

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3485 OF 2025

Sarsadevi Babulal Sharma & Anr.	...Petitioners
<i>Versus</i>	
Arun Jagannath Koli & Ors.	...Respondents

Mr. Sanjay Patil, for the Petitioners.
Mr. Jaydeep Deo i/b. Mr. Sachin Koli, for the Respondent No.1.

CORAM: MADHAV J. JAMDAR, J.
DATED : 4th APRIL 2025

P. C.:

1. Mr. Sanjay Patil, learned Counsel appearing for the Petitioners and Mr. Jaydeep Deo, learned Counsel appearing for the Respondent No.1 state that the parties have arrived at the settlement and tendered the Consent Terms.

2. The Consent Terms are signed by the Petitioner No.2- Mahendrakumar Babulal Sharma on his behalf and as Constituted Attorney of Petitioner No.1-Sarsadevi Babulal Sharma, Respondent No.2-Jayantilal Babulal Sharma, Respondent No.3-Bhavarlal Babulal Sharma and Respondent No.4-Trishala Babulal Sharma.

3. The Power of Attorney dated 31st March 2025 executed by the Petitioner No.1 and the Respondent No.4 giving power to the Petitioner No.2 is annexed from pages 9 to 16 to the Consent Terms. The Power of Attorney dated 2nd April 2025 executed by the Respondent No.2 and Respondent No.3 in favour of the Petitioner No.2 is from pages 17 to 26.

4. The Consent Terms are signed by the Petitioner No.2. The Petitioner No.2 has signed the Consent Terms on his own behalf and on behalf of the Petitioner No.1 and Respondent Nos.2 to 4. The Petitioner No.2 is personally present in Court. He states that the parties have settled the dispute in terms of the Consent Terms. The Consent Terms are also signed by the learned Counsel appearing for the Petitioners. He identifies the signature of the Petitioner No.2.

5. The Consent Terms are also signed by the Respondent No.1- Arun Jagannath Koli i.e. original Plaintiff/Landlord, who is personally present in Court. He also states that the dispute between the Petitioners, Respondent Nos.2, 3 and 4 and him i.e. Respondent No.1 is settled in terms of the Consent Terms. The

Consent Terms are also signed by the learned Advocate appearing for the Respondent No.1.

6. Accordingly, the Consent Terms are taken on record and marked 'X' for identification. The Consent Terms read as under:

“CONSENT TERMS

1. Respondent No. 1 is the original plaintiff/ landlord who has filed Regular Civil Suit No. 1283 of 2012 for eviction against the Petitioner Nos. 1 and 2 and Respondent Nos. 2 to 4 who are the legal heirs of the original tenant Shri. Babulal Sharma.

2. The Regular Civil Suit No. 1283 of 2012 was decreed by the 7th Joint Civil Judge Senior Division, Thane vide Judgment and Order dated 10/2/2016 on the grounds of bona fide requirement, change user, permanent alteration, causing waste under Section 108 of Transfer of Property act and the default.

3. After the decree of eviction was passed, the Respondent No. 1/landlord filed a Regular Darkhast No. 24 of 2016 for executing the decree of eviction before the ld. Executing Court. The Defendants were served and they appeared in the said Regular Darkhast No. 24 of 2016 through advocate on 08/11/2016.

4. The Petitioners challenged the Judgment and Decree of the trial Court in Regular Civil Appeal No. 256 of 2016 of the ld. District Judge, Thane. The

Petitioners filed an application below Exhibit 5 and sought stay to the execution of the judgment and decree passed by the trial Court. Vide judgment and order dated 9/3/2017, the District Judge 4, Thane allowed the application below Exhibit 5 thereby granting stay to the execution of the decree of eviction till the disposal of the Appeal. However, the District Judge imposed a condition that the Petitioners would deposit Rs.8000/- per month in the Appellate Court as compensation/damages towards the suit property from the date of the Judgment passed on 10/02/2016. Since the stay was granted by the Appellate Court, the execution proceedings in Regular Darkhast No. 24 of 2016 were stayed and dates were being given.

5. During the pendency of the Appeal No. 256 of 2016, the Petitioners filed an application below Exhibit 33 seeking permission to adduce additional evidence, oral and documentary. The said application below Exhibit 33 was allowed vide Judgment and Order dated 20/04/2018. Accordingly, the Petitioners adduced oral as well as documentary evidence before the District Court.

6. Regular Civil Appeal No. 256 of 2016 was finally argued before the District Court and the same was dismissed vide Judgment and Order dated 14/02/2024.

7. The Petitioners challenged the said judgment and order dated 14/02/2024 passed by the District Judge-4, Thane before this Hon'ble Court in Civil Revision Application No. 377 of 2024.

8. Civil Revision Application No. 377 of 2024 was heard by this Hon'ble Court when the advocate for the Petitioners pointed out to this Hon'ble Court that though the additional evidence was led before

the District Court the same was not considered at the time of passing of the final order dated 14/02/2024. In the light of the said fact, this Hon'ble Court vide Judgment and Order dated 02/09/2024 set aside the Judgment and Order dated 14/02/2024 passed by the District Court and restored the Regular Civil Appeal No. 256 of 2016 with directions to the District Court to proceed to hear the Regular Civil Appeal No. 256 of 2016 afresh on all the points by taking into consideration the additional evidence led by the Petitioners within a period of six months i.e. before end of March 2025.

9. After remand, the Petitioners filed Misc. Application No. 309 of 2024 on 10/10/2024 before the Principal District Judge for transferring the Regular Civil Appeal No. 256 of 2016 from District Judge - 4 to any other Court. However, the said MA No. 309 of 2024 was rejected by the Principle District Judge vide Order dated 19/10/2024.

10. The Petitioners failed to deposit the amount of compensation/damages of Rs. 8000/- p.m. fixed by the District Court vide order dated 9/3/2017 passed below Exhibit 5 from February 2024. The Respondent No.1/Landlord therefore on 19/10/2024 filed an application below Exhibit 150 in the Regular Civil Appeal No. 256 of 2016 for vacating the stay granted by Order dated 9/3/2017 below Exhibit 5. The District Court, orally directed the Respondent No. 1/Landlord that when the order of remand dated 2/9/2024 was passed by this Hon'ble Court in CRA No. 377 of 2024, the stay to the execution was not continued and therefore the Respondent No. 1/Landlord is free to proceed with the execution of the Decree. On the subsequent dates the Petitioners and/or their advocate did not remain present before the District Court-4 till 12/02/2025.

11. In Regular Darkhast No. 24 of 2016, the advocate for the Decree Holder/Landlord as well as the Judgment Debtors were present on 31/07/2024, 08/08/2024, 31/08/2024 and 21/09/2024. The Respondent No. 1 / Landlord filed an application on 16/11/2024 below Exhibit 40 under Order 21 Rule 36. The Executing Court adjourned the matter to 22/11/2024 for other side to say as Judgment Debtors or their advocate were absent. On 22/11/2024, again the Judgment Debtor or their advocate remained absent and therefore the case was adjourned to 03/12/2024 for hearing without say. On 03/12/2024 again the Judgment Debtors or their advocate were absent when the executing Court heard the arguments of the advocate for the Decree Holder and adjourned the case to 17/12/2024. Finally, on 17/12/2024 when Judgment Debtors or their advocate again remained absent, the executing Court issued Possession Warrant. The Bailiff visited the suit premises on 18/01/2025 and executed the Warrant of Possession and the possession of the suit premises was handed over to the Respondent No. 1/ landlord by Bailiff after following the due procedure of law.

12. Since the Decree was satisfied, the Regular Darkhast No. 24 of 2016 was disposed off on 19/03/2025. After obtaining the possession of the suit premises the Respondent No. 1/landlord has paid a sum of Rs.5,328/- to the Thane Municipal Corporation towards arrears of water charges of the suit premises which was to be paid by Tenant.

13. The Petitioners thereafter filed an application dated 12/02/2025 below Exhibit 156 seeking Restoration of Possession. The said application below Exhibit 156 was opposed by the Respondent No. 1 / Landlord. The said application below Exhibit 156 is rejected by the District Court vide Judgment and Order dated 13/02/2025.

14. The Petitioners also filed another application below Exhibit 160 seeking permission to lead additional evidence allegedly as per the directions of this Hon'ble Court in CRA No. 377 of 2024. The said application below Exhibit 160 was opposed by the Respondent No. 1/landlord. The said application below Exhibit 160 is also rejected by the District Court vide Judgment and Order dated 17/02/2025. The said Judgment and Order dated 17/02/2025 passed below Exhibit 160 filed in Regular Civil Appeal No. 256 of 2016 is challenged by the Petitioners in the aforesaid Writ Petition.

15. In the aforesaid facts and circumstances of the case the Parties to the aforesaid Writ Petition hereby agree, declare and undertake as follows: -

a. Petitioners undertake to deposit sum of Rs.8,000/- per month before the lower Appellate Court in Regular Civil Appeal No. 256 of 2016 from February 2024 till January 2025 within a period of 2 weeks from today.

b. Petitioners undertake to pay a sum of Rs.5,328/- to the Respondent No.1/Landlord which was paid by the Respondent No.1/Landlord to the Thane Municipal Corporation towards arrears of water charges of the suit premises.

c. On deposit of the arrears of compensation of Rs. 88,000/- by the Petitioners from February 2024 to January 2025 and payment of arrears of water charges of Rs. 5,328/-, the Respondent No.1/ Landlord shall hand over the possession of the suit premises to the Petitioners and Respondent Nos. 2 to 4.

d. Petitioners undertake to deposit sum of Rs.8,000/- per month before 05th of each month starting from April 2025 till the disposal of the Regular Civil Appeal No. 256 of 2016. Petitioners and Respondent Nos. 2 to 4 agree and undertake that on two consecutive defaults, Petitioners and Respondent Nos. 2 to 4 shall hand over the possession of the suit premises to the Respondent No. 1/Landlord forthwith.

e. Petitioners and Respondent Nos. 2 to 4 undertake that they will not create third party rights, title or interest or part with possession of the suit premises in favour of third party.

f. On the eventuality of the Regular Civil Appeal No. 256 of 2016 being dismissed, the Petitioners and Respondent Nos. 2 to 4 undertake to hand over the possession of the suit premises to the Respondent No.1/landlord within a period of 8 weeks of the Judgment and Order passed in Regular Civil Appeal No. 256 of 2016 subject to stay by any higher Court.

g. In the event the possession of the suit premises is not handed over by the Petitioners and Respondent Nos. 2 to 4 to the Respondent No. 1/landlord, Regular Darkhast No. 24 of 2016 shall stand restored to the file of the Id. Civil Judge Sr. Division, Thane.

16. The Id. lower Appellate Court be directed to dispose off the Regular Civil Appeal No. 256 of 2016 on or before 31st August 2025.

17. In view of these Consent Terms the Petitioners does not press the aforesaid Writ Petition and Petition be disposed off.

Redover and explained to the parties.”

7. Various statements made in the Consent Terms by both the parties are accepted as undertakings given to the Court.

8. Learned Appellate Court is requested to dispose of the Regular Civil Appeal No.256 of 2016 on or before 31st August 2025.

9. It is made clear that this Court has not expressed any opinion on the merits of the said Regular Civil Appeal No.256 of 2016 and all contentions in that behalf are expressly kept open.

10. Accordingly, the Writ Petition is disposed of in terms of the Consent Terms, with no order as to costs.

[MADHAV J. JAMDAR, J.]

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