

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.7742 OF 2025

IN

WRIT PETITION NO.8869 OF 2021

Prabhakar Umesh Shettigar

Through his Constituted Attorney

Mr. Mohan Umesh Shettigar

...Applicant

**IN THE MATTER BETWEEN:**

Rakesh Rohira

...Petitioner

*Versus*

Prabhakar Umesh Shettigar & Ors.

...Respondents

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Mr. B. K. Barve a/w Mr. Sandeep Barve, Simmy Sebastin i/b B. K. Barve & Co., for the Applicant.

Mr. Lokesh Zade, for the Respondent & Petitioner in WP/8869/2021.

Ms. R. S. Tendulkar, APP for the Respondent-State.

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**CORAM: MADHAV J. JAMDAR, J.**

**DATED: 6<sup>th</sup> MAY 2025**

**P.C.:**

**1.** Heard Mr. B. K. Barve, learned Counsel appearing for the Applicant and Mr. Lokesh Zade, learned Counsel appearing for the Original Petitioner in Writ Petition No.8869 of 2021.

**2.** This Interim Application is heard on 28<sup>th</sup> April 2025, 30<sup>th</sup> April 2025 and on 5<sup>th</sup> April 2025. On all the dates various contradictory statements are made by learned Counsel appearing for the Applicant i.e. Respondent No.1.

**3.** When this Court was to pass the order on the Interim Application to ensure compliance of the Consent Terms filed in the Writ Petition No.8869 of 2021 and to ensure compliance of the undertakings given to

this Court, Mr. B. K. Barve, learned Counsel seeks to withdraw the Interim Application. Accordingly, the Interim Application is allowed to be withdrawn and dismissed as withdrawn.

**4.** However, it is required to be noted that this Court passed order dated 13<sup>th</sup> January 2025 in terms of the Consent Terms. The said order reads as under :-

*“1. Heard Mr. Zade, learned Counsel appearing for the Petitioner and Mr. Chaudhari, learned Counsel appearing for Respondent No.1.*

*2. Both the learned Counsel state that the Respondent No. 2-Umesh Jaru Shettigar has passed away and he is survived by Respondent No.1-Prabhakar Umesh Shettigar and Mohan Umesh Shettigar.*

*3. Mr. Zade, learned Counsel appearing for the Petitioner seeks leave to amend the cause title to implead Mohan Umesh Shettigaras Respondent No.2(a). Accordingly, leave is granted. Amendment be carried out forthwith. Re-verification is dispensed with.*

*4. Respondent No.2 (a)- Mohan Umesh Shettigar is also constituted attorney of Respondent No.1 Shettigar. Prabhakar Umesh*

*5. Both the learned Counsel state that the parties have settled the dispute in terms of the consent terms dated 13<sup>th</sup> January 2025. The consent terms are signed by the Petitioner- Rakesh Rohira as well as Respondent No. 2(a)-Mohan Umesh Shettigar on his behalf and as constituted attorney of Respondent No.1- Prabhakar Umesh Shettigar. Mr. Rakesh Rohira and Mr. Mohan Umesh Shettigar are personally present in Court. They state that the consent terms are signed by them and the dispute between the parties has been settled in terms of the consent terms. Respondent No.2(a)-Mr. Mohan Shettigar, constituted attorney of Respondent No.1- Prabhakar Umesh Shettigar states that said Prabhakar Shettigar has executed power*

*of attorney dated 9<sup>th</sup> January 2025 in his favour and he is also agreeable to the Consent Terms.*

*6. Both the learned Counsel also signed the consent terms and identified signatures of their respective clients.*

*7. Accordingly, the consent terms are taken on record and marked X for identification. The said consent terms read as under:*

**"CONSENT TERMS**

*It is most humbly submitted on behalf of both parties as follows:*

*1. That the above-captioned matter was listed before this Hon'ble Court on December 13, 2024. After arguments for some time, the Hon'ble Court inquired about any possibility of settlement. Accordingly, the parties agreed to have talks for settlement. Therefore, the matter was adjourned to 17<sup>th</sup> December 2024 under the caption of settlement.*

*2. The parties submit that they have agreed to settle the dispute on certain terms and conditions which are as follows:*

**3. The parties have agreed to settle the dispute between them on payment of Rs.1,05,74,000/- (Rupees One Crore Five Lakhs Seventy-Four Thousand only). Out of the aforesaid amount of Rs.1,05,74,000/-(Rupees One Crore Five Lakhs Seventy- Four Thousand only), Respondent No.1 namely Prabhakar Umesh Shettigar has deposited the amount of Rs.15,20,000/-in compliance with the order dated 06/02/2019 passed by this Hon'ble Court in Civil Writ Petition No.152 of 2019. An amount of Rs.54,000/- was deposited by Respondent No.1 before the Ld. Competent Authority, Konkan Division, Mumbai in compliance with the order dated 19/04/2018 passed by the learned Additional Commissioner, Konkan Division, Mumbai. Respondent No.1 has paid/transferred an amount of Rs. 15,00,000/-on 09<sup>th</sup> February 2021 in the account of Petitioner. **The balance amount of Rs.75,00,000/- shall be deposited in the Court by****

***Respondent No.1 namely Prabhakar Umesh Shettigar on or before 30<sup>th</sup> April 2025 through demand Draft without taking any further extension of time.***

*4. Respondent No.1 shall give consent for appropriate orders from this Hon'ble Court for withdrawal of the amount of Rs.15,20,000/- (Rupees Fifteen Lakhs Twenty Thousand only) & Rs.54,000/- (Rupees Fifty Four Thousand only) deposited by Respondent No.1 in compliance with the order dated 06/02/2019 passed by this Hon'ble Court in Civil Writ Petition No.152 of 201 & in compliance with the order dated 19/04/2018 passed by the learned Additional Commissioner, Konkan Division, Mumbai immediately on the filing of the present Consent Terms.*

*5. Upon the successful deposit of the said amount by Mr Prabhakar Umesh Shettigar, the following actions shall be undertaken:*

*i. Both parties shall enter into & execute a Deed of Cancellation for the Sale Agreement bearing document registration number 3981, dated 26<sup>th</sup> May 2014 executed between the parties.*

*ii. Both parties shall withdraw the cases they and their families filed against each other, details thereof are as follows: A. Mr. Rakesh Lilaram Rohira shall consent for the quashing of FIR registered at Dahisar East Police Station, Mumbai being F.I.R. No. 366 of 2015 and subsequent proceedings if any.*

*B. Mr. Mohan Umesh Shettigar who is brother of Respondent namely Mr. Prabhakar Umesh Shettigar shall consent for the quashing of FIR registered at Dahisar East Police Station, Mumbai being C. R. No. 1092 of 2024 and subsequent proceedings if any.*

*C. Mr Prabhakar Umesh Shettigar shall withdraw Civil Suit No. 990 of 2021, filed at City Civil Court at Dindoshi, Borivali Division, Mumbai.*

*D. Both parties shall withdraw all allegations made and cases filed against each other unconditionally, concerning*

*the subject matter of the present consent terms.*

*E. Mr. Prabhakar Umesh Shettigar & his family members and representatives shall be having no objection to the withdrawal of the amount deposited by Respondent No.1 in compliance with orders passed by this Hon'ble Court to Mr. Rakesh Lilaram Rohira.*

*iii. In the event Mr. Prabhakar Umesh Shettigar fails to deposit 75,00,000/- (Rupees Seventy-Five Lakhs Only) in full on or before 30<sup>th</sup> April 2025, he shall be liable to:*

*a. Immediately hand over possession of the property, i.e., Flat No. 1402, A-Wing, Shri Adinath Tower, Nancy Colony, Near Nancy Depot, Borivali (East), Mumbai - 400066 (the "Flat"), to Mr. Rakesh Lilaram Rohira, without any objection, demur or delay.*

*b. If Respondent and his family members fail to hand over the possession of the said flat premises, then he shall be liable for appropriate orders of this Court as well as Civil and criminal proceedings.*

*6. The parties have accordingly settled the dispute between them on the aforementioned terms. This consent term is signed by both the parties and their respective advocates which is the indication that the parties have read the terms and signed it without there being any force, coercion and influence.*

*7. The appropriate order may be passed accordingly."*

*8. The statements made in the consent terms are accepted as undertakings given to this Court by both the parties.*

*9. The Writ Petition is disposed of in terms of the Consent Terms and in above terms with no order as to costs."*

(Emphasis added)

**5.** It is an admitted position that the Respondent - Prabhakar Umesh Shettigar has failed to pay balance amount of Rs.75,00,000/- on or

before 30<sup>th</sup> April 2025 as agreed in the Consent Terms. As per the Consent Terms on record no further extension of time will be granted. The Consent Terms further provides in Clause No.5(iii) provides as under :-

*“5(iii). In the event Mr. Prabhakar Umesh Shettigar fails to deposit 75,00,000/- (Rupees Seventy-Five Lakhs Only) in full on or before 30<sup>th</sup> April 2025, he shall be liable to:*

*a. Immediately hand over possession of the property, i.e., Flat No. 1402, A-Wing, Shri Adinath Tower, Nancy Colony, Near Nancy Depot, Borivali (East), Mumbai -400066 (the "Flat"), to Mr. Rakesh Lilaram Rohira, without any objection, demur or delay.*

*b. If Respondent and his family members fail to hand over the possession of the said flat premises, then he shall be liable for appropriate orders of this Court as well as Civil and criminal proceedings.”*

**6.** The various statements made in the Consent Terms were accepted by this Court by the said order dated 13<sup>th</sup> January 2025, as undertakings given to this Court.

**7.** The Applicant - Prabhakar Umesh Shettigar through Constituted Attorney Mohan Umesh Shettigar is in occupation of the premises alongwith their family members.

**8.** Admittedly the Applicant - Prabhakar Umesh Shettigar has failed to deposit the said amount of Rs.75,00,000/- in this Court on or before 30<sup>th</sup> April 2025. The term in the Consent Terms requires that immediately possession of the said premises bearing Flat No.1402, A-Wing, Shri. Adinath Tower, Nancy Colony, Near Nancy Depot, Borivali

(East), Mumbai – 400 066 is required to be handed over to Mr. Rakesh Lilaram Rohira i.e. Original Petitioner. Thus, it is clear that as the Consent Terms and undertakings given to this Court are violated, the Court Receiver, High Court Bombay is immediately appointed to take possession of said flat from any person who is found in possession of the said flat.

**9.** At this stage Mr. B. K. Barve, learned Counsel states that the possession of the said premises will be handed over on 15<sup>th</sup> May 2025. However, as the undertakings given to this Court is breached and Interim Application filed is withdrawn and for last about 1 week when this matter was heard on every date different statements were made on behalf of said Prabhakar Umesh Shettigar through Constituted Attorney Mohan Umesh Shettigar, the Applicant is not entitled for any discretionary relief.

**10.** Accordingly, the Court Receiver, is directed to immediately take physical possession of the said premises and hand over the same to Mr. Rakesh Lilaram Rohira i.e. Original Petitioner. The concerned Senior Police Inspector of Dahisar (East) Police Station to provide necessary security for taking possession of the said premises in question.

**11.** The Original Petitioner - Rakesh Lilaram Rohira to pay charges of the Court Receiver to ensure compliance of this order.

**12.** In view of the above discussion following order is passed:-

**ORDER**

- i. The Interim Application No.7742 of 2025 is dismissed as withdrawn.
- ii. The Court Receiver, High Court, Bombay is appointed with respect to the said premises i.e. Flat No.1402, A-Wing, Shri Adinath Tower, Nancy Colony, Near Nancy Depot, Borivali (East), Mumbai - 400 066 with all the powers under Order XL of the Code of Civil Procedure, 1908.
- iii. The Court Receiver, High Court, Bombay shall take forcible possession of the said premises immediately from the Applicant or any other person found in the possession of the said premises or by breaking open the lock, if found in locked condition with the help of local police officials forthwith and handover the same immediately to Mr. Rakesh Lilaram Rohira i.e. Original Petitioner.
- iv. The necessary charges as per the relevant rules will be deposited by the Respondent with the Court Receiver.
- v. The Court Receiver is permitted to take Police protection. Ms. R. S. Tendulkar, learned APP is present in Court and she makes a statement on behalf of the

State of Maharashtra that protection will be given to the Court Receiver for taking possession of the said premises. The Senior Police Inspector of Dahisar (East) Police Station, Mumbai or any other appropriate Police Station to provide adequate Police protection to the officials of the Court Receiver, High Court, Bombay for ensuring compliance of the above directions.

- vi. Stand over to **8<sup>th</sup> May 2025** at **2:30 p.m.** for reporting compliance of directions issued to the Court Receiver, High Court Bombay.

**[MADHAV J. JAMDAR, J.]**