IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 26702 OF 2024
IN
COMMERCIAL APPEAL (L) NO. 27216 OF 2023
WITH
COMMERCIAL APPEAL (L) NO. 27216 OF 2023
WITH
INTERIM APPLICATION (L) NO. 27806 OF 2023
IN
COMMERCIAL APPEAL (L) NO. 27216 OF 2023
WITH
CONTEMPT PETITION (L) NO. 2148 OF 2025
IN
INTERIM APPLICATION NO. 27806 OF 2023

1. Royal Realtors Landmarks Pvt. Ltd.

2. Mr. Premji Harakchand Shah

3. Mr. Deven Premji Shah

4. Mr. Himmatlal Ganeshlal Kachhara ...Applicants

In the matter between

1. Royal Realtors Landmarks Pvt. Ltd.

2. Mr. Premji Harakchand Shah

3. Mr. Deven Premji Shah

4. Mr. Himmatlal Ganeshlal Kachhara ...Appellants/Org. Plaintiffs

Vs.

1. Shah Housecon Pvt. Ltd.

2. Mr. Ramji Harakchand Shah

3. Mr. Mansukh Harakchand Shah

4. Mr. Akash Harakchand Shah

5. Mr. Hiren Premji Savla

6. Mr. Pankaj Nandi Gada

7. Mr. Gaurav Padamshi Khirani

8. The Slum Rehabilitation Authority ...Respondents/Org. Defendants

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Mr. Dinyar Madon, Senior Advocate a/w Mr. Ziyad Madon, Mr. Bharat Jain, Mr. Anant Ratnaparkhi, Mr. Kavish Arora i/b I C Legal for the Applicants in IAL/26702/2024, IA/27806/2023 and for the Appellants.

Mr. Pravin Samdani, Senior Advocate a/w Ms. Usha S. Agarwal for Respondent No. 1.

Mr. Anoshak Davar a/w Shubi Syed i/b Ms. Swati Margi for Defendant Nos.2 & 5.

Mr. Ankit Lohia a/w Pooja Batra i/b Ms. Usha S. Agarwal for Respondent Nos.3 & 4.

Mr. Abdul Rehman Khan i/b Mariyah Khatkhatay for Respondent Nos.6 & 7.

Ms. Dhruti Kapadia for SRA-Respondent No.8.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

RESERVED ON : 27 FEBRUARY 2025
PRONOUNCED ON : 19 JUNE 2025

JUDGMENT (PER ADVAIT M. SETHNA, J.) :

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I. Preface

1. These proceedings have a chequered background running into several volumes of documents, pleadings presented by the parties who have advanced detailed submissions and relied on several judgments. However, for the present purposes we are concerned with and would confine ourselves to the **Interim Application (L) No. 26702 of 2024** dated 27 August 2024 filed by the appellant/applicant ("**Applicant**"). The basic issue which we are called

upon to adjudicate revolves around the compromise manifesting in the consent terms dated 1 November 2023 ("**Consent Terms**") executed between the applicants and respondent nos.1, 2, 5 to 7. We are confronted with a question whether such consent terms can be decreed in terms of an order passed by the Court under the provision of Order XXIII Rule 3 of the Civil Procedure Code, 1908 ("**CPC**"). As we delve into the nuances of varied contentions, submissions of the parties canvassed before us, including the pleadings filed in these proceedings, we need to consider the implications of the orders passed by this court dated 2 November 2023 passed by a coordinate Bench of this Court, followed by the order dated 3 November 2023. It is pursuant to such order that the parties to the consent terms have appeared before the Prothonotary and Senior Master of the Court, who after due verification has opined that the consent terms are executed in an orderly manner and a report in that regard be placed before the court. The endeavor of the Court in such cases would be to determine if such compromise in terms of the consent terms is lawful and valid for the purposes of passing orders and accordingly decree the proceedings, in terms of such consent terms.

2. The respondents would assail the interim application mainly on the ground that the consent terms are vague, uncertain, vitiated by fraud and hence unenforceable. For such reason, no orders much less a decree can be awarded in terms of the legally unenforceable consent terms. It is in such

backdrop that we would be deciding the Interim Application filed by the applicants in these proceedings.

3. The facts relevant for deciding the Interim Application are noted below:-

4. The applicant no.1 and respondent no.1 had executed a Joint Development Agreement ("**JDA**") dated 31 October 2020 in respect of two properties referred to as first property and second property respectively together referred to as entire property. For the present purposes, we are concerned with the second property bearing CTS No.580, 581/1 to 13 and 581/A/3B admeasuring 6,804 sq. mtrs. of village Malad (East), Taluka Borivali, Mumbai Suburban District ("**subject property**").

5. The JDA, was executed mainly on account of financial difficulties encountered by respondent no.1 during the Covid-19 period, considering which the applicants agreed to lend financial assistance to respondent no.1. It is on the strength of such JDA that the applicant secured loan of Rs.50 crores from IndiaBulls by mortgaging the property of respondent no.1 and *inter alia*, guaranteed by respondent nos.2 to 4 as directors of respondent no.1. The loan to the extent of Rs.30 crores was disbursed by IndiaBulls to the applicant. On the same day i.e. on 30 December 2020, the applicant transferred the part loan amount of Rs.30 crores to respondent no.1, who in turn cleared the debt of IndiaBulls. By such

arrangement between the parties to the JDA the debt of respondent no.1 was cleared. Accordingly, the applicant became the debtor of the IndiaBulls to the extent of Rs.50 crores. Such was the arrangement which manifested itself in the JDA.

6. Subsequent to the execution of the JDA, certain disputes, differences arose between the parties thereto. It is for such reason that the applicants in the present proceedings filed a Commercial Suit no.303 of 2022 dated 21 September 2022 in the commercial division of this Court. The said suit was filed by the applicants against the respondents mainly for specific performance of the JDA. The applicants would contend that the respondents have failed to perform its obligations under certain clauses of the JDA, aggrieved by which, the said suit was filed. The prayers in the plaint read thus:-

> *"a) This Hon'ble Court be pleased to pass an order and decree, declaring that:*
>
> > *(i) the Agreement dated 31 October 2020, executed between RRLPL and SHPL, is valid, binding and subsisting unto SHPL and/or any other person claiming through or under SHPL;*
> >
> > *(ii) SHPL has defaulted in complying with its obligations under the Agreement dated 31 October 2020, executed between RRLPL and SHPL;*
> >
> > *(iii) the Plaintiffs are entitled to carry out the construction and development of the JD Property, including the obligations of SHPL under the Agreement dated 31 October 2020, without any obstruction and interference from SHPL;*

b) This Hon'ble Court be pleased to grant a permanent injunction against the Defendant Nos. 1 to 7 and/or their representatives, servants, agents, assigns, and/or any other person, claiming through or under them:

(i) from directly or indirectly, in any manner, selling, transferring or creating any third-party rights in respect of the JD Property;

(ii) from directly or indirectly, in any manner, obstructing or interfering in the development of the JD Property by the Plaintiffs;

c) This Hon'ble Court be pleased to pass an order and decree, directing the Defendant Nos. 1 to 7 to appear before the Sub-Registrar of Assurances, Borivali, Mumbai for registration of the Agreement dated 31 October 2020;

d) In the event, the Defendant Nos. 1 to 7 fail to or refuse to appear before the Sub-Registrar of Assurances, Borivali, Mumbai for registration of the Agreement dated 31 October 2020, then this Hon'ble Court be pleased to appoint/authorize an officer of this Hon'ble Court to appear before the office of the Sub-Registrar of Assurances, Borivali, Mumbai Suburban, on behalf of SHPL, for registration of the Agreement dated 31 October 2020, executed between SHPL and RRLPL;

e) Without prejudice to prayer clauses (a) to (d), and in its alternative, this Hon'ble Court be pleased to award compensation and/or damages to the Plaintiffs for a sum of Rs. 40,00,00,000/- (Rupees Forty Crores Only) or such amount as maybe computed by the Plaintiffs at an appropriate stage and/or as maybe ascertained by this Hon'ble Court, to be paid, jointly and severally, by the Defendant Nos. 1 to 7 to RRLPL;

f) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to pass an order allowing the Plaintiffs to carry out the construction and development of the JD Property, including the obligations of SHPL under the Agreement dated 31 October 2020, without any obstruction and interference from SHPL;

g) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to order and direct the Defendant Nos. 1 to 7 to appear before the office of the Sub-Registrar of Assurances, Borivali, Mumbai Suburban for registration of the Joint Development Agreement dated 31 October 2020;

h) In the alternate to prayer clause (f), pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to appoint/authorize an officer of this Hon'ble Court to appear before the office of the Sub-Registrar of Assurances, Borivali, Mumbai Suburban, on behalf of SHPL, for registration of the Agreement dated 31 October 2020, executed between SHPL and RRLPL;

i) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to grant a temporary injunction against the Defendant Nos. 1 to 7 and/or

their representatives, servants, agents, assigns, and/or any other person, claiming through or under them:

(i) from directly or indirectly, in any manner, selling, transferring or creating any third-party rights in respect of the JD Property;

(ii) from directly or indirectly, in any manner, obstructing or interfering in the development of the JD Property by RRLPL;

j) Pending the hearing and final disposal of the present Suit, this Hon'ble Court be pleased to direct the Defendant Nos. 1 to 7 to disclose on oath:

(i) the manner in which the Defendant Nos. 1 to 7 have utilised the amount of Rs. 30,00,00,000/- (Rupees Thirty Crores Only) paid by the Plaintiffs to the Defendant Nos. 1 to 7 on 30 December 2020;

(ii) the manner in which the Defendant Nos. 1 to 7 have utilised the amount of 2,41,70,700/- (Rupees Two Crores Forty One Lakhs Seventy Thousand and Seven Hundred Only) paid by the Plaintiffs to the Defendant Nos. 1 to 7, as loan, for the development and construction of the JD Property;

k) Ad interim relief in terms of prayer clauses (f) to (j);

l) For costs;

m) Such further and other relief as the nature and circumstances of the case may require."

7. Along with the said suit, the applicant preferred an Interim Application bearing (L) No.30675 of 2022 *inter alia* seeking an injunction against the respondent nos.1 to 7 from selling, transferring and/or creating any third party rights in respect of the subject property under the JDA, along with certain other reliefs.

8. The applicants, pursuant to the above, registered a *lis pendens* on 26 September 2022 under Section 52 of the Transfer of Property Act, 1882 ("**TOPA**") regarding the suit, intimating the public at large about the

pendency of the suit so that no third party rights by way of sale or otherwise are created in respect of the subject property.

9. Thereafter, an order dated 9 December 2022 was passed by the Single Judge of this Court in Interim Application No.30675 of 2022, in the said suit. By the said order, on a statement of the learned counsel for the respondent nos.1 to 7, the Court directed the said respondents not to create any third party rights and/or deal with the subject property. Such statement was accepted as an undertaking to the Court and the proceedings were adjourned to 16 December 2022 under the caption "ad interim reliefs".

10. During the operation of the above statement and order dated 9 December 2022, the respondent no.1 through their advocates issued a termination notice dated 9 March 2023 allegedly terminating the JDA. The basic ground of such termination being that the JDA was an incomplete and legally unenforceable agreement.

11. By a letter dated 24 March 2023 addressed by the advocate of the applicants categorically denying the purported termination notice dated 9 March 2023 issued by the advocate for the respondents. The applicants in the said communication reiterated their readiness and willingness to fulfill their obligations under the JDA, calling upon the respondents to withdraw the said termination notice dated 19 March 2023.

12. The applicants would contend that upon failure of respondent no.1 to withdraw the above termination notice, the applicants were constrained to file an another Interim Application (L) No.9530 of 2023 in the said suit. By this Interim Application, the applicants sought for temporary injunction restraining the respondents from acting in furtherance of their termination notice dated 9 March 2023.

13. Pursuant to the above, both the Interim Application (L) Nos.30675 of 2022 (supra) and 9530 of 2023 (supra) were heard by a Single Judge of this Court. Pursuant to the hearing, a detailed order was passed on 31 August 2023. On Interim Application (L) No.30675 of 2022, the Court mainly held that granting the said Interim Application would amount to final reliefs at interim stage and for such reasons, the Court refused to grant interim reliefs as prayed for by the applicants in the said Interim Application. However, as far as the other Interim Application (L) No.9530 of 2023 is concerned which was filed in the context of the termination notice issued by the respondents, the Court was of the *prima facie* opinion that the JDA was vague and the respondents cannot be saddled with such one sided agreement. Accordingly, the Court refused to grant interim reliefs as prayed for in the Interim Application (L) No.9530 of 2023.

14. Aggrieved by the above order dated 31 August 2023 refusing interim reliefs on Interim Application (L) No.9530 of 2023 the applicants

preferred an appeal dated 29 September 2023 against the said order before this Court. Such appeal was filed along with an Interim Application (L) No.2780 of 2023, in the appeal, *inter alia* seeking that respondent nos.1 to 7 be restrained from either directly or indirectly in any manner selling, transferring, partying with the possession or creating any third party rights, title or interest in the subject property.

15. Subsequently the respondent nos.1 to 7 began negotiations with the applicants to arrive at a settlement in the suit of the applicants. The applicants state that substantial progress in that regard was made. In the meantime, the appeal of the applicants and the Interim Application filed therein were listed before this Court on 26 October 2023. All the parties to these proceedings appeared and represented themselves before the Court on the said date. At such time the Court recorded the statement made by the advocates for the parties that they are in the process of settling the disputes amicably. Also a statement of learned counsel for respondent nos.1 to 7 was recorded to the effect that they will not deal with the subject property in the meantime. Accordingly, the proceedings were adjourned to 2 November 2023.

16. Further to the above, the applicants and respondent nos.1, 2, 5, 6 and 7 arrived at a settlement. Accordingly, consent terms were executed, which duly recorded the terms of settlement. As the JDA was executed

between the two companies i.e. applicant no.1 and respondent no.1 respectively, the settlement would primarily concern the two companies.

17. Thereafter, the proceedings were listed before a coordinate Bench of this Court on 2 November 2023. At this time, all the parties to these proceedings represented themselves before the Court. After hearing the parties and for the reasons recorded in the order, the parties to the consent terms i.e. respondent nos.1, 2, 5, 6 and 7 were directed to appear before the Prothonotary and Senior Master of this Court on or before 3.00 p.m. on 4 November 2023. This was to enable the Prothonotary of the Court to go through the consent terms and verify that the same are in order and are duly executed by all concerned. The proceedings were accordingly adjourned to 6 November 2023.

18. Pursuant to the above and as directed by the Court by its order dated 2 November 2023, the executing parties to the consent terms i.e. the applicants and respondent nos.1, 2, 5 to 7 duly appeared before the Prothonotary and Senior Master. The consent terms were read over and explained to the said compromising parties and after getting themselves satisfied about the truthfulness and correctness the compromising parties signed the consent terms in presence of their advocate as submitted by them before the Prothonotary and Senior Master of the Court. Accordingly, by the order dated 3 November 2023, the consent terms were found in order and

duly executed by all concerned, with a direction to place such verification report before the Court.

19. It may be noted that the applicant no.2 and respondent nos.2 and 3 are brothers. Accordingly, the applicants were desirous of entering into a holistic settlement with regard to the larger disputes between the parties including with respondent no.3. Taking this further, the parties to the consent terms made further attempts to arrive at a settlement with respondent nos.3 and 4 also with regard to the other issues between them. Accordingly, at the request of the parties, when the proceedings were listed for the hearing on the adjourned date, the same were further adjourned by consent of the parties to these proceedings with a direction from the Court that the interim order dated 9 December 2022 preventing the respondents from creating any third party rights and/or dealing in respect of the subject property would continue.

20. In the meantime, the advocate of respondent nos.2 and 5 after about 8 months from 1 November 2023 i.e. the date of the execution of the consent terms, addressed a letter dated 29 July 2024 to the applicants alleging that the applicants had played fraud and misrepresentation on the said respondents, inducing them to execute the consent terms. It was alleged that the consent terms were *void ab initio*, not binding on the parties thereto and thus no order can be passed in terms of the said consent terms. Subsequently, another letter dated 10 August 2024 was addressed by the advocate on behalf

of respondent nos.6 and 7 to the applicants stating that the said respondents had duly resigned from respondent no.1 company even before signing the consent terms. It was also alleged that the applicants induced the said respondents through fraud and misrepresentation in signing such consent terms, which were therefore void, bad in law and unenforceable.

21. The applicants on receipt of the above communications dated 29 July 2024 and 10 August 2024 from the advocates of the respondent nos.2 and 5, 6 and 7, were constrained to file the present Interim Application with a prayer that an order and decree be passed in terms of the consent terms recording such compromise between the parties to the consent terms under the provisions of Order XXIII Rule 3 of the CPC. Accordingly, the prayers in the Interim Application read thus:-

> *"a. that this Hon'ble Court be pleased to take on record the Consent Terms dated 1 November 2023 (Exhibit "A" hereto) and pass an order and Decree in accordance therewith;*
> *b. for the Costs of this Interim Application;*
> *c. for such further and other reliefs as this Hon'ble Court deems necessary in the facts and circumstances of the case."*

II. Submissions of The Applicants:

22. Mr. Dinyar Madon, learned senior counsel for the applicants would strenuously urge that the Interim Application be allowed by taking the consent terms on record and passing an order and decree in terms of the said consent terms. Mr. Madon would at the outset submit that once the said

consent terms have been duly signed and executed by the parties thereto i.e. respondent nos.2 and 5, 6 and 7, they ought to be acted upon and given legal effect to. Thereafter, the Court by an order dated 2 November 2023 directed the parties to appear before the Prothonotary and Senior Master of the Court solely for the purposes of verifying of the said consent terms. Accordingly, the parties to the consent terms appeared before the Prothonotary and Senior Master on 3 November 2023 on which the consent terms were duly verified and a verification report was directed to be placed before the Court. In this context Mr. Madon would submit that the board resolution dated 25 October 2023 of respondent no.1-company was also duly examined during the process of verification of the said consent terms before the Prothonotary and Senior Master on 3 November 2023. By such resolution, respondent no.2 was duly authorized by respondent no.1-company to act and take all requisite steps in furtherance of JDA as also to represent the respondent no.1-company in all legal proceedings, including appointing advocates and solicitors in such proceedings. After all of this, Mr. Madon would urge that it was not open to the respondent nos.2 and 5, 6 and 7 to resile from the said consent terms by letters dated 29 July 2024 and 10 August 2024, respectively by the said respondents. By the said letter dated 29 July 2024 respondent nos.2 and 5 alleged fraud by the applicant on the said respondents in executing the consent terms declaring it to be void ab initio and unenforceable. Similarly by

the letter dated 10 August 2024 of the advocate of respondent nos.6 and 7 similar plea of fraud was taken and also that the respondent nos.6 and 7 have resigned from respondent no.1 much prior to the signing of the consent terms, which makes the said consent terms void and illegal. In this context, Mr. Madon would submit that after about 8 months from the date of execution of consent terms dated 1 November 2023 which were duly signed and executed by the said respondents i.e. respondent nos.2 and 5, 6 and 7 respectively such attempts were purely an afterthought, only to evade their obligations and frustrate the compromise entered into in the form of consent terms between the parties.

23. Mr. Madon would next submit that the consent terms signed and executed by the said respondents and verified before the Prothonotary on 3 November 2023 was on their own free will without any coercion, intimidation or threat of retaliation. When such consent terms have been duly verified before the Court on 3 November 2023 under the orders of the Court, the reasons set out in the belated letters dated 29 July 2024 and 10 August 2024 are totally false, misleading as after 3 November 2023, the respondents have failed to show much less establish any fraud or misrepresentation as alleged in the aforesaid letters of the advocates of the respondents. Mr. Madon would contend that no prudent person would believe that after the entire exercise of signing an executed of the consent terms suddenly after 8 months

thereof on the grounds of fraud and misrepresentation inducing the respondents to enter into such consent terms can ever exist. Thus, such grounds as set out in the letter is nothing but a bogie to defeat and frustrate legal and valid consent terms duly executed between the applicants on one hand and respondent nos.2 and 5, 6 and 7 on the other.

24. Mr. Madon would then submit that if the respondent nos.6 and 7 were not concerned with the consent terms then they can have no objection for such consent terms to be taken on record. Accordingly, in such situation they could have no objection to the suit being settled if the said respondents were not actually concerned with the said consent terms. It is a fact that the respondent nos.2 and 5, 6 and 7 have signed the consent terms in the capacity of directors of respondent no.1 knowing fully well the contends and implications arising therefrom.

25. Mr. Madon would urge that the alleged ground of respondent nos.6 and 7 that they were not directors of respondent no.1, when the consent terms were signed is not just false but completely dishonest and a *mala fide* attempt on the part of the said respondents to frustrate lawful and valid consent terms and to ensure that no order is passed in terms thereof, for reasons best known to them.

26. Mr. Madon would refer to a letter dated 5 April 2021 addressed to respondent no.1 to the effect that respondent no.6 is resigning from the

board of directors as alleged by respondent nos.3 and 4 in their affidavit dated 10 December 2024. According to Mr. Madon, this is clearly a backdated and fabricated document. Respondent no.6 continued to be a director and even signed the board resolution dated 25 October 2023 *inter alia* authorizing the respondent no.2 to file the consent terms on behalf of respondent no.1. Further, the falsity of such plea is writ large as such alleged resignation of respondent no.6 was filed with the Registrar of Companies on 3 November 2023, after the said consent terms were executed and tendered before this Court. Mr. Madon would also urge that the resolution dated 26 April 2021 which was relied on by respondent nos.3 and 4 in their affidavit dated 10 December 2024 by which the resignation of respondent no.6 was accepted with immediate effect is clearly a back dated and fabricated document which cannot be relied upon.

27. Mr. Madon in the context of reply dated 9 August 2021 filed by respondent no.2 on behalf of respondent no.1 to a complaint before the Dindoshi Police Station would submit that respondent no.6 and 7 have signed on behalf of respondent no.1 which would further speak volumes of the fact that respondent no.6 continue to be a director of respondent no.1 even as on 9 August 2021. Further, even as on 14 October 2021 when additional written submissions were filed by respondent no.1 to a complaint before the Dindoshi Police Station respondent nos.6 and 7 have duly signed

on behalf of respondent no.1 to demonstrate that respondent no.6 continued to be a director also as on 14 October 2021.

28. Mr. Madon would contend that the plea of alleged resignation of respondent no.7 w.e.f. 18 July 2022 from the board of directors of respondent no.1 is replete with falsity. This is inasmuch as there is no document furnished by the said respondent to even remotely establish such allegation of resignation of respondent no.7 w.e.f. 18 July 2022.

29. Mr. Madon would next draw the attention of the court tot the suit filed by the appellant 21 September 2022 along with the Interim Application (L) No. 30675 of 2022, in the said suit. In this context, he would submit that (para 3 page 4) clearly mention that "Defendant nos. 2 and 7 are directors of SHPL" i.e., respondent no. 1-company. Further such statement has been admitted in the written statement to the plaint by the said respondents, at para 66 (page 790) thereof. He would thus submit that the said respondents cannot resile from their own admission which is binding on them.

30. Mr. Madon would then refer to the order dated 9 December 2022 passed by single Judge of this Court in Interim Application 30675 of 2022 in the suit filed by the applicants. In this context, he would submit that the learned counsel for the defendants/respondent nos. 1 to 7 had made a statement to the effect that they will not create any third party right and deal

with the subject property, which was accepted as an undertaking to the court, that continued from time to time until the impugned order dated 31 August 2023 assailed in the appeal filed by the applicants.

31. Mr. Madon would then refer to a board resolution dated 14 December 2023 of respondent no.1, authorizing the respondent no. 7 to handle all litigation including signing consent terms on behalf of respondent no.1. Such resolution was signed by respondent nos. 2 and 6 in their capacity as directors of respondent no. 1. Thus, even on 14 December 2022, the respondent no. 6 was evidently a director of respondent no. 1. There is nothing contrary produce by the respondents including respondent nos. 2 and 5, 6 and 7 to dislodge such facts.

32. Mr. Madon would next refer to written statement dated 10 March 2023 filed by respondent nos. 2 to 7 in the suit of the applicants. Such written statement was duly verified by respondent no. 3 and signed by respondent nos. 2 and 4 to 7 respectively. He would draw the court attention to para 66 (page 790) of the written statement where the respondents admit the contends of the para 3 of the plaint of the applicants. The applicants have clearly stated therein that respondent nos. 2 to 7 were directors of respondent no. 1. Therefore, even on the date of filing the written statement i.e., 10 March 2023, it was clear that respondent nos. 6 and 7 continued to be the directors of respondent no. 1. The written statement has not been read out to

or interpreted to respondent no. 2 who has claimed in his affidavit in reply dated 4 December 2024 filed in these proceedings that he cannot read or write in English and that he had perused and read a Gujarati translation of the said affidavit dated 4 December 2024 before verifying the same. These are bald statements of the said respondents without even an iota of truth or genuineness to be so believed.

33. Mr. Madon would refer to the board resolution of respondent no.1 dated 10 June 2023 authorizing respondent no.6 to inter alia enter into any compromise or settlement on its behalf. In the said resolution respondent no.7 is clearly referred to as the director. Thus, as on 10 June 2023 the respondent no.6 was clearly a director of respondent no.1 which the respondents have also not been able to controvert in any manner whatsoever.

34. Mr. Madon would then submit that prior to the execution of the consent terms, the respondent no.7 exchange WhatsApp messages with one Raj Pokar, a company secretary of the applicants confirming that his alleged resignation on 24 November 2022 has been acknowledged by the directors of respondent no.1. It is thus clear as Mr. Madon would contend that by the own admission of the respondent no.7 he continued to be the director of respondent no.1 even as on 18 October 2023. Mr. Madon would then refer to an email dated 18 October 2023 addressed by respondent no.6 in the capacity of director of respondent no.1 calling for a meeting of the board of directors of

respondent no.1 on 25 October 2023. The agenda item no.7 would relate to inter alia, taking any steps to comply with the JDA along with the execution of the consent terms. In this context, Mr. Madon would contend that the email was addressed to respondent nos.2 to 5 by respondent no.6. However, respondent nos.3 and 4 failed to reply to the same or in any way raised an objection which is so raised belatedly by them to the effect that respondent no.6 was not a director of respondent no.1 and hence such meeting could never have been called. At the relevant time, the said respondents were clearly aware that respondent no.6 was very much a director duly authorized to convene such meeting.

35. Mr. Madon would then refer to the board resolution dated 25 October 2023 of respondent no.1 authorizing the respondent no.2 to inter alia take steps to comply, confirm and adhere to the JDA, including by executing a fresh agreement on similar terms as the JDA. By the said resolution, respondent no.2 was also authorized to, inter alia, file the consent terms on its behalf in any suit or proceedings. Accordingly, respondent nos.2, 5 and 6 signed the consent terms in their capacity as directors of respondent no.1. The board resolutions are in fact annexed to the consent terms dated 1 November 2023 and form an integral part thereof. It was on such basis that the applicants executed the said consent terms. To the best of the applicant's knowledge, these resolutions continue to remain in force, and at the very least

were very much in force and effect at the time when the consent terms were executed.

36. Mr. Madon would next submit that a perusal of the signature appended to the consent terms would show that respondent no.2 signed on behalf of respondent no.1 and the board resolution dated 25 October 2023 duly authorized him to so do. Further, respondent nos.2 and 5 to 7 with their advocates also signed the said consent terms, which is not disputed much less denied by the respondents.

37. Mr. Madon would urge that the consent terms were duly verified before the Prothonotary and Senior Master of the Court on 3 November 2023 under orders of the Court passed on 2 November 2023. All that remained was the formality of such consent terms being taken on record and a decree being passed in terms thereof which the respondents have tried their best to frustrate and defeat.

38. Mr. Madon would then refer to e-form DIR-12 dated 3 November 2023 filed by respondent no.3 purporting to act on behalf of respondent no.1 recording the resignation of respondent no.6 from the board of directors of respondent no.1 w.e.f. 26 April 2021. In this context Mr. Madon would submit that such form was filed belatedly after the consent terms were executed in Court. The resignation letter dated 26 April 2021 as submitted above is therefore clearly a backdated document. Section 168(1) of

the Companies Act, 2013 read with Rule 15 of the Companies (Appointment and Disqualification of the Directors) Rule, 2014 stipulate that a company is required within 30 days of receipt of notice of resignation from a director, to file form DIR-12 informing the ROC of such resignation and also posting such information on its website, if any. There is nothing on record to show that this was done. In any event, respondent no.6 signed the consent terms in his personal capacity and not on behalf of respondent no.1. Thus, the question of whether or not he was the director at the relevant time is inconsequential, without relevance.

39. Mr. Madon would then refer to a without prejudice settlement meeting held on 7 November 2023 between applicant no.2 and respondent nos.2 and 3 i.e. brothers at which time certain broad terms of settlement were arrived at. In this context Mr. Madon would submit that in the reply affidavit of respondent no.2 at para 3.29 thereof, respondent no.2 has sought to contend that these terms of settlement were final and binding. This is however contrary to the email dated 7 November 2023. In fact by the email dated 7 November 2023 addressed by the advocates on behalf of respondent nos.1, 3 and 4 to the applicant's advocates, it was clearly confirmed that the terms discussed on 7 November 2023 were clearly without prejudice. Thus, the respondents cannot rely on such without prejudice terms overlooking the consent terms of 1 November 2023 which are final and binding. To an email

dated 8 November 2023, addressed by the advocate of the applicants to respondent nos.1, 3 and 4 proposing certain modifications to the terms proposed in the email dated 7 November 2023, no reply was received to such email from the said respondents. Thus, this can be of no assistance to the respondents.

40. Mr. Madon would refer to an MoU dated 24 January 2024, by which respondent no.1 agreed to sale to one Vayuputra Builders and Infrastructures ("**Vayuputra**") an area admeasuring 850 sq. mtrs. in composite building no.5 which had been constructed on the subject property to be used by Vayuputra as permanent transit camp for its own SRA project, by clubbing the two projects. For such purpose Vayuputra agreed to pay respondent no.1 an aggregate consideration of Rs.11,64,50,000/- of which Rs.11,00,000/- was already paid on 3 January 2024. To this Mr. Madon would submit that the said MoU dated 24 January 2024 was executed by the respondents in breach of the undertaking provided by respondent nos.1 to 7 on 26 October 2023 to the Court. It was so recorded by order of 26 October 2023 that the parties were in process of settling the disputes amicably as also the statement of advocate for respondent nos.1 to 7 to the effect that they would not deal with the subject property in the meantime.

41. Mr. Madon would draw the attention of the Court to an agreement dated 1 February 2024 by which respondent no.1 sold unit no.501

in K.D. Heights Building No.4 (being one of the buildings constructed on the subject property) to one Mr. Jivraj Laxman Devda and one Dayaben Jivra Devda for a throwaway price of Rs.5,50,000/- whereas the market value was Rs.41,71,230/-. In this context Mr. Madon would submit that such agreement dated 1 February 2024 executed by respondent no.1 was once again in complete breach of the undertaking of respondent nos.1 to 7 furnished to this Court on 26 October 2023, whereby, an order of the said date such undertaking was duly recorded by the Court.

42. Mr. Madon would then submit that only with a purpose to frustrate and defeat the consent terms, the applicants received letter dated 29 July 2024 from the advocate of respondent nos.2 and 5 followed by another letter dated 10 August 2024 from the advocate of respondent nos.6 and 7, as submitted above, rendering the consent terms as void ab initio and bad in law. Having no alternative the applicants are constrained to approach this Court by the present application with a prayer to pass orders and decree in terms of the consent terms by following the mandate under Order XXIII Rule 3 of the CPC.

III. Submissions of Respondent No.1.

43. Mr. Samdani, learned senior counsel for the respondent no.1 would vehemently oppose the contentions of the applicants. He would at the

outset submit that the consent terms are void, mainly on the ground of vagueness and therefore not enforceable in law. Such consent terms, are not in accordance with law and opposed to public policy. The consent terms cannot be enforced inasmuch as they are terminated as on date. He would elaborate on these propositions which are noted below.

44. Mr. Samdani at the further outset would refer to the plaint in the suit filed by the applicants, more particularly, paragraph 5.29 of the plaint. In this regard, according to him, though the initial agreement was pleaded in the said paragraph of the plaint, the applicants seek to have had a change of heart and sought to enforce the JDA, instead, by filing the said suit.

45. Mr. Samdani would submit that the applicants were fully aware of the following:

a) The number of directors of respondent no.1 were respondent nos.2 to 5 i.e. four in number.

b) Admittedly, the respondent nos.6 and 7 had tendered the resignation letters to respondent no.1 from the directorship of the said company.

c) For the execution of the consent terms, a board meeting would be required and if validly convened then the decision of the said four directors i.e. respondent nos.2 to 5 would result in a deadlock, since only respondent nos.2 to 5 were in dialogue with the applicants.

d) The applicant no.1 despite being aware that respondent nos.6 and 7 had tendered their resignation, the applicants sought to involve the said respondents in the board meeting of respondent no.1 only with a view to ensure that there is majority.

e) The company secretary of the appellant drafted and prepared the board resolution dated 25 October 2023 to be passed by respondent no.1. On 23 October 2023 the company Secretary of the appellant forwarded the draft consent terms along with the draft resolution to be passed by respondent no.1 to respondent no.7, without forwarding the same to respondent nos.1, 3 and 4.

f) Respondent nos.3 and 4 were neither informed nor provided with a copy of the draft consent terms nor were they ever involved in the negotiations.

g) On 25 October 2023, the board resolutions as drafted by the company secretary of the applicants were passed authorizing the respondent no.2 to sign the consent terms and appoint an advocate. The said resolution was signed by respondent no.6, who was not a director at the time of passing of these resolutions.

h) On 6 November 2023 further negotiations took place between the parties during which handwritten writing is signed by the applicant no.2, respondent nos.2 and 3 agreeing to (i) development

management fees shall be 13.25%; (ii) consent accepted; (iii) sales will be handled by respondent no.3 with joint discussion; (iv) bank account shall be jointly operated and Rs.5 crore will be paid by the applicants to the respondents within 7 days; (v) the JDA had provided for 25% development management fee which was reduced under the said consent terms to 13.25%.

i) Mr. Samdani would then refer to an email dated 7 November 2023 addressed by the advocate for respondent nos.1, 3 and 4 to the advocate for the applicants recording the aforementioned settlement terms. On the same day, the advocates for the applicant responded to such email, inter alia, stating that the consent terms were not final and required detailed consent terms along with an agreement to be finalized and executed.

j) It is in such background that Mr. Samdani would submit that the consent terms were rightfully terminated by letter dated 29 July 2024 addressed by the advocate of respondent nos.2 and 5 and another letter dated 10 August 2024 by which the responded nos.6 and 7 through their advocate rightly decided to not act on such consent terms, the same being void and unenforceable.

46. In light of the above factual scenario Mr. Samdani would submit that consent terms in law is nothing but an agreement between parties and if

the same is found to be lawful, to the satisfaction of the Court, then a decree in terms of such consent terms can be passed. He would place reliance on Order XXIII Rule 3 of the CPC in this regard. He would also refer to the following judgments:

A. **Ruby Sales and Services (P) Ltd. & Anr. vs. State of Maharashtra & Ors.**[1] - Referring to paragraph 15 of the said judgment, Mr. Samdani would contend that merely because an agreement is put up in the shape of a consent decree, it does not change the contents of the documents. It remains an agreement subject to all rights and liabilities which any agreement may suffer. A compromise decree cannot stand on a higher footing than the agreement. For such reasons, referring to paragraph 3 and 4 of the consent terms, Mr. Samdani would contend that the same are vague, uncertain as it cannot go beyond the principal agreement i.e. the JDA.

B. ***Misrilal Jalamchand & Anr. vs. Shobhachand Jalamchand & Ors.***[2] - Mr. Samdani referring to the said judgment would submit that the Court has to record a compromise only if it is satisfied that there has been adjustment of the suit by a lawful agreement. The Court in recording a compromise has to consider two questions, namely, (i) whether there has been an agreement adjusting the dispute in the suit; (ii) whether the

1 (1994) 1 SCC 531
2 1955 SCC OnLine Bom.114

agreement is lawful agreement. In the present case, the answers to both these questions would be in the negative and hence the consent terms are not legally valid or enforceable.

C. ***Roshan Lal & Anr. vs. Madan Lal & Ors.***[3]– Mr. Samdani has pressed this judgment into service as he would submit that it has been held that the Court can pass a decree on the basis of a compromise and in such a situation the only thing to be seen is whether the compromise is in violation of the requirement of law. By applying such parameters the consent terms in the present cae are unlawful and cannot be enforced.

47. Mr. Samdani would, further to his proposition that the consent terms are void on the ground of vagueness would contend as under:

a) The said suit filed by the applicants was for seeking enforcement of the JDA. Under the JDA there are various obligations on respondent no.1 with respect to the joint development project, however, under clause 2 of the consent terms the obligations of respondent no.1 are taken over by the applicant no.1 for which a separate, different agreement had to be executed as this cannot be done under the JDA.

b) Under the consent terms a fresh JDA was to be executed between the parties. Contrary thereto, the consent terms state that this would

3 (1975) 2 SCC 785

be on the same terms or similar terms as the JDA. The consent terms also state that the JDA shall be an integral part of the newly executed agreement. All such expressions have different meanings and connotations, rendering the consent terms vague and uncertain.

c) Clause 4 of the consent terms provides for execution of power of attorney and other documents enabling the applicants to develop the subject property, however, none of the other documents or the power of attorney have been agreed or discussed including their terms, making the consent terms void on the ground of uncertainty and being vague.

d) The consent terms do not provide as to whether the appeal of the applicant is to be disposed of. The cause title of the consent terms indicates that the said consent terms are proposed to be filed in the appeal which arises only from an Interim/Interlocutory Application, which cannot dispose the appeal.

e) For the above reasons, the consent terms are void and the ground of vagueness and cannot be enforced under Section 29 of the Contract Act, 1872.

48. In support of his proposition that the consent terms are illegal, being opposed to public policy, Mr. Samdani would make the following submissions:

a) The subject project is a slum rehabilitation scheme covered under the provisions of the Maharashtra Slums Act ("**Slums Act**") and the Development Control Regulations ("**DCR**") as amended from time to time. There are prerequisites to be complied with by a developer before he recognize as such. Unless the pre-conditions including but not limited to obtaining consent of slum dwellers and the appointment of a developer under letter of intent have been fulfilled, no entity can undertake the development of the entire slum project on its own account.

b) Under the consent terms, the entire slum project is sought to be taken over by the applicant no.1 which is opposed to the provisions of the Slums Act, DCR and thus contrary to the public policy. Such consent terms are unlawful and impermissible in law.

c) No decree in terms of such consent terms can be passed if they are unlawful. Clause 6 of the consent terms clearly indicates an attempt to keep the consent terms confidential. This can only be for the reasons that the applicants were conscious of the illegality in the consent terms and for such reasons the applicants wanted to keep the consent terms confidential.

d) In the above context, Mr. Samdani would refer to the decision of the Bombay High Court in the case of ***Sarfaraj Jailab Nadaf vs. Faimida S.***

Nadaf & Ors.[4]. This is to contend that even a single clause in the consent terms which is contrary to law would and/or oppose to public policy would render the entire consent terms void and unenforceable.

e) Mr. Samdani would then refer to a judgment in ***Gautamsheth Kisan Wadve & Anr. vs. Kisan Gangaram Kale & Ors.***[5] to contend that consent terms which are opposed to public policy are void, illegal and can never be enforced by putting a seal of approval of the Court.

f) Mr. Samdani would next submit that the clauses of the consent terms provide for execution of a new agreement. The terms of which are neither agreed nor discussed. Even the consent terms by itself is not a detailed agreement as evident from the email of the applicant dated 7 November 2023 which states that a fresh detailed set of consent terms have to be executed. In the event the Court decides to pass a decree in terms of such consent terms which are void and illegal, a decree in terms thereof would also be unenforceable.

g) Mr. Samdani would urge that before any decree came to be filed, the consent terms were duly terminated by letters dated 29 July 2024 and 10 August 2024. The only remedy available to the applicants to enforce the consent terms would be by filing a suit.

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4 (2016) SCC Online Bom 2446

5 2020 SCC OnLine Bom 828

IV. Submissions of Respondent Nos. 2 and 5

49. Mr. Anoshak Davar, learned counsel for Respondent Nos. 2 and 5, would refer to the Affidavit-in-Reply dated 4 December 2024, filed by one Mr. Ramji Shah i.e. respondent no. 2 herein being the Director of respondent no.1-company. Placing reliance on the above he would make the following submissions:

50. Since Respondent No. 2 is unable to read or write in English, the present affidavit has been prepared by his Advocates, and a Gujarati translation thereof was provided to Respondent No. 2 for his understanding prior to verification.

51. Respondent No. 2 is a Director of Respondent No. 1 and has filed the present affidavit in his personal capacity as well as on behalf of Respondent No. 5, his son-in-law. Respondent No. 2 holds 28.31% shareholding in Respondent No. 1, whereas Respondent No. 5 holds 0.86% shareholding.

52. The Applicants have instituted the above suit seeking, inter alia, a declaration that the JDA dated 31st October 2020 entered into between Applicant No. 1 and Respondent No. 1 is valid. Two Interim Applications were also filed, seeking injunctive reliefs to restrain Respondents from creating third-party rights in the suit property. By an order dated 31 August 2023, this Hon'ble Court was pleased to dismiss the Interim Applications,

inter alia, holding that the JDA appeared to be one-sided and vague. The Applicants have preferred an Appeal therefrom.

53. Sometime around October 2023, after the filing of the said Appeal, applicant no. 2, who is the younger brother of respondent no. 2 and a promoter of applicant no.1 proposed a comprehensive family settlement with an intent to amicably resolve the ongoing disputes, including those with Respondents Nos. 3 and 4. As part of the proposed arrangement, it was represented by applicant no. 2 that applicant no.1 would support the development of the project, in exchange for a Development Management Fee in the range of 12–15%.

54. The parties agreed that, in the first phase, Consent Terms would be executed between the applicants and respondents nos.1, 2, 5, 6 and 7, excluding respondents nos.3 and 4. However, it was clearly agreed that respondents nos.3 and 4 would be brought on board prior to the Consent Terms being made operational or effective.

55. Relying on the assurance and representations of applicant no.2, and given the financial stress being faced by respondent no.1 - including repayment obligations to India Bulls Housing Finance - respondent no. 2 agreed to the proposed settlement, both in his personal capacity and as a Director of respondent no. 1, for the sake of family harmony and to facilitate the completion of the stalled project.

56. Respondent nos. 5, 6 and 7, who are the sons-in-law of Respondent No. 2, were also part of the discussions and agreed to the settlement. In order to formalise the Consent Terms on behalf of Respondent No. 1, it was necessary to convene a Board Meeting and pass a resolution authorizing Respondent No. 2.

57. Applicant No. 2 assured Respondent No. 2 that the Company Secretary of Applicant No. 1 would assist with the drafting and execution of necessary documents. As Respondent No. 2 is not conversant with technology, Applicant No. 2 coordinated through Respondent No. 7. This was done despite the fact that Respondent No. 7 had already resigned as Director of Respondent No. 1 in April 2021 - a fact known to the Applicants.

58. On 18 October 2023, Respondent No. 7 shared with the Company Secretary of the Applicants his resignation letter, the DIR-11 form filed with the Registrar of Companies, and written confirmation that his resignation had been accepted by all directors.

59. Notwithstanding the above, on 18th October 2023, the Applicants' Company Secretary shared, via WhatsApp, a draft notice and draft resolution proposing a Board Meeting of Respondent No. 1 to be held on 25th October 2023. These were addressed to Respondent No. 6, who had also resigned as Director in April 2021.

60. The draft resolution for the proposed board meeting included

the appointment of Respondent No. 2 as authorised signatory and of Advocate Mr. Sunit Pillay to represent Respondent No. 1 in legal proceedings. Acting upon this advice and in good faith, Respondent No. 6 issued a notice dated 18th October 2023 convening the Board Meeting. On 23rd October 2023, the Applicants' Company Secretary shared with Respondent No. 7 a draft of the proposed Consent Terms and the draft Board Resolution for execution.

61. Clause 2 of the draft Consent Terms noted that Applicant No. 1 would undertake the development obligations under the JDA dated 31 October 2020. It was orally clarified by the Applicants that a separate agreement would be executed for finalising the Development Management Fee (13.25%). Proceeding on such understanding, and in the interest of concluding the family settlement, Respondents Nos. 2, 5, 6, and 7 agreed to sign the Consent Terms. The draft resolution circulated on 23 October 2023 initially excluded Respondent No. 7 as a director. However, the Company Secretary of the Applicants advised that both Respondents Nos. 6 and 7 could participate and sign Board resolutions based on past conduct and for the limited purpose of implementing the family settlement.

62. Accordingly, a Board Meeting of Respondent No. 1 was convened on 25 October 2023, and the resolution was passed appointing Respondent No. 2 as authorised signatory and Advocate Mr. Sunit Pillay as

counsel in the proceedings. Further, in a WhatsApp exchange dated 21 November 2023 between the Applicants' CS and Respondent No. 7, it was confirmed that Respondents Nos. 6 and 7 had resigned in April 2021. Despite such clear knowledge, the Applicants proceeded to obtain signatures from Respondents Nos. 6 and 7 as if they were current directors.

63. On 1 November 2023, the Consent Terms were signed by Respondents Nos. 2, 5, 6, and 7 (excluding Respondents Nos. 3 and 4), and affirmed before the learned Prothonotary and Senior Master on 3rd November 2023, on the understanding that they would become effective only upon Respondents Nos. 3 and 4 coming on board.

64. On 6th November 2023, during the hearing of the Appeal, a joint request was made for time to finalise terms with Respondents Nos. 3 and 4 by all the parties including respondent no.2. Thereafter, a handwritten note reflecting the settlement terms was signed by Applicant No. 2, Respondent No. 2, and Respondent No. 3. On 7 November 2023, further discussions were held between Applicant No. 2, Respondent No. 3, and Respondent No. 2, wherein final settlement terms were agreed upon and recorded in writing. The terms *inter alia* are:

a. Applicant No. 1 would perform development obligations under the JDA;

b. Applicant No. 1 would receive a net Development Management Fee

of 13.25%.

65. Despite this consensus, the Applicants failed to abide by the agreed terms and declined to execute revised Consent Terms. Instead, the Applicants proposed an increased Development Management Fee and materially altered the previously settled terms.

66. The conduct of the Applicants, including the misrepresentation of material facts and reliance on the signatures of resigned directors, vitiates the Consent Terms. He further submits that Respondents Nos.2 and 5, through their Advocates, addressed a letter dated 29 July 2024 repudiating the Consent Terms. Similarly, Respondents Nos. 6 and 7 issued a letter dated 10 August 2024 through their Advocates, affirming the same position.

67. Accordingly, Mr Davar would urge that the Consent Terms are rendered void and unenforceable, having been induced by fraud and misrepresentation and would pray that the Interim Application be dismissed.

V. Submissions of Respondent Nos. 3 and 4

68. Mr. Lohia, learned counsel appearing for respondent nos. 3 and 4 would at the very outset, vehemently refuted the consent terms being taken on record or any order/decree being passed in terms thereof, as such consent terms are void, illegal and unenforceable in law.

69. Mr. Lohia would urge that the consent terms are vague, uncertain

and hence not enforceable. In this context, he would submit as under :-

A) Clause 2 of the consent terms provides that the obligations of respondent no.1 would be taken over by appellant no. 1 while clauses – 3 and 4 provide that a fresh agreement, in terms of the JDA, would be executed.

B) Under the JDA, the obligations were cast upon respondent no. 1 qua the joint development project. If clause -2 of the consent terms has to be adhered to, a fresh agreement with all such obligations would have to be entered into, the terms of which are not to be found.

C) In light of the above, the consent terms are clearly vague, uncertain and ought not to be given any legal recognition.

70. Mr. Lohia would then submit that the consent terms are contrary to law. In this context, he would refer to the provisions of the Slums Act to state that the developer of a scheme is vested with specific obligations qua the slum dwellers, as more particularly set out in Regulation 33 (10) of the DCR. Such obligations cannot be transferred to any other party, let alone the appellant, without the consent of the slum dwellers as well as the Slum Rehabilitation Authority (SRA). Neither the consent terms nor the JDA contemplate any such exercise to be undertaken for obtaining consent of the slum dwellers or the SRA.

71. Mr. Lohia would then submit that the consent terms are void on the ground of vagueness. In this context, he would submit that on account of the findings in the impugned order passed in the appeal, as well as the fact that clause - 3 to 5 of the consent terms contemplate the execution of future documents, which has never happened, the consent terms cannot be acted upon.

72. According to Mr. Lohia, the consent terms have been varied and/or overridden. In this context, he would submit that pursuant to the orders dated 6 November 2023, 8 November 2023 and 10 November 2023, the parties took time to verify a settlement and signed writings dated 6 and 7 November 2023, varying and/or overriding the consent terms. Thus, it is no longer open for the appellants to seek any order, much less a decree, in terms of such consent terms.

73. Mr. Lohia would next contend that the consent terms do not provide for the disposal of the suit and are vague and uncertain even on such ground. According to him, the applicants have contended that paragraph 1 of this Court's order dated 2 November 2023 provides for the disposal of the suit in terms of the consent terms. However, he emphasized that paragraph 1 of the said order is only a submission made by the appellants. The consent terms no where provide for the disposal of the suit and for the passing of a decree in terms of the said consent terms.

74. Mr. Lohia would submit that for a period of 10 months i.e., from 10 November 2023 till the filing of the present Interim Application in August 2024, the appellants have not sought decree in terms of the consent terms. Further, the consent given by respondent nos. 2, 5, 6 and 7 in respect of the consent terms was subsequently withdrawn by them, pursuant to the letters dated 29 July 2024 and 10 August 2024. Thus, it is no longer open to the applicants to seek any order in terms of the consent terms, as the consent has been duly withdrawn by the respondents.

75. Mr. Lohia would then make submissions on the aspect of Indoor Management as submitted by Mr. Madon. In this context he would make the following submissions :-

a) It is matter of record that respondent no. 3 is approximately 65% shareholder of respondent no. 1 and has played a key role in the development of the property and execution of the JDA.

b) Placing reliance on the decision of the Supreme Court in ***MRF Limited vs. Manohar Parrikar and Ors.***[6] (Para 111) TR Pratt (Bombay Ltd) vs. ED. Sassoon and company limited, it is not open for a third party who had knowledge of the affairs of the company, to rely upon the doctrine of indoor management. Accordingly, the contentions of the applicants in this regard is

6 (2010) 11 SCC 374

totally misplaced.

c) It is apparent that the applicant no. 2 who is the brother of respondent nos. 2 and 3 being aware of their stakes in respondent no. 1 has attempted to play a fraud upon respondent nos. 3 and 4 as well by this court by obtaining the order dated 2 November 2023 by suppressing its own knowledge of the resignations of respondent nos. 6 and 7, without disclosing true and correct facts on record.

d) Further, the applicants have misled the court by contending that the resolution dated 26 April 2021 is a matter of indoor management in so far as respondent no. 1 is concerned. As is evident from paragraph 3.9 to 3.14 read with the Exhibits – B to G in the affidavit in reply dated 4 December 2024 of respondent no. 2 as well as in the affidavit dated 23 January 2025 filed by respondent no. 4 which refers to an email dated 26 April 2021 from the Company Secretary of the applicant no. 1 making it clear that the applicants were always aware of the resignations of respondent nos. 6 and 7. The applicants thus deliberately suppressed such relevant and material fact of resignation of respondent nos. 6 and 7 and made a false assertions that the resolution dated 26 April 2021 was backdated. Thereafter, as a

complete afterthought and in a desperate attempt to cover up such suppression, the applicants at the hearing held on 27 February 2025 filed the affidavit dated 26 February 2025.

76. In light of all of the above, Mr. Lohia would urge that the Interim Application is devoid of merits and deserves to be dismissed.

VI. Rejoinder Submissions of The Applicants

77. Mr. Madon in his rejoinder would first deal with the respondent's contention that the consent terms are vague and uncertain. In this context, he would refer to clause 11.1(b) of the JDA which provides that in the event the respondent no.1 fails to or is otherwise unable to perform any of its obligation under the JDA, applicant no.1 will have the option to perform the obligations of respondent no.1. Thus, clause 2 of the consent terms is in conformity and consonance with the terms of the JDA. In view thereof, there is no conflict or vagueness in the *inter se* clauses of the consent terms.

78. Mr. Madon would next refer to the respondents contention that the consent terms are contrary to the public policy since it is the SRA project and permission of the SRA has not been obtained. In this context, he would submit as under:-

a) The JDA defines the term 'Approvals' as including all approvals,

authorisations, etc. from the SRA and the term 'project costs' to include the payment of any fees (including premium and deposits) to the SRA and other authorities for obtaining approvals and for amendments and revisions. The JDA thus clearly contemplates obtaining of SRA approvals.

b) Therefore, once the decree has been passed in terms of the consent terms, if an application is required to be made to the SRA, then in performance of the consent terms such application would be made and the requisite premium/fees would be required to be paid. This is clearly contemplated under the said consent terms which incorporates the terms of the JDA.

c) Mr. Madon would then turn to the judgment of the Single Judge of this Court in the case of **Misrilal Jalamchand** (supra) relied upon by Mr. Samdani in his submissions. Mr. Madon would submit that such judgment disputes the legal position that consent terms should be taken on record in facts similar to those in the present case.

79. Mr. Madon would then refer to the respondents' contention that the consent terms are unenforceable and are merely an agreement to enter into an agreement. In this context, he would contend as under :-

a) All the requirements of a concluded agreement are contained in

the consent terms which incorporate the terms of the JDA. There is nothing left for the parties to agree upon. The execution of a subsequent JDA is nothing but part performance of the agreement, and does not affect the validity or completeness thereof as the main terms and conditions were ascertained and determined by the parties. In this context, he would place reliance on a judgment of the Supreme Court on ***Kollipara Sriramulu vs. T. Aswatha Narayana***[7].

b) The reliance of the respondents on the impugned order is of no avail to them. Firstly, findings contained in the said order were *prima facie* and not conclusive. Secondly, respondent nos.1, 2, 5 to 7 themselves disavowed the said impugned order by subsequently executing the consent terms voluntarily and in full understanding thereof.

80. Mr. Madon would then refer to the respondents' contention that prior to filing of the Interim Application respondent nos.2, 5, 6 and 7 have terminated the consent terms. In this regard, Mr. Madon would submit that consent terms are an arrangement/agreemnt between two companies viz. respondent no.1 and applicant no.1. The consent terms were entered into by respondent no.1 pursuant to a valid Board Resolution. Respondent No.1 has

7 AIR 1968 SC 1028

till date not terminated the consent terms nor has it filed an affidavit opposing the application for passing a decree or on the compromise as reflected in the said consent terms. It is thus clear that the respondent no.1 continues to stand by the said consent terms and cannot resile from the same.

81. Mr. Madon then turn to the respondents' contention that respondent nos.3 and 4 were kept out of discussions prior to 2 November 2023 and were not aware of the resolution passed on 26 October 2023. In this context, he would submit as under :-

a) Respondent nos.3 and 4 were clearly in the know of everything as is borne out from the record. Respondent Nos.3 and 4 were given notice of the board meeting to be held on 25 October 2003 but they for reasons best known chose not to attend. At the hearing on 2 November 2024 the Advocate on behalf of the respondent no.3 and 4 stated that his client had not been given notice of the said meeting. This was disputed by the Advocates on behalf of the respondent nos.1, 2, 5 to 7.

b) In their affidavit-in-reply dated 10 December 2024 to the present Interim Application, respondent nos.3 and 4 have not alleged that they were not served with the notice of the said meeting. On the contrary, in paragraph 6.4 of the said reply affidavit they have admitted that a notice had been issued by

respondent no.6 and they themselves brought the same on record. In fact, Item 7 of the Agenda for the meeting specifically refers to passing of a resolution for execution of the consent terms in these proceedings. That apart the applicants have brought on record an email dated 18 October 2023 by which respondent nos.3 and 4 were served with a copy of the above notice.

82. Mr. Madon would then turn to the respondents' contention that the consent terms do not indicate whether they are in the suit or appeal and/or that they dispose of either such suit or appeal. In this regard, he would submit as follows:-

a) The title of the consent terms is clear. The order dated 2 November 2023 passed by this Court clearly records that the consent terms would "dispose of not only the captioned Commercial Suit but also present appeal and all interlocutory proceedings".

b) He would then refer to a judgment in the case of Manoj Pransukhlal Sagar vs. Indian Oil Corporation [2016(5) Bom. CR 707] where the Court followed the decision of the Supreme Court in **M/s. Silver Screen Enterprises vs. Devki Nandan**

Nagpal held that it was open for a party to a suit to approach the Court even in an appeal and seek relief of a decree in accordance with compromise.

83. Mr. Madon would then refer to the respondents' contention that appellants were aware of the resignation of the respondent nos.6 and 7. In this regard, he would submit as under :-

a) Referring to the WhatsApp messages as referred to and relied upon by the respondents the applicants would contend that they have placed on record an incomplete WhatsApp messages. Accordingly, the applicants have annexed a complete WhatsApp messages have not been read out by any of the counsel for the respondents. A perusal of such messages would demonstrate that the respondents' submission is not correct. Such messages of 18 October 2023 refers to the resignation of respondent no.7 wherein he admitted that none of the directors had accepted his resignation but had merely acknowledged a copy thereof. Pertinently respondent no.7 neither attended the Board Meeting on 25 October 2023 nor did he sign the resolution annexed to the consent terms. Infact, he signed the consent terms in his personal capacity. Therefore, it is of no consequence whatsoever as to whether or not he resigned prior

to execution of the said consent terms.

b) As far as respondent no.6 is concerned, it was only on 21 November 2023 i.e. nearly 3 weeks after the consent terms dated 1 November 2023 were executed that respondent no.7 for the first time contended that the respondent no.6 had resigned in April 2021 and further stated that even after April 2021, respondent no.6 had signed along with other directors in a Court proceedings.

84. Mr. Madon would then deal with the respondents' contention that the presence of respondent nos.6 and 7 was needed to outvote respondent nos.3 and 4. In this context, he would contend that respondent nos.3 and 4 did not attend the board meeting on 25 October 2023. The resolution would have been carried unanimously in any case without the presence of respondent no.6. Respondent No.7 never attended the meeting. It is not the case of the respondent that quorum for the board meeting was only of 2 directors. In view thereof, such contention of the respondents is of no assistance to themselves.

85. Mr. Madon would then deal with the respondents' contention that in terms of paragraph 3.15 of the reply of respondent no.2, it was stated that by consent terms applicant no.1 had undertaken to take over respondent no.1's obligations and that the applicants have denied this in their rejoinder.

In this context, Mr. Madon would submit that this is a false submission of the respondents. Paragraph 3.15 (page 8 of the reply affidavit of respondent no.2) has been dealt with in paragraph 7 of the rejoinder to such reply, wherein the applicants have not denied the aforesaid statement and in fact, have specifically averred "I deny all that is contrary to what is mentioned in the consent terms as alleged or at all". Respondents have cleverly glossed over this vital aspect.

86. Mr. Madon would then turn to the respondents' contention that the facts set out at paragraph 3.4 to 3.27 of the reply affidavit of respondent no.2 were the reasons why they were induced to enter into the consent terms. In this context, according to Mr. Madon, there is nothing on record to support the above. In fact, the averments are contrary to the statements made by respondent nos.1, 2, 5 to 7 to this Court at the hearing on 2 November 2023 and before the Prothonotary and Senior Master of the Court on 3 November 2023. Pertinently, the Advocates for the parties were involved in the preparation of the consent terms and have accordingly signed the same.

87. Mr. Madon would refer to the respondents' contention that the consent terms were varied allegedly by the applicants on 6 and 7 November 2023. In light of such variations under section 18 of the Specific Relief Act, 1963 according to the respondents the applicants ought to have sought a decree in terms of the amended consent terms. In this regard, Mr. Madon

would contend that the respondents in such view of the matter should have admitted and accepted that the contract was varied and accepted by both the parties. If the respondents accept this then it was always open for them to take out an application for decree on admission, on such varied contract. They having not done so makes it clear that even as far as respondents were concerned there was no change, variation, in the consent terms, as alleged. In any event, the applicants have demonstrated in their rejoinder affidavit filed in the Court that these documents were clearly without prejudice and very much under discussion. Accordingly, such variations, during negotiations cannot be considered as concluded contract between the parties, in any manner whatsoever.

88. Mr. Madon would the deal with the respondents' contention on paragraph 5.29 of the plaint in the suit filed by the applicants. In this regard, he would refer to the submissions of Mr. Samdani when he contended that it is an admitted position that paragraph 5.29 of such plaint contained agreed terms between the parties. However, Mr. Madon would submit that this would run contrary to the respondents' averment in paragraph 69 of their written statement, where they have denied the contents of paragraph 5.29 of the plaint. The respondents cannot take such contradictory and self-defeating stand.

89. Mr. Madon would urge that none of the counsel appearing for

the respondents have attempted to explain to the Court as to why in paragraph 66 of the written statement it was admitted that respondent nos.6 and 7 continued to be the directors of respondent no.1. Further, the Gujrati translation referred to in paragraph 1 of the affidavit in reply of respondent no.2 has not been furnished to the Court, though specifically called for.

90. Mr. Madon would in light of the above submit that the Interim Application be allowed and made absolute.

91. In the above backdrop, we have heard the learned counsel for the various parties and with their assistance perused the record. We now proceed to pen down our reasoning which is as under.

VII. Analysis

92. At the very outset, we may observe that the adjudication of the interim application is premised on taking on record the Consent Terms dated 1 November 2023 and pass an order and draw a decree in terms thereof. This exercise ought to be undertaken by the Court under the canopy and parameters prescribed under Order XXIII Rule 3 of the CPC, which would act as a pole star in deciding such proceedings.

93. We would therefore at the very threshold refer to Order XXIII Rule 3 of the CPC which reads thus:-

> "*ORDER XXIII - WITHDRAWAL AND ADJUSTMENT OF SUITS:*
>
> *1. ……..*

2. ……

*3. **Compromise of suit** — Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise satisfaction to be recorded, and shall pass a decree is accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:*

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule;

***3-A. Bar to suit**— No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.*
***3-B**. No agreement or compromise to be entered in a representative suit without leave of Court —*
(1) no agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.
(2) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.
Explanation. — In this rule, "representative suit" means, —
(a) a suit under section 91 or section 92,
(b) a suit under rule 8 of Order I,
(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,
(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit."

94. Before delving into the nuances of the submissions made by the counsel for the parties, we would deem it appropriate to examine the

fundamental issue in these proceedings. This relates to the validity and legality of the compromise executed between the parties in the form of Consent Terms dated 1 November 2023 and in respect of which a decree can be passed in terms thereof. In this context we would refer to the said Consent Terms which are reproduced below:-

"CONSENT TERMS

1. *The Appellants and Respondent No. 1,2,5,6 and 7 have arrived at an amicable settlement which is set out hereinbelow:*

2. *The Respondent No. 1 agrees and confirms that the Agreement dated 31st October 2020 executed between Appellant No. 1 and Respondent No. 1 is valid, subsisting and binding unto Respondent No. 1 and/or such other persons claiming through or under Respondent No. 1. The parties further agree and confirm that Appellant No. 1 shall be entitled to carry out the construction and development of the Joint Development Property as more particularly described in the Commercial Suit No. 303 of 2022 including the obligations of Respondent No. I under the Agreement dated 31 October 2020.*

3. *The parties further agree, declare and confirm that the Appellant No. 1 as well as Respondent No.1 shall enter into a fresh Joint Development Agreement within a period of 30 days from the execution of these present Consent Terms on same terms and conditions as are mentioned in the Agreement dated 31 October 2020 and the said newly executed Agreement shall be duly stamped and registered with the office of the Sub-registrar of Assurances at Borivali, Mumbai suburban within a period of 45 days from the execution of these present Consent Terms. The parties agree, declare and confirm that the Agreement dated 31 October 2020 shall be an integral part of the said newly executed stamped and registered Agreement.*

4. *The Respondent No. 1 agrees, declares and confirms that simultaneously upon execution and registration of the new Agreement upon the same terms and conditions as Agreement*

dated 31st October 2020, Respondent No. 1 shall also execute and register a Power of Attorney and all such necessary documents in favour of Appellant No. 1 to enable Appellant No. 1 to jointly develop the Joint Development Property with Respondent No. 1 as per the terms and conditions of the newly executed Agreement.

5. *The Appellants agree and confirm that upon execution and registration of new Agreement on similar terms and conditions as the Agreement dated October 31, 2020 and also on execution and registration of Power of Attorney by Respondent No.1, the Appellants shall take requisite steps to de-register Lis Pendens.*

6. *The parties agree and undertake that the contents of this settlement terms will be kept strictly confidential and will not be disclosed to any third party and the same will not be treated as precedent to any other similar matter or project.*

7. *Undertakings made herein by the respective parties shall be understood as undertakings given to and accepted by this Hon'ble Court.*

8. *Parties to act on a copy of this Order duly authenticated by the Court Officer of this Hon'ble Court.*

9. *Certified copy of the order is expedited.*

10. *Liberty to apply.*

11. *No Order as to Costs.*

Dated this 1st day of November, 2023."

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF ROYAL REALTORS LANDMARK PRIVATE LIMITED ("THE COMPANY') HELD ON WEDNESDAY, SEPTEMBER 07, 2022 AT 11.00 A.M. AT OFFICE NO.1, 6TH FLOOR, SHAH TRADE CENTER, RANI SATI MARG, MALAD (E) MUMBAI -400 097.

****

Authority to Mr. Himmat Ganeshlal Kachhara (DIN:- 00123698) Director of the Company to deal with legal matters of the Company:

*"**RESOLVED THAT** Mr. Himmat Ganeshlal Kachhara (DIN-00123698) Director of the Company, be and is hereby authorized on behalf of company to :-*

(a) appear, sign, verify, declare, affirm, make, present, submit and file including but not limited to all necessary notices, plaints, petitions, written statements, reply, rejoinders. sur-rejoinders, affidavits, undertakings, vakalatnamas, declarations, Appeals, Revisions, applications, statements, complaints, papers, consent terms and documents and all proceedings and matters in connection with any suit(s), writ petition(s), appeals, appeal from order or proceeding(s) filed by or against the Company before any court of law or any tribunal or any quasi-judicial or statutory or administrative authority; and

(b) nominate, appoint and engage advocates, solicitors, counsel or other professionals and retainers; and to do all such acts, things, deeds as may be necessary or proper to carry out the purposes herein above mentioned."

*"**RESOLVED FURTHER THAT** certified true copy of the resolution be furnished to any authority as required to give effect of this resolution under signature of any Director of the Company".*

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF SHAH HOUSECON PRIVATE LIMITED AT ITS MEETING HELD ON WEDNESDAY, OCTOBER 25, 2023 AT 05.00 PM AT 801,8TH FLOOR, SHAH TRADE CENTRE, RANI SATI MARG, MALAD (EAST), MUMBAI 400 097.

****

***RESOLVED THAT** Mr. Ramji Harakchand Shah (DIN:-00123657) Director of the Company be and is hereby authorized to take necessary all steps to comply confirm and adhere to the terms of the Agreement dated October 31, 2020 executed between Shah Housecon Private Limited and Royal Realtors Landmark Private Limited, including, re-execution and registration of the Agreement dated October 31, 2020 by executing a fresh agreement on similar terms and conditions as the Agreement dated October 31, 2020 and execution, registration and submission of necessary legal documents such as consent terms, Memorandums of understanding, and any other documents as majority of Directors deem fit.*

*"**RESOLVED FURTHER THAT** any director of the company shall be*

authorized to produce said resolution copy with concern authority or personnel to give effect of this resolution.

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF SHAH HOUSECON PRIVATE LIMITED AT ITS MEETING HELD ON WEDNESDAY, OCTOBER 25, 2023 AT 05.00 PM AT 801,8TH FLOOR, SHAH TRADE CENTRE, RANI SATI MARG, MALAD (EAST), MUMBAI 400 097.

****

Authority to Mr. Ramji Harakchand Shah (DIN:-00123657) Director of the Company to deal with legal matters of the Company:

*"**RESOLVED THAT** Mr. Ramji Harakchand Shah (DIN:-00123657) Director of the Company be and is hereby authorized to represent Shah Housecon Private Limited in any and all legal proceedings/claims/matters before any judicial-quasi judicial authority(ies) including proceedings before the High Court of Bombay or any other courts and do all such acts deed and things including:-*

*1. **To sign and file** statement of defense, affidavit in reply, counterclaims, appeals, reviews applications, affidavits, Vakalatnama, consent term, Memorandum of Understanding and writing of every description as may the necessary to be signed, verified and executed for the purpose of defending any all suits/petitions/matters and / or appeals and proceedings of any kind before any court of law whether Original, Appellate or Revisional jurisdiction and to defend, answer or oppose the same.*

*2. **To appoint and engage** Advocates, Solicitors, Counsels in such proceedings and to agree to pay their fees and cost in accordance with law.*

*3. **To do** all necessary acts, deeds, steps etc. to properly prosecute and/or defend (as the case may be) such proceedings including giving of evidence on behalf of the Company.*

*"**RESOLVED FURTHER THAT** all legal matters/proceedings pertaining to the Company and its assets shall be dealt with only by Mr. Ramji Harakchand Shah and/or with his prior written consent and any and all previous authorizations pertaining to the aforesaid powers granted to other directors shall hereby stand cancelled and revoked.*

*"**RESOLVED FURTHER THAT** certified true copy of the resolution be furnished to any authority as required to give effect of this resolution under signature of any Director of the Company".*

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF SHAH HOUSECON PRIVATE LIMITED AT ITS MEETING HELD ON WEDNESDAY, OCTOBER 25, 2023 AT 05.00 PM AT 801,8TH FLOOR, SHAH TRADE CENTRE, RANI SATI MARG, MALAD (EAST), MUMBAI 400 097.

****

RATIFICATION OF THE APPOINTMENT OF MR. SUNIT PRAVIN PILLAY ADVOCATES.

Mr. Ramji Harakchand Shah in his capacity as director of the Company has appointed Mr. Sunit Pravin Pillay, Advocate to act and plead in the Company Appeal (L) No. 27216 of 2023 in Interim Application (L) No. 30675 of 2022 and Interim Application (L) No. 9530 of 2023 in Commercial Suit No. 303 of 2022 preferred by Royal Realtors Landmark Private Limited and Ors on behalf of the Company.

*"**RESLOVED THAT** the Company hereby ratifies the appointment of Mr. Sunit Pravin Pillay. Advocate to appear and plead before the Hon'ble Bombay High Court in Company Appeal (L) No. 27216 of 2023 in Interim Application (L) No. 30675 of 2022 and Interim Application (L) No. 9530 of 2023 in Commercial Suit No. 303 of 2022 preferred by Royal Realtors Landmark Private Limited and Ors the above-mentioned said Commercial Suit and said Company Appeal on behalf of the Company."*

Directors confirm that the company shall be bound by the actions taken through the hands of Mr. Ramji Harakchand Shah, the Director of the Company.

*"**RESOLVED FURTHER THAT** certified true copy of the resolution be furnished to any authority as required to give effect of this resolution under signature of any Director of the Company".*

95. At this juncture it would be necessary to note a few orders passed by the Court in these proceedings so that a clear picture is before us. Firstly, a

Learned Single Judge of this Court was pleased to pass an order dated 9 December 2022 in Interim Application (L) No.30675 of 2022 in suit no.303 of 2023 filed by the applicants to restrain the respondents from creating any third party rights and/or dealing directly or indirectly in the subject property. Accordingly, the Court accepted the statement of the advocate appearing for the respondents as an undertaking to the Court to the effect that no such third party rights in respect of the subject property would be created and the proceedings stood adjourned with such directions to 16 December 2022. The said order of the Court dated 9 December 2022 reads thus:-

> *"P. C.:*
>
> *After the matter was argued for sometime, I enquired with Mr.Shaikh, the learned counsel appearing on behalf of Defendant Nos.1 to 7, whether Defendant No.1 was willing to appear before the office of the Sub-Registrar of Assurances for registration of the Agreement dated 31 October, 2020 executed between SHPL (Defendant No.1) and RRLPL (Plaintiff No.1). Mr. Shaikh submitted that he would require a week's time to take instructions on this aspect. He further stated that in the interregnum, Defendant Nos. 1 to 7 and/or their representatives, servants, agents, assigns, and/or any other person claiming through or under them shall not either directly or indirectly in any manner sell, transfer, part with possession or create any third party right, title or interest in the joint development property more particularly described in the Plaint.*
>
> *2 Accepting the aforesaid statement as an undertaking given to this Court, the matter is stood over to 16th December, 2022 under the caption for "ad-interim reliefs".*
>
> *3 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."*

96. The applicants filed two interim applications in the commercial

appeal before the Court. One was Interim Application (L) No.27806 of 2023 with an interim prayer to injunct the defendants from creating any third party rights in the subject property and from acting in furtherance of the notice dated 9 March 2023 issued by the respondents for terminating the JDA dated 31 October 2020. The other Interim Application (L) No.26702 of 2024 was to take the Consent Terms on record and pass orders and decree in terms thereof. The Court in the first Interim Application (L) No.27806 of 2023 filed in the Commercial Appeal by the applicants passed an order dated 26 October 2023 which reads thus:-

> "*1. Heard Mr. Madon, learned counsel appearing on behalf of the applicants/appellants, Mr. Pillay, learned counsel appearing on behalf of respondents 1, 2, and 5 to 7, Ms. Agarwal, learned counsel appearing for respondents 3 and 4 and Ms. Kapadia, learned counsel appearing for respondent no. 8 (SRA).*
>
> *2. The learned counsel for the parties state that they are in the process of settling the dispute amicably.*
>
> *3. Stand over to 2nd November 2023.*
>
> *4. We also record the statement of learned counsel representing respondents 1 to 7 that they will not deal with the property in the meantime."*

97. A perusal of the above clearly indicates that the Court has duly noted the statement of the learned counsel for all the parties in these proceedings to settle the disputes between them amicably. Also that the statement made on behalf of the counsel for the respondent nos.1 to 7 to not

deal with the subject property on 9 December 2022 shall continue.

98. The Court then proceeded to pass further order dated 2 November 2023 on the first Interim Application (L) No.27806 of 2023 in the Commercial Appeal of the applicants. The said order reads thus:-

> *"1. Mr. Madon, learned senior counsel today tenders consent terms entered into between the Applicants/Appellants and Respondent Nos. 1, 2, 5, 6 & 7. He submits that the Appellants are dropping Respondent Nos.3 and 4 from the array of Respondents. He submits that the consent terms will in fact dispose of not only the captioned Commercial Suit but also present Appeal and all interlocutory proceedings.*
>
> *2. Mr. Ankit Lohia raises a strong objection to these consent terms being taken on record. He submits that the Appellant No.2 is only a 35% shareholder in the first Respondent-Company and Respondent No.3 is a 65% shareholder in the first Respondent-Company. It is his contention that no notice of the Board meeting dated 25th October, 2023 was given to Respondent Nos.3 and 4 and thus the Resolution annexed to the consent terms is bad in law. He submits that the Appellants cannot be permitted to compromise the present Suit in the manner that is being done and that this Court therefore ought not to take the consent terms on record.*
>
> *3. Per contra, Mr. Madon points out that Respondent Nos.3 and 4 were aware of the said meeting but chose not to attend the same. Mr. Pillay, learned counsel appearing on behalf of Respondent Nos.1, 2 and 5 to 7 supported the submissions made by Mr. Madon and stated that notice of the said Board meeting was duly served upon Respondent Nos.3 and 4, despite which, they had chosen not to attend the said Board meeting.*
>
> *4. We have heard learned counsel and note that Respondent Nos.3 and 4 can have no objection to being dropped from the array of Respondents. The real dispute between Respondent Nos.3 and 4 on the one hand and the Appellants on the other appear to be in the nature of disputes inter se shareholders and/or directors. The fact remains that today the Appellants have entered into consent terms which are duly supported*

by a Board Resolution of Respondent No.1. The signatories to the consent terms are all present in the Court and have no opposition to the same being taken on record and the Appeal disposed of in terms thereof. Needless to state that if Respondent Nos.3 and 4 have any grievance qua the said Board Resolution pursuant to which the consent terms have been executed, it is always open to them to seek redressal in respect of the same before the appropriate forum. This factor by itself cannot today preclude this Court from taking on record the said consent terms. We therefore direct as follows;

(a) The parties to the consent terms are directed to appear before the Prothonotary and Senior Master, High Court, Bombay on or before 3.00 p.m. of 4th November, 2023 to enable the Prothonotary and Senior Master, High Court, Bombay to go through the consent terms and verify that the same are in order and have been duly executed by all concerned.

5. Stand over to 6th November, 2023 for filing consent terms."

A perusal of the above order would categorically make clear the following:-

a) The Court clearly records that respondent nos.3 and 4 can have no objections being dropped from the array of the respondents.

b) The real dispute between the respondent nos.3 and 4 on the one hand and the appellants on the other is in the nature of disputes, *inter se* shareholders and/or directors.

c) The fact remains that the applicants have entered into consent terms which are duly supported by a board resolution of respondent no.1.

The signatories of the Consent Terms are all present in the Court and have no objection for taking such Consent Terms on record and disposing

of the appeal in terms of the Consent Terms dated 1 November 2023. The Court also observed that if the respondent nos.3 and 4 have any grievance qua the said board resolution dated 25 October 2023 pursuant to which the Consent Terms have been executed, it is always open to them to seek redressal in respect thereof, before the appropriate forum. This factor cannot preclude the Court from taking on record the Consent Terms. In such view of the matter, the Court directed that the parties to the Consent Terms should appear before the Prothonotary and Senior Master of this Court before 3.00 p.m. on 4 November 2023 for him to go through the Consent Terms, verify the same are in order and duly executed by all concerned. The proceedings were adjourned to 6 November 2023 for 'filing Consent Terms'.

99. Further to the above order, the parties to the Consent Terms and in these proceedings appeared before the Prothonotary and Senior Master of this Court, including the advocates for the applicants and respondent nos.1, 2 and 5 to 7, being the signatories to the Consent Terms. The Prothonotary and Senior Master after recording the presence of the parties and that the Consent Terms were signed in their presence, he was of the opinion that the Consent Terms are in order, have been duly executed by all concerned. The office/registry of the Court was directed to place the verification report before the Court. The said order dated 3 November 2023 reads thus:-

*"**P.C.:** By Order dated 2nd November, 2023, the Hon'ble Court directed to go through the consent terms and verify that the same are in order and have been duly executed by all concerned.*

Accordingly, the terms of consent terms are verified along with a copy of Agreement dated 31.10.2020, a copy of which is tendered by the parties.

The Ld. Advocate for the Appellants submit that the consent terms are executed between Appellants and Respondent Nos. 1, 2, 5, 6 and 7.

The Appellants and Respondent Nos. 1, 2, 5, 6 and 7 present in person are identified by the Ld. Advocates for the Appellants and Respondent Nos. 1, 2 and 5 to 7 respectively.

Perused Board Resolution dated 07.09.2022 of Royal Realtors Landmark Pvt. Ltd., Appellant No. 1 wherein authority to sign consent terms is given to Mr. Himmat Ganeshlal Kachhara, Appellant No. 4. Also, perused Board Resolution dated 25.10.2023 of Shah Housecon Pvt. Ltd., Respondent No. 1 wherein authority to sign consent term is given to Mr. Ramji Harakchand Shah, Respondent No. 2.

The Appellants and Respondent Nos. 1, 2, 5, 6 and 7 present in person submit that they have read and understood the terms of the consent terms. They admit that the terms of consent terms are true and correct and signed by them in the presence of Advocates for the Appellants & Respondent Nos. 1, 2 and 5 to 7.

Appellants and Respondent Nos. 1, 2 and 5 to 7 present in person stated that they have entered into the said consent terms of their own will and without coercion, intimidation or threat of retaliation.

The Ld. Advocates for the Appellants and Respondent No. 1, 2 and 5 to 7 submit that the said consent terms are read over and explained to the compromising parties and after getting themselves satisfied about the truthfulness and correctness, the compromising parties signed the said consent terms in their presence.

In view thereof, I am of the opinion that the consent terms are in order and have been duly executed by all concerned.

Office to place this verification report before the Hon'ble Court."

100. At this juncture we may observe that the above orders and events would make it abundantly clear that the parties to the Consent Terms have duly accepted such Consent Terms along with the compromise as manifested in the Consent Terms. Thus, the provisions of Order XXIII Rule 3 have been duly satisfied which is evident from the order of this Court dated 2 November 2023 which led to the consequential order dated 3 November 2023.

101. We may observe that there was a hiatus for about 8 months after the execution of the Consent Terms dated 1 November 2023. Thereafter, the respondent nos.2 and 5 issued a letter dated 29 July 2024 through their advocate, to the applicants. The said letter reads thus:-

"Date: 29-07-2024

To,

1. Royal Realtors Landmark Pvt. Ltd.
A company Incorporated under the
Companies Act, 2013 having its registered
Office at 6th Floor, Shah Trade Centre,
Rani Sati Marg, Malad (East),
Mumbai-400 097.
2. Premji Harakchand Shah
3. Deven Premji Shah
4. Himmat Ganeshlal Kachhara
All having their Office at 6th Floor,
Shah Trade Centre, Rani Sati Marg,
Malad (East), Mumbai-400 097.

Re: IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO. (L) 27216 OF 2023
IN
INTERIM APPLICATION (L) NO. 30675 OF 2022
IN
INTERIM APPLICATION (L) NO. 9530 OF 2023
IN
COMMERCIAL SUIT NO.303 OF 2022

Royal Realtors Landmark Pvt. Ltd. & Others

...Appellants (Org. Plaintiffs)

Versus

Shah Housecon Pvt. Ltd. & Others.

...Respondents (Org. Defendants)

1. I am concerned for my clients, Respondent Nos. 2 and 5 and I refer to the captioned matter, under whose instruction, I address to you all as follows:

2. My clients state that you no.1/ you no.1's promoter viz; Mr. Premji Shah (you no.2), who is also the brother of my client Mr. Ramji Shah i.e. Respondent No. 2 in the captioned matter along with you no.3 and 4, have played fraud and misrepresentations on my clients, induced my clients in signing the purported Consent Terms dated 1st November, 2023 ("said Consent Terms"). My clients state that the said Consent Terms is void ab initio, bad in law and in any event not enforceable and not binding. In such event my clients hereby terminate the said Consent Terms.

3. My clients further state that since the said Consent Terms is void ab initio, bad in law and in any event not enforceable and not binding, the same cannot be taken on record by the Hon'ble High Court and / or any order cannot be passed in terms of the said Consent Terms.

4. In the event you nos.1 to 4 or either of you insist and/or apply to the Hon'ble Court for taking the said Consent Terms on record then my clients state that the same shall duly be objected to by my clients.

5. Please note that this Letter is without prejudice to the rights and contentions of my clients."

A perusal of the above would show that the respondent nos. 2 and 5 by

such letter have invoked fraud and misrepresentation against the applicants who were induced to sign the Consent Terms, rendering the same void and legally unenforceable.

102. The above letter was followed by another letter dated 10 August 2024 issued by the advocate for the respondent nos.6 and 7, which reads thus:-

"Dated 10th August, 2024

1. Royal Realtors Landmark Pvt. Ltd.
A company incorporated under the
Companies Act, 2013 having its registered
Office at 6th Floor, Shah Trade Centre,
Rani Sati Marg, Malad (East),
Mumbai-400 097.
2. Premji Harakchand Shah
3. Deven Premjl Shah
4. Himmat Ganeshlal Kachhara
All having their Office at 6th Floor,
Shah Trade Centre, Rani Sati Marg,
Malad (East), Mumbai-400 097.

Re: ***IN THE HIGH COURT OF JUDICATURE AT BOMBAY***
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL APPEAL NO. (L) 27216 OF 2023
IN
COMMERCIAL SUIT NO.303 OF 2022

Royal Realtors Landmark Pvt. Ltd. & Others .... Appellants
Versus
Shah Housecon Pvt. Ltd. & Others. ...Respondents

I am concerned for my clients, Respondent Nos. 6 and 7 and I refer to the captioned matter.

1. My Clients say that my clients had duly resigned from the Respondent No. 1 Company even before signing of the Consent Terms. However, you all

induced my Clients into signing the purported Consent Terms dated 1st November, 2023 ("Consent Terms") through fraud and misrepresentations played upon my clients. My Clients say that the Consent Terms are, therefore, void, bad in law, and in any event cannot be said to be enforceable and/or binding.

2. My clients therefore hereby terminate the Consent Terms. In view of the above, the Consent Terms therefore cannot be taken on record in the captioned Suit and the question of passing any order in terms of the Consent Terms cannot and does not arise.

3. My clients state that, however, in the event that you apply or insist to the Hon'ble Court for taking the Consent Terms on record, then my clients shall be constrained to oppose to the same from being taken on record or passing of any order in the terms thereof. Additionally, my clients shall also be constrained to bring to the notice of the Hon'ble Court the fraudulent and conniving acts undertaken by you all to defraud Respondent No. 1 and its stakeholders.

4. My Clients are neither concerned with the Consent Terms nor with the ongoing dispute between you all and Respondent No. 1. This letter is without prejudice to the rights, remedies, and contentions of my clients as are available in law."

The contents of the above letter would show that the respondent nos.6 and 7 by such letter have stated that they have resigned from respondent no.1-company even before signing the Consent Terms. They have also invoked fraud and misrepresentation against the applicants who were induced to sign the Consent Terms, rendering the same void and legally unenforceable, on identical grounds as taken by respondent nos.2 and 5.

103. In the light of the above we observe that it is for the first time belatedly after about 8 months that the signatories to the Consent Terms chose to invalidate the said by the above letters of July and August 2024. This was mainly on the ground of fraud, misrepresentation and respondent nos.6

and 7 having claimed to have resigned from respondent no.1 much before the signing of the Consent Terms. What we find peculiar is that the said letters dated 29 July 2024 and 10 August 2024 of respondent nos.2 and 5, 6 and 7 respectively have not placed on record any material particulars of such fraud and misrepresentation except for bald use of such expressions, which are defined under Sections 17 and 18 of the Contract Act, respectively. The same ought to be interpreted and construed accordingly. The law mandates that such parties have to, at the least make out a *prima facie* case for such fraud and/or misrepresentation as alleged. The said communications are completely silent on the aspect of alleged inducement by fraud and/or representation by which the said respondents were made to sign the Consent Terms. At this stage, without delving into the further details/nuances as contended by the parties before us, we find that the letters of July and August 2024 (supra) of the said respondents, after a gap of 8 months as noted above, is a sheer afterthought. In our *prima facie* opinion, to say the least, it is an attempt by the said respondent nos.2, 5, 6 and 7 to resile from such consent terms and to wriggle out from the same. The said respondents have failed to point out any change of circumstances in the said letters after execution of Consent Terms on 1 November 2023, so as to bring about such alleged inducement by fraud and misrepresentation by the applicants upon the respondents, in signing the Consent Terms.

104. What passes through our mind at this juncture is that had the said respondents, who are signatories to the Consent Terms being indeed a victim of any fraud or misrepresentation, why no steps were taken to recall the order dated 2 November 2023 passed by the Court. It is trite law that parties who allege fraud in the compromise entered into are entitled to make an application to recall the order of the Court taking such compromise on record. In this context, it is apposite to refer the judgment of the Supreme Court in ***Navratan Lal Sharma Vs. Radha Mohan Sharma & Ors.***[8], paragraphs 14 and 15 of which read thus:-

> *"14. By the impugned order, the High Court dismissed the application solely on the ground that the order dated 14.07.2022 recording the compromise does not grant liberty to restore the appeal. We are of the opinion that this is not the correct approach, as it defeats the statutory right and remedy available to the appellant under the CPC. This Court in Pushpa Devi Bhagat (supra), as well as several other cases, le has held that only the court that entertains the petition of compromise can determine its legality, at the time of recording the compromise or when it is questioned by way of a recall application. No other remedy is available to the party who is aggrieved by the compromise decree as an appeal and fresh suit are not maintainable under the CPC.*
>
> *15. In view of this legal position, the High Court was not correct in curtailing the statutory remedy available to the appellant in the first place, In fact, when there is a statutory remedy available to a litigant, there is no question of a court granting liberty to avail of such remedy as it remains open to the party to work out his remedies in accordance with law, Therefore, there was no occasion for the court to deny liberty to file for restoration by its order dated 14.07.2022 and the consequent dismissal of the recall application by the impugned order on this ground alone does not arise. Further, as a matter of public policy, courts must not curtail statutorily provisioned remedial mechanisms available to parties.*"

8 (2024) SCC Online SC 3720

The statement of law laid down in the above judgment is very clear which reiterates the view taken in earlier decisions of the Supreme Court, to the effect that only the Court that entertains the application/petition of compromise can determine its legality, at the time of recording the compromise or even when it is questioned by way of a recall application. No other remedy is available to the party who is aggrieved by such compromise decree as filing appeal or fresh suit are not maintainable under the CPC. The said respondents i.e. 2 and 5, 6 and 7 have for reasons best known not filed any such recall application before the Court which passed the order dated 2 November 2023. Strangely, despite the Court in its order dated 2 November 2023 granting liberty to respondent nos.3 and 4 to seek redressal in respect of the board resolution and Consent Terms before the appropriate forum, even this was not resorted to by them. The Court thus being *prima facie* satisfied in regard to the validity and legality of the compromise as set out in the Consent Terms directed the parties to proceed further for verification on 3 November 2023 which was also undertaken by the parties. Throughout this time the said respondents have not raised any grievance about any inducement by fraud or misrepresentation against the applicants, in executing the Consent Terms. We may observe that it is not controverted that the decree to be passed in accordance with the compromise as recorded in the Consent Terms is in

relation to the parties to the suit. Thus, the requirements under Order XXIII Rule 3 which have to be proved to the satisfaction of the Court was duly fulfilled as on 2 November 2023, which was taken to its logical conclusion by the subsequent order dated 3 November 2023, as noted above.

105. We may observe that the impugned order dated 31 August 2023 is passed in the suit of the applicants assailed by them in the commercial appeal. However, despite certain *prima facie* observations in the impugned order *inter alia* with regard to the JDA being one sided, logically the respondents agreed and executed the Consent Terms which were premised on the said JDA. However, the parties by their volition and considering their best interest decided to enter into the said Consent Terms, in November 2023 even after passing of the impugned order in August 2023.

106. It may be pertinent to note that there is no substantive Interim Application filed by the respondent nos.2 and 5, 6 and 7 to dislodge the Consent Terms on the ground that the same are void and legally not enforceable. The said respondents have only come up with specious pleas and a defence in the Interim Application of the applicants with a view to defeat said Consent Terms. The said respondents are therefore estopped by law from retracting from the Consent Terms and preventing a decree to be passed in terms of Order XXIII Rule 3 of the CPC.

107. We have noted the submissions raised by the respondent nos.2 to

5 and have perused the affidavit-in-reply dated 4 December 2024 which is on record. In this context, we may note that the letter of the said respondents dated 29 July 2024 clearly mentions the ground of inducement of the respondents by fraud and misrepresentation by the applicants to make them sign the Consent Terms. There is nothing beyond this. Thus, the parties ought not to substitute or supplant their stand in the reply affidavit which in the given facts, appears to be a complete afterthought and clever drafting, to retract from their obligations and the Consent Terms. Strangely the affidavit-in-reply states that the contents of the same were translated in Gujarati to respondent no.2 on the basis of which the said affidavit was executed and verified by respondent no.2. The Court had asked Mr. Davar to furnish a copy of such translation on the basis of which the affidavit was prepared and signed by respondent no.2. However, the said respondent failed to furnish copies of the said translation despite providing sufficient opportunities to them.

108. We may also note that the respondent nos.2 and 5 have not able to provide any satisfactory explanation on the board resolution dated 25 October 2023 on the basis of which they were authorized to sign and execute the said Consent Terms. The averments made in the affidavit in this regard do not inspire any confidence for any prudent person much less the Court to be satisfied with the genuineness of the same. We may observe that the said

respondent nos.2 and 5 have also passed the buck on the respondent nos.6 and 7 who claimed to have resigned prior to signing the Consent Terms. This appears to be a sheer afterthought on the part of the said respondents who have attempted to wriggle out of the Consent Terms. We would deal with the issue of the alleged resignation of respondent nos.6 and 7 from respondent no.1 company, in further detail below.

109. A perusal of the submissions made by Mr. Samdani for respondent no.1 and Mr. Lohia for respondent nos.3 and 4 we find that they have assailed the Consent Terms mainly on the ground that the same are vague, uncertain and void on the ground of vagueness. On perusal of the said Consent Terms, we find much substance in the submissions of Mr. Madan in this regard. As correctly submitted clause 11.1(b) of the JDA on a bare perusal thereof clearly provides that in the event respondent no.1 fails or is otherwise unable to perform any obligations under the JDA, parties agree that the applicant no.1 would perform the obligations of respondent no.1. We find that clause 2 with the other clauses of the Consent Terms are in consonance and conformity with the terms of the JDA without there being any conflict, much less vagueness or uncertainty as alleged by the respondents.

110. In our view, Mr. Madon is correct in submitting that all the requirements of a concluded contract are contained in the Consent Terms which incorporates the terms of the JDA. So also, the respondent nos.1, 2 and

5 to 7 have themselves distanced away from the impugned order dated 31 August 2023 by subsequently executing the Consent Terms. In such view of the matter it is neither possible nor logical to accept that such Consent Terms are vague or uncertain.

111. The court's order dated 2 November 2023 categorically records as its finding in paragraph 4 thereof that the signatories to the Consent Terms are all present in the Court and have no opposition to the same being taken on record and the appeal being disposed of in terms of the said Consent Terms. In any event, the title of the Consent Terms is clear which categorically states that the Consent Terms would "dispose of not only the captioned commercial suit but also the present appeal and all interlocutory proceedings". Thus even on such ground the Consent Terms cannot be branded as vague or uncertain as alleged by the respondents.

112. Clause 3 of the consent terms clearly contemplate that a fresh joint development agreement would be entered within 30 days from the execution of the consent terms on the same terms and conditions of the JDA. Thus, the stage of such fresh agreement would come only after the stipulated period of 30 days from execution of the said consent terms. We do not find such clause to be vague, in any manner, whatsoever. Further, clause 4 of the consent terms also provides for execution and registration of power of attorney and necessary documents under the conditions of the freshly

executed agreement, which would take place only after the stipulated period of 30 days from the execution of the said consent terms. Further, the new agreement to be executed would be on similar terms and condition as JDA as stipulated in clause 5 of the consent terms. It is after completion of all requisite procedures steps that the applicant shall take appropriate steps to de-register Lis Pendens. We do not find any vagueness much less uncertainty, to say the list any illegality in such clear terms of compromise as expressed in the consent terms. There is no provision in law, which would be contravened in our view when the terms of compromise are clear, which the parties have not only understood in the appropriate perspective but mutually agreed and further the Court by its order dated 2 November 2023 also recorded its satisfaction in term of Order XXIII Rule 3 of the CPC. We may also mention that such consent terms being executed strictly between the parties thereto, maintaining confidentiality of the same, cannot be treated as any illegality and/or attribute any mala fide to the applicants in this regard as alleged by the respondents. We do not find any merit or force in such contentions of the respondents.

113. We may observe that in the written note tendered on behalf of respondent no. 1 in regard to their contentions on para 5.29 of the plaint, we find that they have contended it to be an admitted position that the said para contend the agreed terms between the parties. However, such contentions is

contrary to the respondents own averments in their written statement in paragraph 69 thereof where they have denied the contents of para 5.29 of the plaint. There is no explanation much less justification on such self contradictory stand of the respondents.

114. Considering the above, we do not find any merit in the submission of Mr. Samdani that the Consent Terms would be contrary to Section 29 of the Contract Act and are void for uncertainty. For the reasons noted above there is no uncertainty or vagueness in the said Consent Terms to make Section 29 even remotely applicable in the given facts and circumstances.

115. We may now deal with the submissions of the respondents who would vehemently contend that the Consent Terms are contrary to the public policy since the parties are dealing with an SRA project and the permission of the SRA has not been obtained. In this regard we may observe that the JDA clearly refers to the term 'approval' to include approvals, authorizations etc. from the SRA which is a step to be taken, both logically and legally after the decree has been passed in terms of the Consent Terms. This is for the reason that if an application is required to be made to the SRA, there is no reason to believe that such application would not be made and the requisite fees/premium would not be paid. The Consent Terms which incorporates the terms of the JDA, inter alia, under clause 6 specifically refers to such

requirement including obtaining necessary approvals from the SRA, which is slated to be the obligation of respondent no.1. We do not find the Consent Terms being unlawful on such ground. There is not restriction much less a bar, being pointed out by the respondents from the Slums Act to show that an arrangement of such nature cannot be entered into by way of Consent Terms, which do not affect any mandatory requirements under the Slums Act, keeping the same expressly open, to be fulfilled upon execution of the Consent Terms.

116. We find merit in the submission advanced by Mr. Madon in rejoinder who would submit that the respondents have falsely contended that the applicants were aware of the resignation of respondent nos. 6 and 7 on account of whatsapp message, annexed to the affidavit in reply of respondent nos. 2 and 5. In this context, it appears that as far as respondent no. 6 is concerned it was only on 21 November 2023 i.e., nearly three weeks after the consent terms dated 1 November 2023 were executed that the respondent no. 7 for the first time contended that respondent no. 6 had resigned in April 2021. We find substance in the submission of Mr. Madon, who has referred to the complete whatsapp communication annexed to the rejoinder to give a complete picture of the factual matrix. In this regard, we find that even assuming that the respondent nos. 6 or 7 signed the consent terms in their personal capacity, then whether they resigned as directors prior to signing of

such consent terms becomes irrelevant and inconsequential. We therefore, do not find merit in such reasons inter alia of resignation of respondent nos.6 and 7 by the respondents to render the consent terms illegal and unenforceable.

117. For the respondents to successfully contend that the consent terms were varied on 7 November 2023, they ought to admit and accept that there was a valid and binding contract in the form of consent terms. Once having accepted that it was always open for them to take out an application for decree on admission on the varied contract. Having not done so would *prima facie* establish that the respondents also knew and cognizant of the fact that there was no such variation, which was subsequently brought to the fore by the respondents as an afterthought to defeat the consent terms.

118. In our view, such variations including in regard to the project management fee came to light on 7 November 2023 as a part of discussions, negotiations between the parties. Such without prejudice communications, even if in writing, cannot be escalated to the status of a binding agreement or a binding contract, as mandated under the provisions of the Contract Act. If at all such variations, according to the respondents have changed the Consent Terms steps could have been taken in this regard in the form and manner as the law would require. This was not done.

119. We have perused the judgments referred to by Mr. Samdani on

behalf of respondent no. 1 in the case of ***Misrilal Jalamchand & Anr.*** (supra) we find that it was a case where the consent terms were executed only with some parties, the non executing parties were dropped from the proceedings and one of the executing parties attempted to resile from the same by alleging fraud, who did not benefit from the compromise after having confirm the execution thereof, after the Hon'ble court. Thus, on such facts the court held that the consent terms should be taken on record, which would assist the case of the applicants and not of the respondents.

120. As far as the decision in the case of **Ruby Sales and Services (P) Ltd**. (supra) relied on by Mr. Samdani and Mr. Lohia, we find that the supreme Court held that the consent decree falls under the definition 'conveyance' as well as 'instrument' as defined under the Bombay Stamp Act, 1958. The decision is on different parameters however as far as consent decree which is a creature of the agreement is concerned, as held in the said case, the terms of the consent terms which are aligned with the principle agreement i.e., the JDA are in no manner vague or uncertain. Thus, this judgment does not assist the respondents.

121. The decision in the case of **Roshan Lal** (supra) cited by Mr. Samdani is a decision where a court held that when the agreement is lawful in an eviction suit, the court is bound to record a compromise and pass a decree in accordance therewith. Passing a decree for eviction on adjudication of the

requisite facts or on admission in compromise is not different. Thus, we do not find that any manner the said decision would be of assistance to the respondents.

122. The decision in the case of ***Sarfaraj Jailab Nadaf*** (supra) cited by Mr. Samdani is on the proposition that the clause in consent terms which would require a wife to give up her claim to future maintenance is opposed to public policy and hence void and illegal. We do not find any such clause in the consent terms being contrary to public policy, which on such ground is either void or unenforceable.

123. Similarly, the judgment in the case of ***Gautamsheth Kisan Wadve & Anr.*** (supra) relied on by Mr. Samdani is on incompletely different facts and where the terms of the compromise were per se contrary to section 36A of the Maharashtra Land Revenue Code, 1966 where without obtaining sanction or approval, as the law would mandate, certain transfers of land were effected. However, the facts in that case does not even bear a remote reassemble to the facts and circumstances before us, where there is no irregularity much less illegality pointed out in the consent terms, sufficient or necessary, so as to render it illegal or unenforceable, as the law would require.

124. On a perusal of the judgment cited by Mr. Lohia in the case of ***MRF Limited*** (supra) we find that in the context of Indoore Management, such judgment is of no assistance in any manner whatsoever to the

respondents, as it is in a completely different factual complexion. We are not able to accept his submission that applicant no. 2 and respondent nos. 2 and 3 being brothers are aware of the affairs of respondent no. 1 company and that they obtained the order of 2 November 2023 by suppressing the fact of resignation of respondent nos. 6 and 7. A perusal of the order dated 2 November 2023 would clearly indicate that the court has categorically recorded that the real dispute between respondent nos. 3 and 4 on one hand and the applicants on the other appear to be in the nature of disputes *inter se* shareholders and/or directors. In light of such clear observations recorded in the presence of respondent nos. 3 and 4, and when the said order is not assailed by any of the respondents, we are not able to accept the contentions has raised by Mr. Lohia.

125. Coming to the judgments cited by Mr. Madon, we find that the decision in the case of ***Manoj Pransukhlal Sagar vs. Indian Oil Corporation Ltd.***[9] where a coordinate Bench of this Court, (of which one of us G. S. Kulkarni, J. was a member) held thus :-

> *'23. Reliance on behalf of the Applicant on the decisions of the Supreme Court in the case of "Silver Screen Enterprises v. Devki Nandan Nagpal"? and in the case of "K. Venkata Seshiah v. Kanduru Ramasubbamma (Dead) by LRS" is appropriate. The Supreme Court in the case of Silver Screen Enterprises (supra), has held that it is open to a party to a suit to approach the Court even in an appeal on the basis of the compromise and seek a relief of a decree in accordance with the compromise. Their Lordships in paragraph 3 have observed as under: -*

9 (2016) SCC Online Bom 6461

> *"3. The compromise in question specifically says that the parties thereto have compromised all their disputes mentioned therein including the two matters referred to earlier. On the basis of that compromise both the appellant and the respondent were required to withdraw all the pending proceedings excepting the one mentioned earlier. There is no dispute that one of the matters compromised is that relating to the appeal with which we are concerned herein. Once a dispute is validly settled out of Court, it is open to a party to a litigation to move the Court to pass a decree in accordance with the compromise. Rule 3 of Order XXIII of Code of Civil Procedure provides that where it is proved to the satisfaction of the Court that a suit (which expression includes an appeal) has been settled wholly or in part by any lawful agreement, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to that suit. This is a mandatory provision. It is some-what surprising that the High Court should have felt itself helpless under the circumstances of the case to do justice between the parties. Clause 12 of the compromise provides that if the respondent does not carry out the terms of the compromise, he shall be held responsible for all the losses that the appellant may suffer because of its breach. This clause does not preclude the appellant from putting forward the compromise and asking the Court to dismiss the appeal in accordance with its terms. Both the factum and the validity of the compromise are not in dispute. Hence, the appellate Court was bound to accept the same. That Court acted in accordance with law in dismissing the appeal. Hence, the Court was clearly wrong in interfering with the judgment of the appellate court."*
>
> *24. The Supreme Court in the case of K. Venkata Seshiah (supra) has held that once a compromise is genuine and lawful, same is required to be acted upon."*

126. Mr. Madon would then rely on the judgment of the supreme Court in ***M/s. Silver Screen Enterprises vs. Devki Nandan Nagpal***[10], the relevant para of which read thus :-

> *"3. The compromise in question specifically says that the parties thereto have compromised all their disputes mentioned therein including the two matters referred to earlier. On the basis of that compromise both the appellant and the respondent were required to withdraw all the pending proceedings excepting the*

10 1970(3) SCC 878

one mentioned earlier. There is no dispute that one of the matters compromised is that relating to the appeal with which we are concerned herein. Once a dispute is validly settled out of Court, it is open to a party to a litigation to move the Court to pass a decree in accordance with the compromise. Rule 3 of Order XXIII of Code of Civil Procedure provides that where it is proved to the satisfaction of the Court that a suit (which expression includes an appeal) has been settled wholly or in part by any lawful agreement, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to that suit. This is a mandatory provision. It is some-what surprising that the High Court should have felt itself helpless under the circumstances of the case to do justice between the parties. Clause 12 of the compromise provides that if the respondent does not carry out the terms of the compromise, he shall be held responsible for, all the losses that the appellant may suffer because of its breach. This clause does not preclude the appellant from putting forward the compromise and asking the Court to dismiss the appeal in accordance with its terms. Both the factum and the validity of the compromise are not in dispute. Hence the appellate court was bound to accept the same. That Court acted in accordance with law in dismissing the appeal. Hence the High Court was clearly wrong in interfering with the judgment of the appellate court.

4. In the result this appeal is allowed and the decree and judgment of the High Court are set aside and that of the appellate Court restored. The respondent shall pay the costs of the appellant in the High Court and in this Court."

The above judgment has been referred to in the judgment of the Court in ***Manoj Pransukhlal Sagar*** (supra). It is clear from the above, as held by the Supreme Court that it was open for a party to a suit to approach the court even in appeal and seek relief of a decree in accordance with the compromise.

127. We would now advert to the decision cited by Mr. Madon in ***Kollipara Sriramulu*** (supra), para 4 of which reads thus :-

"4. In other words, there may be a case where the signing of a further formal agreement is made a condition or term of the bargain, and if the formal

agreement is not approved and signed there is no concluded contract. In Rossiter v. Miller Lord Cairns said;

> *"If you find not an unqualified acceptance subject to the condition that an agreement is to be prepared and agreed upon between the parties, and until that condition is fulfilled no contract is to arise then you cannot find a concluded contract."*

In Currimbhoy and Company Ltd. v. Creet the Judicial Committee expressed the view that the principle of the English law which is summarised in the judgment of Parker, J. In Von Hatzfeldt-Wildenburg v. Alexander was applicable in India. The question in the present appeals is whether the execution of a formal agreement was intended to be a condition of the bargain dated July 6, 1952 or whether it was a mere expression of the desire of the parties for a formal agreement which can be ignored. The evidence adduced on behalf of Respondent 1 does not show that the drawing up of a written agreement was a prerequisite to the coming into effect of the oral agreement. It is therefore not possible to accept the contention of the appellant that the oral agreement was ineffective in law because there is no execution of any formal written document. As regards the other point, it is true that there is no specific agreement with regard to the mode of payment but this does not necessarily make the agreement ineffective. The mere omission to settle the mode of payment does not affect the completeness of the contract because the vital terms of the contract like the price and area of the land and the time for completion of the sale were all fixed. We accordingly hold that Mr Gokhale is unable to make good his argument on this aspect of the case."

Considering the above, we are similarly dealing with a case where the formal agreement consent terms has been executed in terms of an in conformity with the JDA, both of which have been duly signed, executed and approved by the parties thereto. Thus, the above decision would be applicable to the given factual scenario.

128. Before concluding, we may observe that the consent terms which manifest the compromise entered into by the parties thereto fully comply with the provisions of Order XXIII Rule 3 in letter and spirit. We cannot

countenance a situation by accepting the contentions of the respondents, as we would be then drifting away from the order of this Court dated 2 November 2023 and 3 November 2023. This being so when the court has recorded its *prima facie* satisfaction in regard to the validity and legality of the consent terms. Such order is not assailed by the respondents. For the reasons noted above, merely by chanting the mantra of fraud or misrepresentation when parties desire to retract/resile and distance themselves from the consent terms, which are otherwise legally binding, cannot be countenanced in the present factual complexion.

129. For all of the above reasons, we find much merit and substance in the Interim Application. We accordingly pass the following order:-

VIII. Order

i. The Interim Application (L) No. 26702 of 2024 is allowed.

ii. The Consent Terms dated 1 November 2023 are taken on record. In Commercial Suit No. 303 of 2022, there shall be a decree in terms of the Consent Terms.

iii. Decree to be drawn up accordingly.

iv. Appeal stands disposed of in the aforesaid terms. No costs.

130. Considering the above, nothing survives in the Contempt Petition (L) No.2148 of 2025 and Interim Application (L) 27806 of 2023 which are rendered infructuous and are disposed of, accordingly.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI , J.)