

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.19156 OF 2024

Vijay Sakharam Churi

...Petitioner

Versus

Vishwanath Sakharam Churi & Ors.

...Respondents

Mr. Rafique Ahmed Shaikh a/w. Mr. Hasan Sayed, for the
Petitioner.

Mr. Prashant G. Karande a/w. Mr. Sudam S. Patil i/b. Mr. Praful S.
Pawar, for the Respondent Nos.1 to 4.

CORAM: MADHAV J. JAMDAR, J.

DATED : 10th FEBRUARY 2025

P. C.:

1. By the present Writ Petition filed under Article 227 of the Constitution of India, the challenge is to the order dated 21st November 2024 passed by the learned Division Bench of the Small Causes Court at Mumbai in Revision Application No.262 of 2024. In the said Revision Application, the challenge was to the legality and validity of the order dated 21st August 2024 passed below Exhibit-20 in R.A.D. Suit No.15 of 2024. The said Application bearing Exhibit-20 has been filed by the original Defendant Nos.2 to 5 for rejection of the plaint.

2. By the impugned order dated 21st November 2024, the said Application bearing Exhibit-20 has been allowed and R.A.D. Suit No.15 of 2024 is rejected vide Order VII Rule 11(d) of the Code of Civil Procedure, 1908. The said R.A.D. Suit has been filed seeking a declaration that the Plaintiff i.e. present Petitioner is the joint tenant of the Defendant No.1 in respect of the suit premises.

3. Thus, the dispute is *inter se* between three brothers i.e. the Petitioner, Respondent No.1 and heirs of Mahendranath Sakharam Churi i.e. Respondent Nos.2 to 4. The Respondent No.5 is the landlord.

4. Both Mr. Shaikh, learned Counsel appearing for the Petitioner and Mr. Karande, learned Counsel appearing for the Respondent Nos.1 to 4 state that the Petitioner and the Respondent Nos.1 to 4 have arrived at the settlement and they tender the Consent Terms. Both of them state that the Respondent No.5 is landlord/developer and he has been served, however, throughout these proceedings he has remained absent. Both of them state that the Respondent No.5 has expressed that as this is the family dispute amongst the Petitioner (original Plaintiff) and Respondent

Nos. 1 to 4 (original Defendant Nos. 2 to 5) and therefore, the Respondent No.5(original Defendant No.1) is not concerned with the said dispute and the Respondent No.5 has no objection for the settlement of the dispute between the said family members. Both the learned Counsel state that the Petitioner and the Respondent Nos.1 to 4 have entered into the Consent Terms. The Consent Terms are signed by the Petitioner as well as the Respondent Nos.1 to 4. The Consent Terms are signed by the Respondent No.3 through his Constituted Attorney. All the signatories to the Consent Terms are present in Court. They state that the dispute between them is settled in terms of the Consent Terms and they have signed the Consent Terms. The respective Advocates have also signed the Consent Terms and they identify the signatures of the respective parties. Accordingly, the Consent Terms are taken on record and marked 'X' for identification. The Consent Terms read as under:

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL WRIT PETITION NO.19156 OF 2024

IN

REVISION APPLICATION NO.262 OF 2024

DISTRICT: MUMBAI

Vijay Sakham Churi ... Petitioner (Orig. Plaintiff)

Vs.

Vishwanath Sakham Churi & Ors. ... Respondents

MINUTES OF CONSENT TERMS / ORDER

The parties i.e. the Petitioners and the Respondent Nos.1 to 4 (Respondent No.1 as one entity and the Respondent Nos.2 to 4 together as a single entity) have settled their dispute on following terms: -

1. The parties agree, admit and confirm that each of them is having equal right, share and interest in the tenancy / occupancy rights of Flat No.B-14 admeasuring about 630 sq. ft. carpet area, Shree Ram Mandir Trust Building at F.P. No.137, Mahim, Mumbai and as such the Petitioner, Respondent No.1, Respondent Nos.2 to 4 - (taken together as one entity) are entitled being tenants-in-common (i.e. having equal share, rights and interest, viz. -1/3rd each) to receive permanent alternative accommodation admeasuring about 856 sq. ft. area bearing Flat No.401 situated on 4th floor of proposed new building to be constructed in lieu of Shree Ram Mandir Trust Building at F.P. No.137, Mahim, Mumbai to be allotted and delivered in lieu of said Flat No.B-

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14.(said Flat No.401 is hereinafter referred to as "the said Flat for the sake of brevity).

2. In view of agreement and understanding at Clause No.1 hereinabove, the Petitioner and the Respondent No.1 and the Respondent Nos.2 to 4 undertake to forthwith make an Application to the Respondent No.5 and Chief Officer/ Executive Engineer, MBRR Board, MHADA for inclusion of their names in the list of eligible occupants of said Flat No. B-14, Shree Ram Mandir Trust Building, Mahim, Mumbai 400 016. It is further agreed that the Petitioner, Respondent No.1 and the Respondent Nos.2 to 4 (taken together) shall be entitled to 1/3rd share each in the compensation to be paid by the Respondent No.5 till delivery of possession of the said Flat and accordingly, necessary request will be made to the Respondent No.5 and C.O., MBRR Board, MHADA.

3. It is agreed between the parties that the Petitioner, Respondent Nos.1, 2 to 4 are entitled to 1/3rd share each in the interim compensation for securing transit premises in lieu of the said flat and as such the Respondent Nos.1, 2 to 4 undertakes to pay the Petitioner a sum of Rs.2,66,666.66 (Rupees Two Lakhs Sixty Six Thousand Six Hundred and Sixty Six Rupees and Sixty Six Paise Only) (being 1/3rd amount of interim compensation so far received for the period from December 2023 to November 2024 @ Rs.60,000/- per month aggregating to Rs.8,00,000/-) by way of D.D. within period of 4 weeks from the date of passing of order on these consent terms. The said amount of Rs.2,66,666.66 is inclusive of share in the transportation charges.



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4. It is further agreed by and between the parties that earlier notarized agreement for provision of permanent alternative accommodation dated 16.12.2023 executed between the Respondent Nos.1, 2 to 4 and the Respondent No.5 is treated as cancelled. It is further agreed that new agreement for provision of permanent alternative accommodation, viz. – Flat No.401 in the newly constructed to be executed between the Petitioner, Respondent No.1, Respondent Nos.2 to 4 - (taken together as one entity) with the Respondent No.5, shall be executed at the earliest and registered before the Sub-Registrar of Assurances, Mumbai and the parties shall pursue the matter with the Respondent No.5 for the purpose of registration and the registration shall be done in presence of all the parties to this Consent Terms and all parties i.e. Petitioner, Respondent No.1 and Respondent Nos.2 to 4 undertake to attend office of Sub Registrar of Assurances without claiming any charges for the same.

5. It is mutually agreed, admitted and confirmed by and between the parties that the valuation of said Flat as on today is about Rs.3 crores only and said amount shall be treated as basic minimum value for sale of said Flat. It is further agreed between the parties that the Petitioner shall simultaneously pay a sum of Rs.1 crore each (by way of D.D.) to the Respondent No.1 and to the Respondent Nos.2 to 4 (taken together) within period of 60 days from the date of passing of the Order on these minutes by the Hon'ble Court and upon payment as stated earlier, the Respondent No.1 and Respondent Nos.2 to 4 shall simultaneously execute Release Deed / Deed of Relinquishment of Rights in favour of

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the Petitioner thereby relinquishing their 2/3rd rights, share and interest in the said Flat including right to receive interim compensation and right to receive permanent alternative accommodation in lieu of the said flat from the date of execution of such release deed. The expenses for registration and necessary stamp duty shall be borne by the Petitioner. It is further clarified that the interim compensation for transit premises w.e.f. December 2024 till execution of release deed between the parties shall be shared equally between the Petitioner, the Respondent No.1 and the Respondent Nos.2 to 4 (taken together).

6. In the event, if the Petitioner fails to make payment as stated in Clause No.5 hereinabove within stipulated time period of 60 days, then the Petitioner shall sell his undivided 1/3rd share said Flat to the Respondent Nos.1 and 2 to 4 at minimum basic price of Rs.3 crores. The Respondent Nos.1 and 2 to 4 shall pay a sum of Rs.1 crore to the Petitioner within period of 60 days thereafter. It is further agreed that upon payment of Rs.1 crore by the Respondent Nos.1, 2 to 4 to the Petitioner, he shall simultaneously execute Release Deed / Deed of Relinquishment of Rights in favour of the Respondent Nos.1, 2 to 4 thereby relinquishing his undivided 1/3rd rights, share and interest in the said Flat including right to receive interim compensation and right to receive permanent alternative accommodation in lieu of the said flat from the date of execution of such release deed. The expenses for registration and necessary stamp duty shall be borne by the Respondent Nos.1, 2 to 4.



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7. In the event of failure of Respondent Nos.1 and 2 to 4 to pay amount as stated in Clause No.6 hereinabove, then each party shall be entitled to bring prospective purchaser for the same. Amongst the offers received from prospective purchasers, "whichever is higher" shall be selected and finalized. It is further agreed that the time period for bringing prospective purchaser shall be 60 days, which can be extended by mutual agreement depending upon then prevailing circumstances at that time. It is further agreed, admitted and confirmed between the parties that the Petitioner, Respondent No.1, Respondent Nos.2 to 4 shall be entitled to get 1/3rd share each (after deducting expenses, if any) from such sale of the said Flat. It is further agreed that in no event the said Flat shall be sold for less than the reserve price of Rs. 3 crores.

8. Each party shall be responsible for respective taxation liability.

9. It is further agreed, admitted that in the event of any of the parties being not alive till implementation of consent terms is complied, as aforesaid, then their respective rights, share and interest shall devolve upon their respective heirs and legal representatives or any person claiming through them and these terms shall be valid and binding upon such heirs and legal representatives or any person claiming through them.

10. In view of above settlement, understanding, the parties have settled all their disputes and there is no claim, demand of whatsoever nature against each other with reference to said Flat (except clauses hereinabove). It is further agreed that the Petitioner undertakes to

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withdraw Criminal Case No.CC-97/SW of 2023 filed by him in the Additional Chief Metropolitan Magistrate's 9th Court at Bandra, Mumbai against the Respondent No.1 and Respondent No.4, Reshma Sagar Churi, Seema Shirang Ranavade, Paresh Vishwanath Churi, Madhavi Vishwanath Churi within period of 30 days from the passing of the Order by the Hon'ble Court on these minutes. The parties hereby agree, undertake that the complaints made by them against each other with the Police, MHADA or any other authority/person/s shall be treated as withdrawn and cancelled.

11. The Petitioner, the Respondent No.1 and the Respondent Nos.2 to 4 have understood correct meaning of above terms Nos.1 to 10 and the same has been explained to them in their mother tongue-Marathi by their respective Advocates. It is further confirmed by and between the parties that they are signing present minutes of order of their free will, volition without any kind of pressure, influence from anybody.

12. The undertakings given by the parties are accepted by the Hon'ble Court and any breach of the undertakings shall invite Contempt proceedings before this Hon'ble Court.

13. No order as to cost.

14. In view of above, the Writ Petition stand disposed.



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Mumbai dated 10th February 2025.

Identified & Explained by me,
R. A. Shinde
Advocate for the Petitioner

[Signature]
Petitioner

Identified & Explained by me,
[Signature]
Advocate for the Respondent Nos.1 to 4

[Signature]
Respondent No.1

[Signature]
Respondent No.2

[Signature]
Respondent No.3
Through her C.A.

[Signature]
Respondent No.4

5. The undertakings given in the Consent Terms are accepted as the undertakings given to this Court.
6. Accordingly, the Writ Petition is disposed of in terms of the Consent Terms, however, with no order as to costs.
7. All concerned to act on the authenticated copy of this order.

[MADHAV J. JAMDAR, J.]

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