of Consent Terms dated 13th February 2024 ("*the said Consent Terms*"), entered into between Respondent Nos.1 to 35 on the one hand and Respondent Nos.40 to 44 on the other hand. Respondent Nos.1 to 35 are the Plaintiffs in the said Suit and are hereinafter referred to as the Respondent/Plaintiffs and Respondent Nos.40 to 44 who are Defendant Nos.8 to 11 to the said Suit and are hereinafter referred to as the Respondent/Developers. The Appellants are Defendant Nos.1 to 3 to the captioned Suit.

2. The said Suit has been filed by Respondent/Plaintiffs *inter alia* seeking a declaration that they are the purchasers of certain units in a proposed commercial building complex known as "*Sharda Complex*", to be built on land bearing Survey No.41-part (1)(B), CTS No.444, 444/1, 444/2 and 445 situated at Swami Vivekanand Road, Village Oshiwara, Jogeshwari, Mumbai 400 102 ("*the said plot*"). The Respondent/Plaintiffs have based their claim *inter alia* on certain Letters of Allotment ("LOAs") issued to them by the Appellants. It is not in dispute that the Appellants subsequent to issuing the said Letters of Allotment

had also entered into development agreements initially with Respondent Nos.36 to 39 and thereafter a Joint Venture Agreement ("JVA") dated 10th May 2001 with the Respondent/Developers by and under which the Respondent/Developers were to construct upon the said plot and deliver possession of the various units in respect of which the LOAs were issued by the Appellants. Since despite the passage of considerable time, the Respondent/Plaintiffs did not receive their units, they filed the captioned Suit against *inter alia* the Appellants, Respondent Nos.36 to 39 and the Respondent/Developers collectively in their capacity as Promoters under the provisions of the Maharashtra Ownership of Flats Act, 1963 ("MOFA") and accordingly sought the discharge of their obligations as Promoters. During the course of the said Suit, the Respondent/Plaintiffs had taken out a Notice of Motion in which the Court Receiver, High Court, Bombay came to be appointed as Receiver in respect of the said plot as also to remove certain encroachment on the said plot. It is not in dispute that by an order dated 22nd March 2001 passed by the competent authority under the provisions of the Smugglers and Foreign Exchange

Manipulators (Forfeiture of Property) Act, 1976 ("*SAFEMA*"), the said plot was infact stood forfeited in favour of the Central Government. The said order was challenged by the affected parties before the Appellate Tribunal, which *inter alia* remanded the matter back to the competent authority under SAFEMA. By the order of the competent authority dated 10th October 2018, possession of the said plot was restored to the Respondent/Developers and only the interests of the Appellants under the said JVA stood forfeited. It is in this backdrop that the Respondent/Plaintiffs and the Respondent/Developers have entered into the said Consent Terms.

3. Mr. Chinoy, Learned Senior Counsel appearing on behalf of the Appellants at the outset submitted that the very basis of the claim of the Respondent/Plaintiffs in the said Suit was misconceived, since the same was admittedly based only upon LOAs and not any Agreement/s, much less registered agreements under the provisions of MOFA. He submitted that it was well settled that mere LOAs would not confer any right upon the Respondent/Plaintiffs under the provisions of MOFA. He then

submitted that in any event, the Appellants were disputing the said LOAs and therefore the question of the Respondent/Plaintiffs making any claim on the basis of the said LOAs did not arise.

4. Mr. Chinoy then submitted that the Appellants had terminated the JVA, basis which the Respondent/Developers were claiming the right to develop the said plot and deliver the various units to the Respondent/Plaintiffs on the basis the various LOAs issued by the Appellants. In support of his contention, he placed reliance upon a public notice dated 7th July 2012 and pointed out that by the same, the public at large were clearly informed "*that no one should deal with said M/s Shree Sai Developers, M/s Royal Developers and M/s Tanna Construction Co. and/or its partners named above, in respect of under mentioned schedule property*". Basis this, he submitted that there was no question of the Respondent/Developers now carrying out any construction on the said plot of land absent the consent of the Appellants.

5. Mr. Chinoy then submitted that what was being attempted by the Respondent/Plaintiffs and the Respondent/Developers by the said Consent Terms was to get the imprimatur of the Court on something which was otherwise impermissible. He submitted that if the Respondent/Developers could legally construct upon the said plot, there was no need for the said Consent Terms. He pointed out that it was only because the Respondent/Developers and the Respondent/Plaintiffs were well aware that they could not construct on the basis of the documents executed, they had sought to enter into the Consent Terms. He submitted that the object of entering into the said Consent Terms was only to obtain the requisite permissions which otherwise would not be made available to the Respondent/Developers absent the consent of the Appellants. He thus submitted that what the Respondent/Plaintiffs and the Respondent/Developers were by virtue of the Consent Terms seeking was a declaration that the Respondent/Developers had a right to build upon the said plot, which he submitted could never have been granted absent the Appellants' consent. In support of his contention, he placed reliance upon clause 14 of

the Consent Terms which recorded that the Appellants were entitled to undertake the development of the said plot. Basis this, he submitted that there was no manner of doubt that the Consent Terms were being entered into only to vest the Respondent/Developers to do what was otherwise impermissible.

6. Mr. Chinoy then pointed out that even on the assumption that the said JVA was valid, the same contemplated that the Appellants were to get 13500 sq. ft. super built up area thereunder. He also pointed out that the same was entered into in the year 2001 and there had since been a huge rise in the permissible FSI etc. and thus the considerations which applied in 2001, would not be applicable now.

7. Mr. Chinoy then submitted that the Appellants had filed an Appeal against the order dated 22nd March 2001 passed in proceedings taken against the Appellants under the provisions of the SAFEMA, by which the Appellants' leasehold rights in the said land came to be forfeited. He submitted that in the event the Appellants were to succeed in the Appeal, all the rights of

the Appellants in the said plot would stand restored and if the Respondent/Developers were permitted to build upon the said plot in the interregnum, the same would directly prejudice and/or defeat the rights of the Appellants.

8. *Per contra*, Mr. Kamat, Learned Senior Counsel appearing on behalf of the Respondent/Plaintiffs submitted that the Consent Terms did not in any manner affect the Appellants. He pointed out that the Appellants had not even filed a Written Statement to oppose the said Suit, despite the passage of over fourteen years. He then submitted that the Appellants had infact in an Affidavit filed in the course of the hearing of the said Suit, specifically admitted the rights of the Respondent/Plaintiffs under the said LOAs. He therefore submitted that the question of the Appellants now opposing the Consent Terms and/or denying the said LOAs did not arise.

9. Mr. Kamat then submitted that the Appellants did not have even the slightest semblance of a right in the said plot. He pointed out that by virtue of the JVA the Appellants had not only

given up all their rights in the said plot, save and except to be entitled to a super built up area of 13500 sq. ft., but had also parted with possession of the said plot. He submitted that had it not been for the JVA, infact the entire plot would have stood forfeited. He thus submitted that it was not open to the Appellants to today claim any right whatsoever in the said plot. He pointed out that on the date when the Impugned Order was passed, the Appeal which had been filed by the Appellants before the Appellate Tribunal under SAFEMA had also been dismissed for default. He thus submitted that there was absolutely no merit in the claim of the Appellants or even the slightest sincerity in their conduct to support such a claim.

10. Mr. Kamat then in dealing with the contention that the Appellants had terminated the said JVA pointed out that the public notice upon which reliance was placed by the Appellants infact made no mention of any termination of the said JVA. He pointed out from the public notice that (i) the Appellants had terminated a previous agreement entered into with Respondent Nos.36 to 39 and not the JVA entered into with the

Respondent/Developers and (ii) the public notice merely cautioned the public at large not to deal exclusively with the Respondent/Developers and nothing more. He thus submitted that the Appellants' contention that the said JVA had been terminated was *ex facie* untenable.

11. He then invited our attention to various letters addressed by the Appellants to Respondent No.43 i.e. partner of Respondent/Developers in which the Appellants had specifically recognized the rights of the Respondent/Plaintiffs under the said LOAs and infact called upon the Respondent/Developers to protect the same. Basis this, he submitted that the question of the Appellants now, for the first time disputing and/or denying the rights of the Respondent/Plaintiffs did not arise.

12. Mr. Jagtiani, Learned Senior Counsel appearing on behalf of the Respondent/Developers adopted the submissions made on behalf of the Respondent/Plaintiffs. He reiterated that the JVA dated 10th May 2001 entered into between the Appellants and the Respondent/Developers had never been

terminated. In addition, to point out that the public notice dated 7th July 2012 made absolutely no mention of any such termination, he submitted no termination letter had ever been issued by the Appellants to the Respondent/Developers which would naturally be a step which would precede the issuance of a public notice. He thus submitted that the said JVA was therefore very much valid and subsisting. Mr. Jagtiani then pointed out that it was not in dispute that possession of the said plot was in the possession of the Respondent/Developers as evidenced by the order dated 10th October 2018 passed by the Competent Authority under SAFEMA. He submitted that had there infact been any termination of the JVA, the Appellants would have taken steps to recover possession of the said plot from the Respondent/Developers, which the Appellants had admittedly not taken. He thus submitted that the Appellants' contention that the said JVA stood terminated apart from being plainly misconceived was also false to the Appellants' knowledge.

13. Mr. Jagtiani then submitted that essence of the Appellants' contentions was that the Consent Terms affected the

Appellants property rights in view of the termination of the said JVA. He pointed out that this was a dispute *inter se* Defendants to the said Suit and therefore not one which could have been determined in the preset Suit. He submitted that if the Appellants in any manner apprehended that their property rights were in any manner in jeopardy, it was always open to the Appellants to take recourse to appropriate legal action, which was precisely what the Learned Judge had held while disposing of the said Suit in terms of the said Consent Terms. He however submitted that the Appellants could not have any grievance to the Respondent/Plaintiffs and the Respondent/Developers in settling the said Suit on the basis of the said Consent Terms.

14. Mr. Jagtiani then submitted that the Appellants would still be liable under the terms of the said JVA. He thus submitted that the Appellants' apprehension of their rights being defeated and/or affected did not in any manner arise. He then reiterated that in any view, any *inter se* dispute between the Appellants and the Respondent/Developers *qua* rights following from the said JVA were *inter se* dispute between the Defendants in the

said Suit. Mr. Jagtiani clarified that the Appellants' apprehension of any misuse of the Impugned Order and/or Consent Terms did not arise as the Respondent/Developers would have to still comply with the law to carry out construction. He also clarified that no construction would be carried out through the Receiver, but that the Receiver's appointment would only be to ensure there is no encroachment on the said plot and only to remove the existing encroachments. He submitted that this could in no manner affect the Appellants.

15. Mr. Dedhia, Learned Counsel appearing on behalf of Respondent Nos.36 to 38 (M/s. Shree Sai Developers), with whom the Appellants had initially entered into a Development Agreement, also supported the arguments of the Appellants. The Learned Counsel submitted that Respondent Nos.36 to 39 had filed their independent Appeal, in which they had also challenged the Impugned Order essentially on the ground that the Consent Terms would affect the rights of Respondent Nos.36 to 39. Essentially the submission was that Respondent Nos.36 to 39 had rights in respect of the said plot based on the said

Agreement, which was entered into with the Appellants prior to the JVA. It was thus he submitted that the present Appeal deserves to be allowed.

16. We have heard Learned Counsel for the parties and we find no infirmity with the Impugned Order and we find that the Appeal deserves to be dismissed for the following reasons, viz.

A. *First*, and at the outset, we must note that the Appellants have not filed a Written Statement despite the passage of fourteen years from the date of the filing of the Suit. Thus, on the date the Impugned Order was passed, there was admittedly no contest to the said Suit by the Appellants. Also, it was not disputed by the Appellants that on the day Impugned Order was passed, the Appeal filed by the Appellants against the order of competent authority under SAFEMA dated 10th October 2018 had infact been dismissed for default. Thus on that date, the Appellants neither were contesting the said Suit, nor was there a challenge to the said order by which the interest of the

Appellants in the said plot was forfeited and the Respondent/Developers were asked to complete the development project on the said plot. Another aspect that we must also note here is that the Appellants have not been able to even *prima facie* demonstrate that they had terminated the said JVA dated 10th May 2001 or that possession of the said plot was not with the Respondent/Developers pursuant to the said JVA. Thus, for the Appellants in this background to contend that the Consent Terms could not have been accepted absent their consent is plainly untenable.

B. *Second*, and crucially, we find that the Learned Judge has after construing the provisions of Order XXIII Rule 1 and Rule 3 of the Code of Civil Procedure ("*CPC*") accepted the said Consent Terms and disposed of the Suit in terms thereof. There can be no dispute that under Order XXIII Rule 1 of the CPC a Plaintiff may at any time after the institution of the Suit, abandon the Suit or part of the claim against all or any of the Defendants. We find that

this is precisely what the Respondent/Plaintiffs have done *inter alia* against the Appellants. Also, Order XXIII Rule 3 expressly permits parties to a Suit to compromise the same, provided that the said compromise is lawful. In the case at hand, the Respondent/Plaintiffs and Respondent/Developers have entered into the Consent Terms on the basis that the Respondent/Developers shall carry out construction and hand over the various units to the Respondent/Plaintiffs in terms of their various LOAs. Thus, the Respondent/Plaintiffs will now look only to the Respondent/Developers for realizing their claims under the various LOAs and not to the Appellants. There is nothing that, in our view, can be even remotely said to be unlawful in this arrangement. Needless to state, the Respondent/Developers by entering into the said Consent Terms would not be absolved in any manner doing what is legally necessary to discharge their obligations under the said Consent Terms. What we have to see is, if the same can be said to be *per se* unlawful or voidable. We find that in the present case, not even an attempt was made to

demonstrate that the Consent Terms were unlawful and/or voidable.

C. The main plank of the Appellants' case was that the Consent Terms would defeat the rights of the Appellants. We find that the Learned Judge succinctly dealt with this aspect in paragraph 26 of the Impugned Order in which he has held as follows, viz.

"26. In the present case, Plaintiffs have decided to compromise the suit only qua Defendant Nos. 8 to 11. Such compromise is based on a belief that Defendant Nos. 8 to 11 are in a position to carry out construction and hand over commercial units to the Plaintiffs as per allotments made in their favour. Whether such belief is correct or not and whether Defendant Nos. 8 to 11 indeed have a right to carry out construction on the plot is something which is not being decided in the compromise terms. If Defendant Nos.1 to 3 or Defendant Nos. 4 to 6 believe that Defendant Nos. 8 to 11 do not have right to carry out construction on the suit plot, they will have to adopt appropriate remedies in that regard and compromise effected by the Plaintiffs with Defendant Nos.8 to 11 will not come in the way of Defendant Nos.1 to 3 or Defendant Nos.4 to 6 from prosecuting their remedies."

We are in complete agreement with the aforesaid findings.

D. We also find that the Appellants' contention that the Consent Terms will be misused by the Respondent/Developers or that continuance of the Court Receiver will be misused has been adequately clarified in terms of the statement made by the Learned Senior Counsel appearing on behalf of the Respondent/Developers that the continuance of the Court Receiver shall only be for the limited purpose of removing encroachments on the said plot and nothing more. Also, we find that the Learned Judge has in paragraph 30 of the Impugned Order more than adequately dealt with the Appellants' apprehension that it will be perceived that this Court has put a stamp of approval in respect of the rights of the Respondent/Developers by expressly recording as follows, viz.

"30 In the light of the above, even though paragraph 24 of the Consent Terms seek to make Notice of Motion No.2381 of 2011 absolute in terms of prayer clauses (a) and (b) thereof, the same would not mean that this Court has put any stamp of approval in respect of any right of Defendant Nos.8 to 11 to carry out construction on the suit property. If rights of Defendant Nos.8 to 11 are challenged by any person/entity including Defendant No.1 to 6, such proceedings

shall be decided independent of the contents of the Consent Terms and nothing agreed therein would bind other parties, who are not signatories to the Consent Terms, in any manner. In my view, this would dispel the apprehension expressed by Mr. Tamboly about continuance of Court Receiver."

We find the above, more than adequately address any apprehension that the Appellants may have.

17. Hence for the aforesaid reasons, the Appeal is dismissed.

18. In view of dismissal of the captioned Appeal, Interim Application No.1263 of 2024 does not survive and the same is accordingly disposed of.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)