

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

SUIT NO. 1965 OF 2010

Jasmine Sanjay Shah

..Plaintiff

Vs.

Mallika Madhukant Jhaveri & Ors.

..Defendants

Mr. Rashid Khan with Vivek Phadke for Org. Defendant No.2.

Mr. Dhaval Patil i/b. K. Ashar & Co. for the Plaintiff.

Mr. R. A. Shaikh with Hasan Sayed for Defendant No.1.

Mr. C. M. Lokesh i/b. Lex Forum for Defendant No.4.

Mr. Jehangir Jeejeebhoy for O.L.

Mr. Dileep S. Paranjape with Pravin Patel for Defendant No.8.

CORAM:- B. P. COLABAWALLA,J.

DATE :- MARCH 29, 2022.

P. C.:

This matter had originally come up yesterday when the consent terms were tendered to the Court. The consent terms are dated 21st March, 2022 and are executed between the Plaintiff and Defendant No.1.

2. Yesterday, Mr. Jeejeebhoy, the learned Advocate appearing

on behalf of the Official Liquidator, Mr. Paranjape, the learned Advocate appearing on behalf of Defendant No.8 (State Bank of India) and Mr. Khan, the learned Advocate appearing on behalf of Defendant No.2, all stated that the consent terms have not been circulated to them for their perusal in order to ensure that their rights are not affected by the aforesaid consent terms. In order to enable the said parties to go through the consent terms entered into between the Plaintiff and Defendant No.1, the matter was kept today.

3. Today when the matter was called out, Mr. Jeejeebhoy, the learned Advocate appearing on behalf of Official Liquidator (appointed for the 7th Defendant Company), has stated that the Official Liquidator has no objection to the consent terms being taken on record provided it is clarified that these consent terms shall not in any way prejudice any of the rights and contentions of the Official Liquidator. He submitted that it be further clarified that the factory premises mentioned in paragraph (9) of the consent terms should not be confused with the factory premises belonging to Defendant No.7 situated at W-114(A), MIDC, Kharvai, Badlapur (E), Thane -421503.

4. Mr. Paranjape, the learned Advocate appearing on behalf of Defendant No.8 (State Bank of India) also submitted that Defendant

No.8 has no objection to these consent terms being taken on record provided it is clarified that these consent terms should not in any way prejudice any of the rights and contentions that State Bank of India may have against Defendant Nos. 2 and 7 and/or properties mortgaged in favour of State Bank of India.

5. Mr. Khan, the learned Advocate appearing on behalf of Defendant No.2, has also taken the same stand, namely, let the consent terms be taken on record but the same should not in any way prejudice to any rights and contentions of Defendant No.2.

6. I must mention that when the matter was called out yesterday, the Plaintiff and Defendant No.1 were both present in Court. The Plaintiff is visually impaired and was enable to read the consent terms. However, she stated before the Court that the consent terms have been read out to her by her husband (who was also present in Court) as well as by the Advocates for the Plaintiff. She further stated that after the consent terms were read out to her and after understanding the implications thereof, she has signed the same of her own free volition. Defendant No.1 was also present in Court yesterday. She stated before the Court that she too has signed the consent terms after the same were explained to her in detail in the Gujarati language and after

understanding the implications of the consent terms.

7. The consent terms are also signed by the Advocates for the Plaintiff, the Advocates for Defendant No.1 as well as one Mr. Sanjay Shah who is the husband of the Plaintiff. In these circumstances, the consent terms dated 21st March, 2022 are taken on record and marked 'X' for identification. There shall be an order in terms of the consent terms.

8. It is clarified that these consent terms shall not in any way prejudice any of the rights of the other Defendants in the above Suit which the Plaintiff wants to prosecute.

9. It is explicitly made clear that the factory premises mentioned in paragraph (9) of the consent terms are not the factory premises of Defendant No.7, namely, W-114(A), MIDC, Kharvai, Badlapur (E), Thane -421503 and which is in the possession of the Official Liquidator.

10. The learned Advocate appearing on behalf of the Plaintiff as well as the learned Advocate appearing on behalf of Defendant No.1, on taking telephonic instructions, have stated that if there are any tax implications by virtue of transfer of any premises as mentioned in the consent terms, the same shall be borne by the Plaintiff and Defendant

No.1 on a pro rata basis. The said statement is accepted as an undertaking given to the Court.

11. It is made clear that the Suit shall now proceed against Defendant No. 1 only as a formal party and against all the other Defendants on merits.

12. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(B. P. COLABAWALLA, J.)