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Apartment Ownership

The West Bengal Apartment Ownership Act 1972. The owner of a building having apartments for residential purposes may submit the building to the provisions of the West Bengal Apartment Ownership Act 1972. Along with the application an agreement has to be submitted to the authorised officer. The owners of the building may withdraw the property from the provisions of the Act with the permission of the State Government.

The advantages of submitting the building to the provisions of the West Bengal Apartment Ownership Act 1972 are that each apartment owner will be assessed to municipal tax separately but such apartments and Association of Apartment Owners or Condominium or Co-operative Society has to be formed by the apartment owners for maintenance of the apartments and common services and that all disputes among the members or apartment owners or between the apartment owners and Association or Condominium or Society should be decided by the Authorised Officer appointed under the West Bengal Apartment Ownership Act 1972 and his decision will be final.

The declaration submitting the building to the provisions of the said Act and the agreement are to be registered under the Registration Act 1908. The Association or Condominium or Society shall be governed by its bye-laws which will define the rights and obligations of the members as also the functioning of the Association or Condominium or Society.

FORMS

Declaration under section 2, read with section 10 of the West Bengal Apartment Ownership Act 1972

[See Rules 3(1) and 4(1) of the West Bengal
Apartment Ownership Rules 1974]

1. In pursuance of section 2 of the West Bengal Apartment Ownership Act 1972, read with sub-section (1) of section 10 of the Act, I/we.....hereby declare that I/we/am/are the owner/owners of the property situated at.....city/town/village.....in the district.....and do hereby further declare that I/We submit the said property, comprising a building or buildings.....containing apartment, together with the common areas and facilities, mainly meant for residential purpose, to the provisions of the West Bengal Apartment Ownership Act 1972 (West Bengal Act XVI of 1972) and all amendments thereto.

Authenticated copies of the building plan and site plan, prepared by.....and sanctioned by.....are appended herewith and marked respectively as Annexures 'A' and 'B'. The relevant title deed is also appended herewith and marked Annexure 'C'.

2. I/We, do hereby furnish further the following particulars as required under sub-section (1) of section 10 of the said Act:

A. Description of the property:

- (i) Area and description of the land upon which the building/buildings is/are constructed:
- (ii) Area and description of the building/buildings. Building No. :
 - (a) Total plinth area:
 - (b) Number of storeys:
 - (c) Number of apartments:
 - (d) Other particulars, if any:
- (iii) Area and description of common areas and facilities:
 - (a) Lawn, Parks etc.:
 - (b) Road, Pathways:
 - (c) Other common areas, if any:
 - (d) Water Supply arrangements:
 - (e) Street light within the property:
 - (f) Internal drainage:
 - (g) Other common facilities, if any:

- (iv) Description of the limited common area and facilities, if any stating to which apartments their use is reserved:
- (v) Value of the property:
- (vi) Nature of interest of the owner/owners of the property:
- (vii) Existing encumbrances, if any, affecting the property:

B. Description of common areas and facilities in respect of each building—

- (a) Foundation and main wall of the building/buildings:
- (b) Stairway:
- (c) Water Tank:
- (d) Plumbing Network:
- (e) Electric wiring network:
- (f) Other common areas:

C. Description of each Apartment or each building Apartment No. or Building No.

- (a) Location:
- (b) Approximate area:
- (c) Number of rooms:
- (d) Immediate common area to which it has access:
- (e) Any other information necessary for its proper identification:
- (f) Value of the Apartment:

D. Percentage of individual interest in the common areas and facilities appertaining to each apartment and its owner for all purposes including voting.

E. Other particulars, if any

3. I/We.....do hereby further declare, covenant and undertake as follows:

- (i) that each apartment constitutes a single residential unit, transferable and heritable as such, but shall not be partitioned or sub-divided for any purpose, whatsoever;
- (ii) that each apartment owner, present or future, shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration and appurtenant to such Apartment;
- (iii) that the common areas and facilities, general or restricted, shall remain undivided and that no owner shall bring any action for partition or division thereof so long as the property remains submitted to the provisions of the said Act;

- (iv) that the percentage of the undivided interest in the general or restricted common areas and facilities, as expressed in the Declaration, shall not be altered except with the consent of all the apartments owners expressed in an amended Declaration duly executed and registered as provided in the said Act;
- (v) that during the period the property remains subject to the said Act, no encumbrance of any nature shall be created against the property, though such an encumbrance may be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment in the same manner as in relation to any other separate parcel of property subject to individual ownership;
- (vi) that the percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment in which it appertains and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument;
- (vii) that no apartment owner shall do anything which would be prejudicial to the soundness and safety of the property or reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any additional basement or cellar;
- (viii) that no apartment owner shall sell, otherwise transfer or rent out his apartment for any purpose other than residential; and
- (ix) that for the proper and effective administration of the property and for the due maintenance, repair and replacement of the common areas and facilities the apartment owners shall strictly comply with the provisions of the said Act and the bye-laws made thereunder and shall pay their share or common expenses as assessed by the Association of Apartment Owners and that the failure to comply with any such requirement shall be a ground for action for damages or for other relief or reliefs at the instance of the Manager or the Board of Managers on behalf of the Association of Apartment Owners or in a proper case, by an aggrieved apartment-owner.

IN WITNESS I/we have set out our hands this..... day of and solemnly declare that what is stated in is true to my/our knowledge and what is stated in is my/our information received from

(1) Shri/Smt.

Sole owner/or all the owners of the property

(2) Shri/Smt.

(3) Shri/Smt.
and so on

In the presence of:

(1)

and

(2)

solemnly affirmed before me

this.....day

of 19

(Signature of the Magistrate/or person
competent to administer oath)

Agreement for Transfer of a Flat by a Member of a Co-operative Housing Society to Another

THIS AGREEMENT MADE at this day of
..... 1999 BETWEEN Mr. T.R. hereunder referred to as the TRANSFEROR
of the One Part and Mr. P.R. of hereinafter referred to as the
TRANSFEEE of the Other Part.

WHEREAS the TRANSFEROR is a member of Popular Co-operative Housing
Society Ltd., registered under No. 2368 of 1989 under the West Bengal Co-
operative Societies Act 1983 and as such member he is occupying as Owner
Flat No. 4 on First Floor in the building known as COSY standing on Plot
No. 3 on K.P. Road, Calcutta 700009 belonging to the said Society having a
carpet area of about 500 sq. meters.

AND WHEREAS the TRANSFEROR intends to transfer his right to occupy the
said flat with all his right, title and interest in the said society to the
Transferee.

Now therefore these presents witnesseth and the Parties hereto have
agreed as follows:

1. The TRANSFEROR will transfer and the TRANSFEEE will purchase the
Transferor's right to occupy and his right, title and interest to and in the
said Flat together with all its fixtures and fittings at the price of Rs. 5 lakhs
calculated at the rate of Rs. 1,000 per sq. ft. The TRANSFEEE has inspected
the flat and is satisfied in all respects.

2. The TRANSFEEE will pay to the TRANSFEROR on the execution of this
agreement as earnest money Rs. 1 lakh and the balance against delivery of
possession of the said Flat.

3. The TRANSFEROR shall obtain the consent of the Board of Directors of the said Society and of the Registrar of Co-operative Societies, West Bengal as required under Rule 142 of the West Bengal Co-operative Societies Rules 1987 to the transfer of the flat and of the five shares held by him in the said Society to the TRANSFEREE, before completion of the transfer. The transfer shall be completed within 6 months of execution of this Agreement.

4. The TRANSFEREE has taken inspection of all the documents in possession of the TRANSFEROR to title to the said Flat and is satisfied therewith.

5. After obtaining the requisite consents the TRANSFEROR shall deliver vacant possession of the Flat to the TRANSFEREE against payment of the said balance amount of Rs. 4 lakhs and execute transfer form in respect of the said five shares bearing Nos. 120 to 124 held in the Society and represented by Share Certificate No. 3 dated

6. The TRANSFEROR will take the Flat in the condition as it is and the TRANSFEROR will not be liable to do anything in respect thereof.

7. After vacant possession of the said Flat is given to the TRANSFEREE he will be the absolute owner thereof with all rights of occupation thereto as a member of the Society and thereafter the TRANSFEROR will have no right, title or interest therein.

8. The TRANSFEROR shall pay all the Society's dues upto the date of delivery of possession and thereafter the TRANSFEREE will be liable to pay the same and will be subject to the bye-laws and Resolutions of the Society.

9. It has been represented by the TRANSFEROR that (i) he is the absolute owner of the said Flat and no other person has any interest therein, (ii) there is no encumbrance or claim of any person on the said Flat, (iii) that he has been in exclusive and peaceful possession and occupation of the said Flat since it was purchased by him, (iv) on taking possession of the said Flat the TRANSFEREE will be entitled to occupy and enjoy the same without any claim or interruption from the TRANSFEROR or anybody claiming under him.

10. The TRANSFEROR undertakes that on completion of the transfer he will hand over to the transferee (i) the Certificate of Shares together with the share transfer form duly filled in and executed, (ii) the agreement for purchase of flat between the Developer and the TRANSFEROR all other documents relating to the Flat, if any, in the possession of the Transferor.

11. The TRANSFEROR shall sign and execute, any deed or writing and do all acts required to be signed executed or done to complete the title of the TRANSFEREE to the said Flat as and when requested at the cost and expense of the Transferee.

12. Any fee or donation or money required to be paid to the Society for its consent to the transfer of the said Flat and/or the shares under Rule 142(2) of the West Bengal Co-operative Societies Rules 1987 or any other Rules and if any stamp duty is required to be paid on the share transfer

form the same will be borne and paid by the TRANSFEROR and the TRANSFEREE in equal shares.

13. If any clearance under the Income-tax Act 1961 or compliance with any provision thereof is required then this agreement will be subject to the approval or clearance or certificate of the Income-tax authorities concerned.

14. In case of refusal of the society to give its consent to the transfer or the refusal of the Income-tax authority to give its approval or for any reason beyond the control of the TRANSFEROR or the TRANSFEREE this Agreement becomes impossible of performance the TRANSFEROR shall refund the earnest money to the TRANSFEREE forthwith without any interest. But if the TRANSFEROR commits any default in completing the transfer, the TRANSFEREE will be entitled to cancel this agreement by giving 30 days' notice and in that event the TRANSFEROR will be liable to refund the amount of earnest money and all other monies received with interest thereon at 12% p.a. from the date of this Agreement till payment. If the TRANSFEREE makes any default in completing this Agreement the TRANSFEROR will be entitled to cancel this Agreement by giving 30 days' notice to the TRANSFEREE and in that event the earnest money only will be forfeited. This is without prejudice to the right of any party to file a suit for specific performance of this contract and/or for further damages, if any.

IN WITNESS WHEREOF the parties have executed these PRESENTS on the day, month and year above-written.

Signed and Delivered by the within
named TRANSFEROR in the presence of:

Signed and Delivered by the within
named TRANSFEREE in the presence of:

Agreement for Sale of Apartment

AGREEMENT MADE at this day of 2000 BETWEEN Mr. V of hereinafter referred to as the VENDOR (which term shall include unless repugnant to the context his successors and assigns) of the one part and Mr. P of hereinafter referred to as the PURCHASER (which term shall include unless repugnant to the context his heirs and successors) of the other part.

WHEREAS the VENDOR is absolutely seized and possessed of the land and premises situate at.....and more particularly described in the Schedule hereunder written.

AND WHEREAS on the said land described in the First Schedule hereunder written there are certain buildings or structures.

AND WHEREAS the VENDOR proposes to develop the said land by demolishing the existing structures and by constructing a new building in their place,

according to the Building Plans hereinafter mentioned and to sell the flats in the said Building on Apartment Ownership basis.

AND WHEREAS the VENDOR has obtained permission of the Competent Authority under the Urban Land (Ceiling and Regulation) Act 1976.

AND WHEREAS the PURCHASER has agreed to purchase one flat or apartment in the said building being Apartment No. 3 on the First Floor of the said building and having the specifications mentioned in the 2nd Schedule hereunder written at the price of Rs. 25 lakhs only but subject to the provisions herein contained.

AND WHEREAS the PURCHASER has examined the title of the VENDOR to the said land and has seen the documents of title in the Vendor's possession and is satisfied with the Vendor's title to the said property.

AND WHEREAS the VENDOR declares that the said property is free from any encumbrances.

AND WHEREAS the VENDOR proposes to enter into an agreement for sale with the said PURCHASER pending the construction of the said building.

AND WHEREAS the PURCHASER has agreed to purchase and the VENDOR has agreed to sell on ownership basis the said Apartment No. 3 on the First Floor in the said building hereinafter referred to as "the Apartment" on the terms and conditions mentioned herein.

NOW THEREFORE THESE PRESENTS WITNESSETH and the parties agree as follows:

1. Unless prevented by any circumstances beyond his control, the VENDOR shall construct a building on the said plot of land more particularly described in the First Schedule hereunder written in accordance with the plans and specifications sanctioned by the Municipal Corporation. The PURCHASER agrees that the VENDOR shall be entitled to make such variations therein as the Government or the Municipal Corporation or other local body or authority may require and as may be necessary by the exigencies of the circumstances from time to time.

2. Inspection of the Plan and Title Deeds have been given to the PURCHASER and he has satisfied himself as to the title of the VENDOR to the said land and premises and accepts the same.

3. The VENDOR shall sell and the PURCHASER shall purchase the apartment being Apartment No. 3 having a carpet area of approximately 500 sq. ft. on the First Floor of the building to be constructed on the said property and delineated on the plan and thereon shown by red coloured boundary line at or for a lump-sum price of Rs. 25 lakhs (subject to what is provided hereinafter) and this lump-sum price shall (subject to aforesaid) be final and binding and shall be independent and irrespective of the actual carpet area of the Apartment on completion of the building. Out of the said amount

a sum of Rs. 5 lakhs has been paid by the PURCHASER to the VENDOR on the execution of these presents and the balance will be paid by instalments as follows:

- (1) Rs. 5 lakhs on or before.....
- (2) Rs. 5 lakhs on or before.....
- (3) Rs. 5 lakhs on or before.....
- (4) Rs. 5 lakhs being the balance against delivery of possession of the Flat to the Purchaser.

The time will be of the essence of the contract in case of each instalment.

4. The PURCHASER shall be liable to pay interest at the rate of 12% p.a. on all the amounts due and payable by the PURCHASER under this Agreement if such amounts remain unpaid for more than 7 days after becoming due. This is without prejudice to the rights and remedies of the VENDOR under these presents and/or in law.

5. Possession of the Apartment shall be given to the PURCHASER after the said building is ready for occupation and the building occupation or completion certificate obtained from the Municipal Corporation or other concerned authority. The VENDOR shall give possession of the said Apartment to the PURCHASER on or before the day of The PURCHASER shall, within the seven days of the receipt by him of the written notice from the VENDOR that the said Apartment is ready for use and occupation and that the building completion certificate or occupation certificate has been obtained from the concerned authority, take possession of the said Apartment.

6. On the PURCHASER duly observing and performing all the obligations and stipulations contained in this Agreement and on his part to be observed and performed and on payment to VENDOR all amounts payable by him under this Agreement, the PURCHASER shall be entitled to the possession of the said Apartment.

7. The VENDOR shall not incur any liability if he is unable to deliver possession of the said Apartment on or before the.....day of.....or the completion of the said building is delayed by reason of non-availability of steel, cement or any other building material or on account of civil commotion, riot or any act of God or on account of any notice, order, rule, or notification of the Government and/or public body or authority or on account of withholding of or delay on the grant of the building completion or occupation certificate, water connection and/or any other necessary facilities, permission or sanctions by the Government, the Municipal Corporation and/or any such other or similar public body or authority or on account of any Order of any Court.

8. No act of the VENDOR shall be construed as a grant in law to the PURCHASER of the said plot and building to be constructed thereon or any

part thereof until a formal Deed of Sale of Apartment or Conveyance is executed as hereinafter provided.

9. After the VENDOR informs the PURCHASER that the VENDOR obtained occupation Certificate or completion certificate from the Municipal Corporation, the PURCHASER shall not be entitled to refuse to take possession or delay taking possession thereof on the ground that in the opinion of the PURCHASER some work still remains to be done or completed in or in respect of the said Apartment or building. After 30 days of taking possession the PURCHASER shall have no claim against the VENDOR as to any item of work *viz.*, construction, designs, finishing or any other items or quality of work in the said Apartment. On the delivery of possession it shall be the sole responsibility of the PURCHASER to maintain the Apartment in good and tenable repairs in all respects.

10. The PURCHASER shall have no claim save and except in respect of the said Apartment hereby agreed to be purchased by him. All the other structures of the said land, open spaces, parking places, lobbies, staircases, lifts, terrace etc. will remain the property of the VENDOR until all the Apartments are sold and transferred to the PURCHASERS thereof and the Declaration and Deeds of Apartment are executed and the association is formed as provided in the West Bengal Apartment Ownership Act 1972 (West Bengal Act XVI of 1972).

11. Notwithstanding anything herein contained, upon notice in writing from the VENDOR calling upon the PURCHASER to take possession of the said Apartment, the PURCHASER shall be liable to contribute a monthly sum equivalent to 10% of all outgoings in respect of the said property such as all rates, taxes, assessment, dues, duties and impositions of any kind or nature whatsoever in respect of the said land and/or the building thereon or any part thereof as may be charged or imposed by Government, Municipality and/or any other competent authority and wages of watchmen, malee, and sweeper and other expenses of common benefit irrespective of the fact whether or not the PURCHASER has actually taken possession of the Apartment upon notice as aforesaid and until such time all the flats to be constructed are sold to the buyers thereof. Thereafter the purchasers shall also continue to be liable to contribute to all such common expenses as aforementioned during all the time he would be entitled to the said apartment and his contribution shall be in proportion to the area of the Apartment and as the Association of Apartment Owners shall from time to time decide.

12. The purchasers of all the flats and the premises in the said building including the PURCHASER herein shall join and form an Association and the PURCHASER agrees to join such association or society. On completion of the building and receipt by the VENDOR of the full price of all the flats/car parking places and other premises in the said building under this and similar agreements in respect thereof and all other charges and deposits payable

by each purchaser to the VENDOR under this Agreement and similar agreements with other Purchasers in respect of each Apartment the VENDOR shall convey and/or cause to be conveyed to each purchaser including the PURCHASER herein title to the respective Apartment free from all encumbrances. However, the VENDOR will not be obliged to execute the Deed of Apartment till such time as all the flats and premises are sold. The PURCHASER shall be liable to contribute to and at the time of execution of this Agreement and deposit and keep deposited with the VENDOR a sum of Rs. 50,000 towards legal costs (exclusive of stamp duty and registration charges of the Deed of Apartment) in connection with the execution of this and other documents required to be executed. All the legal expenses including the expenses of Stamp Duty and Registration charges will be borne by the PURCHASER alone.

13. The costs charges and expenses of preparing, engrossing, stamping and registering all the Agreements, Conveyances, Deeds or any other document or documents required to be executed by the VENDOR or by the PURCHASER as well as the entire professional costs of the advocates of the VENDOR in preparing and approving all such documents shall be borne by the PURCHASER in proportion to the area which the flat agreed to be sold bears to the total built up area of the building.

14. VENDOR will prepare the draft Deed of Apartment to be executed in favour of the PURCHASER. The form will be common to all the flat purchasers in the said building. The VENDOR will furnish a copy of such draft Deed of Apartment and after approval the PURCHASER shall get the same engrossed and stamped and the VENDOR will sign the same. It will be the responsibility of the PURCHASER to lodge the same for registration.

15. Without prejudicing the rights of the PURCHASER under the Deed the VENDOR will be at liberty to sell, assign or otherwise deal with his own interest in the said land and building or any part thereof.

16. No delay or indulgence by the VENDOR in enforcing any of the terms of this Agreement or any forbearance or giving of time to the PURCHASER shall be construed as a waiver on the part of the VENDOR. Any breach or non-compliance of any term or condition of this Agreement by the PURCHASER shall not in any manner prejudice the right of the VENDOR.

17. Until transfer of the said Apartment to the PURCHASER and all dues payable to VENDOR have been paid and without previous written consent of the VENDOR the PURCHASER shall not agree to or let, transfer or assign or give on Leave and Licence the said Apartment. The consent shall not however be unreasonably withheld.

18. Upon the PURCHASER paying the VENDOR'S dues and performing the terms and stipulations of this Agreement the PURCHASER shall peacefully hold and enjoy the Apartment for ever without any interference by the VENDOR or any person claiming under him.

19. The PURCHASER on getting possession of the said Apartment shall not demolish or cause to be demolished any construction work in or about the said apartment nor at any time make or cause to be made any new construction or work of whatsoever nature in or about the said Apartment nor will he make any additions or alterations in the said Apartment without the previous consent in writing of the VENDOR or in contravention of any Municipal Rules and Regulations nor without such consent or in such contravention as aforesaid, close lounges and any balcony, effect any alteration in the elevation or change the colour scheme of the exposed walls of the various lounges or external walls.

20. The PURCHASER covenants to do all acts, and things and sign and execute all other documents and papers as shall be incidental to the due carrying out the performance of the terms of this Agreement and for safeguarding the interests of the VENDOR and other purchasers of apartments in the said building as the VENDOR may require him to do and execute from time to time at the costs and expenses of the VENDOR.

21. The PURCHASER covenants to observe and perform all the Rules and Regulations which the Association of Apartment Owners may adopt at its inception and from time to time and at all times for fully and effectively vesting the management in the Association and otherwise to observe all stipulations and conditions in respect of the use and occupation of the particular flats by particular members and to ensure regular and punctual payment of contributions and charges. The PURCHASER shall observe all the rules and regulations which the VENDOR may frame and bring into force including rules and regulations regarding parking of cars, storing of materials and goods outside the Apartments, playing games likely to cause damages, injury, nuisance and other similar matters during the interim period until all the apartments are sold and building is completed and the Association is formed.

22. The VENDOR shall pay the balance if any of the deposits paid by the PURCHASER to the VENDOR under clauses 11 and 12 above after defraying the expenses mentioned in the said clauses and after transfer of the property is complete shall be paid to the respective flat owners. The said deposits shall not carry any interest.

23. Service of all letters, receipts and notices by the VENDOR shall be under certificate of posting to the address given by the PURCHASER. Such despatch will be sufficient proof of receipt of the same by the PURCHASER.

24. The PURCHASER shall not use or permit to be used the said Apartment for any purpose other than residential purpose or for a purpose approved by the Association. The PURCHASER shall not cause or permit to be caused any nuisance or annoyance to the occupiers of other flats and Apartments in the said building. The PURCHASER shall not be entitled to use any parking

or other space in the compound of the building for parking vehicles, except any parking space he may have agreed to purchase, and his right to park the vehicle will be subject to the rules and policy of the Association.

25. Subject to the other provisions of this Agreement the sale of the said Apartment will be completed within 6 weeks from the date of completion of the building and the occupation certificate being issued by the Municipal Corporation and notice whereof is given by the VENDOR to the PURCHASER.

26. All the outgoing including ground rent, taxes, etc. pertaining to the property up to the date of the occupation certificate of the flat payable and paid by the VENDOR may be apportioned between the VENDOR on the one hand and the PURCHASER and the other purchasers of the other Apartments on the other.

27. The VENDOR and all other necessary parties interested in the said property shall make and execute the Deed of Apartment (Deed of Conveyance) in terms of the draft to be prepared by the VENDOR.

28. It is declared by the VENDOR that no notice had been issued by the Government or Municipal Corporation or any other Public Body for carrying out repairs to the said property and if such notice is issued prior to the completion of the sale the VENDOR shall comply with the same at his expenses.

29. Before completion of the sale of the said Apartment to the PURCHASER if the whole building including the said flat is notified by the Government or any other authority for acquisition or requisition the PURCHASER will not be entitled to cancel the Agreement but will be entitled to refund of the amount paid by him to the VENDOR or a proportionate part thereof in case the compensation awarded for the property is less than the cost incurred by the VENDOR in the construction of the building including the price of the land, out of the compensation if and when awarded and paid by the Government or other authority. In the case of requisition of the said Apartment the PURCHASER will be entitled to the compensation that will be awarded by the requisitioning authority and save as aforesaid all his liabilities under this Agreement and subsequently as the owner of the said Apartment will continue to subsist.

30. The said and other Apartments shall be subject to the provisions of West Bengal Apartment Ownership Act 1972 and the Rules made thereunder and execute or join in executing a Declaration to the effect that he or they submits his Apartment or their Apartments to the provisions of the West Bengal Apartment Ownership Act 1972, in the form prescribed by or under the said Act and will abide by the terms thereof.

31. On the purchaser's failure to complete the purchase of the said Apartment in terms of this Agreement within the time stipulated herein the PURCHASER shall forfeit the said earnest money and will be liable to pay

proportionate costs, charges and expenses and damages incurred by the VENDOR.

32. On the VENDOR's failure to complete the sale within the stipulated time he shall be liable to refund to the PURCHASER the amount of earnest money and all other moneys with interest at 12% p.a. till repayment and all costs, charges and expenses incidental to this agreement and incurred by the PURCHASER.

33. The original Apartment Agreement given to the PURCHASER will be lodged for registration under the Registration Act 1908 within 4 weeks from the date of delivery of possession of the Apartment by the VENDOR to the PURCHASER and the VENDOR will admit execution before the Registering Authority (Sub-Registrar) on receiving intimation that this agreement is so lodged.

34. All disputes and differences whatsoever arising between the parties hereto or persons claiming under them touching this Agreement or any matter or things contained or the construction thereof or as to any matter in any way connected therewith or arising thereout or the operation thereof or the rights and liabilities of either of the parties shall be referred to arbitration and such arbitration shall be governed by and be subject to the provisions of the Arbitration and Conciliation Act 1996 as modified from time to time or re-enactment thereof for the time being in force.

IN WITNESS WHEREOF the parties hereto have hereunto put their respective hands on the day, month and year first above-written.

The Schedules above referred to

I

II

Signed and delivered by the within named VENDOR
in the presence of:

- 1.
- 2.

Signed and delivered by the within named PURCHASER
in the presence of:

- 1.
- 2.

Apprenticeship

Introductory observation. A contract of apprenticeship is a contract for personal service and is usually, though not necessarily, effected by a deed. The apprentice must signify his consent except in cases when he is a minor and enters into the contract through his guardian. The contract being for personal service terminates by death or permanent incapacity of either party. An apprenticeship agreement need not be in writing unless it is one under the Apprentices Act (Act XIX of 1850) which has been replaced by Act LII of 1961. Section 4 of the Apprentices Act provides that no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade, i.e., a trade which the Central Government specifies as designated trade for the Act (a) unless such person or, if he is a minor, his guardian has entered into a contract of apprenticeship with the employer, and (b) the contract of apprenticeship has been registered with the Apprenticeship Adviser. Every contract of apprenticeship may contain such terms as agreed by the parties provided no term or condition shall be inconsistent with the provisions of the Act. In other cases, no written document is necessary but sometimes for a long period of apprenticeship or where terms are complicated, a deed is executed embodying the articles of apprenticeship. An apprenticeship deed is generally executed and attested.

FORMS

Apprenticeship Deed

THIS APPRENTICESHIP DEED, made the day of 2000 BETWEEN AB of, etc. (hereinafter called the MASTER), of the first part, CD of, etc. (hereinafter called the FATHER), of the second part, and EF, son of CD,

aged years (hereinafter called the APPRENTICE), of the third part, WITNESSES as follows:

1. The APPRENTICE, of his own free will and accord and with the knowledge and consent of the FATHER, hereby agrees to be bound as a good and regular apprentice to the MASTER in the trade (or, etc.), of, etc., and to serve the MASTER for a term of years from the date hereof.

2. As consideration for imparting technical knowledge and education to the apprentice the FATHER of the APPRENTICE has paid to the MASTER a sum of Rs. as premium (the receipt of which the MASTER hereby acknowledges).

3. THE MASTER HEREBY AGREES with the FATHER and the APPRENTICE jointly and severally as follows:

- (a) The MASTER shall throughout the said term teach, give instruction and lessons and train the APPRENTICE to the best of his knowledge and/or cause him otherwise efficiently trained and instructed, in the trade or business of, etc., as carried on by the MASTER and in all matters and things appertaining thereto, PROVIDED that the APPRENTICE shall always be regular and punctual and make his best services available to the MASTER and obey all lawful commands of the MASTER, and commit no breach of duty or act of indiscipline or any of the conditions of the contract by the APPRENTICE herein contained.
- (b) The MASTER shall, during the period of apprenticeship, pay the APPRENTICE Rs.each week (or month) during the first year and Rs.a week (or month) during the second and every subsequent year of the apprenticeship as his allowance.
- (c) The MASTER shall give all facilities and always provide the APPRENTICE during the period of apprenticeship with adequate tools and implements to work with as may be necessary or requisite to receive lessons and instructions in the particular trade and with suitable board and lodging, and also medical attendance and medicines during sick periods.
- (d) The MASTER shall not require the APPRENTICE to work at the said trade on Sundays or other public holidays, or more than.....hours during any other week/days.....hours during any Saturday.

4. THE FATHER HEREBY AGREES with the MASTER as follows:

- (a) The FATHER shall provide the APPRENTICE during the period of apprenticeship with suitable clothing and all other necessaries of life, except board, lodging, medical attendance, medicine, tools and materials.
- (b) The FATHER shall pay the MASTER as premium (if it is payable by instalments) in the following manner, namely, etc.

5. AND THIS DEED FURTHER WITNESSES and the FATHER AND THE APPRENTICE jointly and severally agree with the MASTER as follows:

- (a) That the APPRENTICE shall faithfully and obediently serve the MASTER during the period of apprenticeship in the said trade and shall obey all lawful and reasonable commands of the master and behave himself properly, honestly and diligently in all respects.
- (b) That the APPRENTICE shall at all times cautiously handle all tools and implements provided for by the MASTER and never cause any mischief or damage nor wilfully waste or spoil or remove any property nor divulge, otherwise make known, to others any trade secret nor injure the MASTER in his trade nor neglect his duty or make himself absent therefrom without leave except in case of sudden illness of which immediate notice should be given to the MASTER.
- (c) The APPRENTICE shall not work nor serve elsewhere during the period of apprenticeship and shall always preserve and maintain the secrets of the trade imparted to him.
- (d) That the MASTER shall have power to reimburse himself against loss caused by absence, negligence or misconduct of the apprentice out of the allowance payable to him.

6. PROVIDED, however, and notwithstanding anything herein before contained, it is hereby further agreed by and between the parties as follows:

- (a) The MASTER shall have the power always by one week's notice in writing to determine this agreement in case of gross negligence, misconduct, dereliction of duty on the part of the apprentice, or in the event of default being made in payment of any instalment or instalments of the said premium.
- (b) In case the MASTER or the apprentice shall die or become permanently incapacitated during the said term, or the MASTER shall cease to carry on the said trade, the MASTER or his executors or administrators shall refund the FATHER a part of the premium, proportionate to the period of the said term then unexpired, and all liabilities hereunder of the parties hereto or their executors or administrator, shall thereupon stand determined.
- (c) If the APPRENTICE shall duly and faithfully serve the MASTER throughout the said term, the MASTER will employ the APPRENTICE as a, etc., in his said trade for the period of years at wages of no less than Rs. per month.

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered
by AB, CD and EF

Deed of Cancellation of Apprenticeship

THIS DEED is made the day of 1999 BETWEEN AB of, etc. (hereinafter called the MASTER), of the first part, CD of, etc. (hereinafter called the FATHER), of the second part, and EF, son of CD, aged years (hereinafter called the APPRENTICE) of the third part.

WHEREAS by a deed dated the day of and made between the said AB, CD and EF, the APPRENTICE was, in consideration of Rs., duly apprenticed to the MASTER to learn the trade (or, etc.) of, upon the terms and stipulations therein expressed; AND WHEREAS disputes and differences have lately arisen between the said parties which could not be adjusted. *Now this deed witnesses* and it is hereby agreed between the parties as follows:

1. In consideration of Rs. to be paid by the FATHER to the MASTER (the receipt whereof the MASTER hereby acknowledges), the said deed shall stand cancelled, determined and made void in all respects and to all intents and purposes whatsoever and it is hereby recorded that the said sum has been paid.

2. The MASTER hereby accepts the sum of Rs. in full discharge of all claims and demands whatsoever, which he may have or might set up against the FATHER, either under or by virtue of the said deed, or otherwise howsoever.

3. No action or other proceedings whatsoever, civil or criminal, shall hereafter be taken by or on behalf of either of the said parties, against the other or his or their executors or administrators, under or by virtue of the said deed either for performance or non-performance of its terms, covenants and conditions or in respect of cancellation of the same or for or in respect of any other act, matter, complaint or thing whatsoever touching or relating to the said apprenticeship.

4. The APPRENTICE shall not enter into the service or employment of any other person or persons in the town of, etc., or within an ambit of miles thereof, nor divulge or disclose any of the secrets of the MASTER, or of his trade or dealings, or any other matter or thing whatsoever which may be injurious, prejudicial or derogatory either to the business or to the character or reputation of the MASTER or any of his family, friends, servants or customers.

IN WITNESS, etc.

Signed, sealed and delivered

AB

CD

EF

6

Arbitration and Award

THE OLD ACT

The Arbitration Act 1940

Introductory observations. The law relating to arbitration in India was codified and standardized and the same is contained in the Arbitration Act (X of 1940) mainly based on the English law as amended by the Amending Act.¹ It repealed, among others, the Indian Arbitration Act (Act IX of 1899) which had only a restricted application only in the Presidency towns and in notified areas and was based upon the English Arbitration Act 1899,² and the Schedule II of the Code of Civil Procedure (Act V of 1908) and other provisions therein relating to arbitration modified after the Common Law Procedure Act 1854.³

In ancient India, the decisions of panchayats had been accepted as binding long before regular courts were established.⁴ To refer matters to such a bench was one of the natural ways of settlement of disputes in India which resembled judicial courts. The panchayati system fell into disuse with the advent of British Rule and in 1850 the Civil Procedure Code (Act VIII of 1850) was placed in the statute book and in 1899 the old Arbitration Act was enacted and courts in India followed the English Rules or the Private International Law. Since attainment of a sovereign independent status, courts are free to follow their own principles as consonant with their own ideas of justice, equity and good conscience.⁵

1 24 and 25 Geo Vict C 14.

2 52 & 53 Viet C 49.

3 17 and 18 Vict C 125.

4 *Amir Bibi v Arokiam* 45 IC 813; 34 MLJ 184.

5 *India and General Duvests Trust Ltd. v Ramchandra* AIR 1952 Cal 508.

The Arbitration Act 1940 has since been repealed and replaced by the Arbitration and Conciliation Act 1996 which has come into force on 25th January 1996. But as s. 85 of the new Act provides, notwithstanding such repeal of the 1940 Act its provisions shall apply in relation to arbitral proceedings which commenced before the 1996 Act came into force unless otherwise agreed by the parties. Accordingly, some of the provisions of the 1940 Act are noted below. Details of the Act follow hereafter.

“Arbitration agreement” or submission means, according to cl. (a) of s. 2 of the Arbitration Act 1940 (hereinafter referred to as the Act), “is a written agreement to submit present or future disputes and differences to arbitration, whether to one arbitrator or more arbitrators named therein or not.”

The authority of the arbitrator or umpire is irrevocable except with leave of the court. The principles laid-down by the Privy Council in *Pestonjee’s* case⁶ are of universal application. A submission can be revoked only if the court is satisfied *prima facie* that some manifest injustice will be the consequence of binding the parties to the contract, so it is not revocable without just and sufficient causes.

Arbitration is of three types: (i) private arbitration; (ii) Arbitration with the intervention of court; and (iii) court arbitration.

A reference to arbitration may be made without the intervention of a court. The provisions relating to such arbitration are to be found in Chapter II, ss. 3 to 19 of the Act.

Any of the parties to an arbitration agreement may desire to have the difference to which the agreement applies, referred to arbitration with the intervention of a court having jurisdiction in the matter, even though no suit is pending. The provisions for such arbitration are to be found in Chapter III, s. 20 of the Act.

In a pending suit also, all the parties interested may agree that any matter in difference between them in the suit shall be referred to arbitration. The procedure in such cases is laid down in Chapter IV, ss. 21, 23, 25 of the Act.

Authority of appointed arbitrator or umpire. An arbitrator is a judge appointed by the consent of the parties. The authority of an appointed arbitrator or umpire cannot be revoked except with the leave of the court and, in cases of sufficient cause, unless a contrary intention is expressed in the arbitration agreement.⁷

Effect of death of a party to an arbitration agreement. Arbitration agreement is not discharged by the death of any party thereto, either in respect of the

6 *Pestonjee v D. Manickjee & Co.* 12 MIA 112; 10 WR 51 (PC).

7 Section 5 of the Arbitration Act 1940.

deceased or any other party, but shall in such event be enforceable by or against the legal representative of the deceased. Nor does the death of any party, by whom the arbitrator was appointed, revoke his authority.⁸

Power of arbitrator. Section 13 of the Arbitration Act (Act X of 1940). Unless a different intention is expressed in the agreement, the arbitrator or umpire has power to—

- (i) administer oath to the parties and witnesses appearing;
- (ii) state a special case for the opinion of the court on any question of law involved or state the award, wholly or in part, in the form of a special case of such question for the opinion of the court;
- (iii) make the award conditional or in the alternative;
- (iv) correct in an award any clerical mistake or error arising from any accidental slip or omission; and
- (v) administer to any party to the arbitration such interrogatories as may, in the opinion of the arbitrators or umpire, be necessary.

Award. When the arbitrators or umpire have made their award, they are to sign it and file it in the court in accordance with the provisions of s. 14 of the Act. As stated by Russell,⁹ the arbitrator shall decide neither more nor less than the dispute referred to him, otherwise the award is liable to be set aside. An award though at times is attested but such attestation is not essential except in Bombay under the Bombay High Court Rules.¹⁰ An award may be set aside on the ground laid down in s. 30 of the Act.

FORMS

Award made under an Order of the Court

In the matter of the Arbitration Act
and

In the matter of Suit No.
of

This is the award of the Arbitrator made thisday of 2000.

WHEREAS in pursuance of an order of reference dated the.....
day of made by the court in Suit No. of 2000 of the court

⁸ Section 6 of the Arbitration Act 1940.

⁹ Russell on *Arbitration*, 15th Ed., p. 257.

¹⁰ Paruek's *Arbitration*, 3rd Ed., p. 132.

of etc., the following matters in difference between the above-named AB and CD; namely, etc. (*state the matter in difference*), were referred to us for arbitration and determination: NOW WE THE UNDERSIGNED having heard and examined the parties and considered all allegations and counter-allegations and submissions made against each other and all documents and other evidences produced and laid before us, made our award as follows:

WE AWARD

- (1) that, etc.
- (2) that, etc.

Date: Arbitrator

Award by Arbitrator Appointed by Parties

In the matter of the Arbitration Act (Act X of 1940) and in the matter of an Arbitration Agreement dated..... BETWEEN AB, of, etc., and CD, of etc.

THIS is the award of the Arbitrator made this day of 2000.

WHEREAS in pursuance of an agreement and/or submission in writing dated the day of and made between the above-named AB and CD, the said AB and CD referred to me, XY, for my decision and award the matters in dispute and difference between them (*state the matters in difference*): Now I, the said XY, having heard and examined the parties and considered the pleadings and all allegations and counter-allegations made by them against each other and also all books, papers, writings and other evidences produced before me, do hereby make my award as follows:

I AWARD

- (1) that, etc.
- (2) that, etc.
- (3) that the cost of this reference be paid by the said CD (or AB).

IN WITNESS WHEREOF I have hereunto set and subscribed my hand and signature this day of 2000.

XY (Arbitrator)

Award by Umpire

In the matter of the Arbitration Act (Act X of 1940) and In the matter of Arbitration Agreement dated BETWEEN AB etc. and CD etc.

WHEREAS by an agreement in writing and/or submission dated the day of made between AB of, etc., and CD of, etc., the matters in disputes and differences between them as specified therein were referred to the decision and arbitration of X and Y as joint arbitrators who thus appointed me as the umpire at the commencement of the reference on the day of 19.....

And the said X and Y having disagreed and differed as between themselves over the subject-matter of the arbitration and the award to be made thereon during the pendency of the proceeding, I, the said umpire, took upon myself the reference and having examined the pleadings and heard the parties and considered allegations and counter-allegations and all documents and evidences produced before me, do hereby make my award as follows:

I AWARD

(1) that, etc.

(2) that, etc.

(3) that, etc.

Dated this day of 19.....

IN WITNESS, etc.

Z (Umpire)

THE NEW ACT

The Arbitration & Conciliation Act 1996

This Act applies to arbitral proceedings commencing on or after 22nd August 1996.

No judicial intervention. No judicial authority shall intervene unless specifically asked to do so.

Parties to be referred to arbitration

(a) *Domestic disputes.* A judicial authority before which an action is brought the subject-matter of which is covered by an arbitration agreement shall, on an application by a party, refer it to arbitration. The application praying for such reference to arbitration shall be accompanied by a certified copy of the Arbitration Agreement. However, the pendency of such an action in court

will not prevent the commencement or continuation of the arbitration proceedings or making of an Award.

(b) *International disputes.* If an action is brought in case of an international dispute covered by New York Convention in any court then on the application of a party the court may refer the parties to arbitration. The court may refuse to refer the dispute to arbitration if it finds that the agreement is void or incapable of being performed.

When an international dispute covered by Geneva Convention is brought before a court then on an application of a party the court shall refer the parties to arbitration. However, if the arbitration cannot be proceeded with or it becomes inoperative then the court may proceed with the action before it.

In respect of international contractual or commercial legal relationship if any action is brought before a court in India covered by the Geneva Convention the court will refer the parties to arbitration. However, there must be a written valid agreement for referring the dispute to arbitration and both the parties must have adopted the Convention.

Procedure. For referring the matter in a pending proceeding before a court to arbitration an application has to be made by a party for referring the dispute to arbitration setting out the facts and circumstances of the case. The application is to be accompanied by a duly authenticated copy of the agreement containing the arbitration clause, particulars of the parties and cause of action and as to the jurisdiction of court. The Chief Justice of High Court will appoint the Arbitrator in case of domestic arbitration. The Chief Justice of Supreme Court will appoint the Arbitrator in case of an international arbitration. If a party to an arbitration agreement either of his own or in spite of direction of the court fails to appoint its Arbitrator within 30 days or each party appoints an Arbitrator but the Arbitrators fail to appoint a third Arbitrator within 30 days then a party may make an application to Chief Justice of the High Court of the State having the jurisdiction for appointment of an Arbitrator. Such an application can be made if the parties fail to appoint an Arbitrator, one party appoints the Arbitrator but the other party does not accept the appointment or the sole Arbitrator does not enter into reference. If the parties have agreed to appoint an Arbitrator according to the procedure laid down in the agreement but fail to do so then a party may apply to the Chief Justice for appointment of an Arbitrator. The Chief Justice may delegate his powers to an individual or an Institution in which case the application has to be made to that delegate.

The decision of the Chief Justice is final. The Chief Justice will frame a scheme for the purpose of the application for appointment of an Arbitrator.

Interim orders

(a) *By Court.* Before the arbitration starts or during arbitration proceeding or after the Award is made, a party may apply to the court for interim

protection. Such interim protection may include appointment of a guardian for a minor or for a person of unsound mind or for the preservation or sale of goods or to secure the amount under dispute or for detention, preservation and protection of the subject-matter of the dispute. The court may issue interim injunction or appoint a receiver. The court may make the interim order for protection as may appear to the court to be just and convenient. The power of the court is the same as in any other proceeding before the court.

(b) *By Arbitrator.* An Arbitrator may make interim orders if the parties have not agreed to the contrary. The Arbitrator may at the request of a party order the opposite party to take any interim measure of protection as the arbitrator may consider necessary in respect of the subject-matter of the dispute. The Arbitrator may require a party to furnish security which may appear to the Arbitrator to be just and convenient for the protection and preservation of the subject-matter of the dispute.

During the pendency of the arbitration proceeding a party to the arbitration may therefore apply either to the court or to the Arbitrator for interim reliefs subject to any agreement between the parties.

Jurisdiction. Except for the appointment of an Arbitrator for which an application has to be made to Chief Justice or his delegate all other applications are to be made to the Principal Civil Court of the District or the High Court within whose jurisdiction the cause of action arose or the respondent resides or carries on business or the first application was validly made. Whether an Arbitrator has become legally or factually unable to function or he has failed to act without undue delay shall be decided by the parties. If they cannot agree then an application lies to court for decision on such a point. Once an application is made in respect of arbitration agreement to a court having jurisdiction all other subsequent proceedings should be before that court in respect of the said matter.

Court assistance. A party with the approval of the Arbitrator or the Arbitrator may apply to the court for assistance in taking evidence. On such an application the court may direct that evidence be given directly before the Arbitrator. The court may issue process to witnesses to appear before the Arbitrator in accordance with the rules of taking evidence before the court itself. Failure of the witnesses to comply with the direction of the court will amount to contempt of the court.

Application for setting aside of an Award. An application can be made by a party to the court for setting aside the Award. The party has to show that he was (i) under some incapacity or (ii) the Arbitration Agreement is not valid or (iii) he was not given proper notice of the appointment of the Arbitrator or (iv) of the arbitration proceedings or (v) otherwise he was unable to present his case. He may show that (vi) the Award deals with a dispute not within the scope of the Arbitration or (vii) that the composition of the Arbitral Tribunal or

(viii) the arbitration proceeding was not in accordance with the agreement. The court may set aside the Award (ix) if the subject-matter of the dispute is not capable of settlement by arbitration or (x) the Award is in conflict with the public policy of India. Where the valid portion of the Award can be separated the court will set aside the invalid portion only. An Award if (xi) induced by or affected by fraud or corruption or (xii) there has been breach of confidentiality or (xiii) reliance on evidence in other proceedings then it would be void as being against public policy of India.

Limitation. The limitation for making the application for setting aside the Award is 3 months from the date of receipt of the Award or the corrected Award or the additional Award, as the case may be. The court has the discretion to extend this period by another 30 days for sufficient causes being shown.

Refer back to arbitrator. In appropriate cases at the request of a party the court may adjourn the hearing of the application to give an opportunity to the Arbitrator to resume the proceedings or to take such action as would eliminate the grounds for setting aside the Award.

Award is decree. In absence of a setting aside application, the Award shall be final and binding on the parties and can be enforced under the Code of Civil Procedure as a decree.

Enforcement of domestic Award. The Award is treated as a decree and can be executed in accordance with the provisions of Or. 21 read with s. 36 of the Code of Civil Procedure 1908. Both the domestic Award and the foreign Award are binding on the parties without any further Order of the court. Such an Award may be used as a defence or by way of set-off or otherwise in any legal proceedings in India.

Enforcement of foreign Award. For enforcing a foreign Award an application has to be made annexing an authenticated copy of the Award, a certified copy of the Agreement of Arbitration and necessary evidence that the Award is a foreign Award. Where the Award is in a foreign language, an English translation certified as correct by the Diplomatic or Consular Agent is to be annexed. The court means a District Court or the High Court. A foreign Award may not be enforced if the opposite party objects on the ground that (i) he was under incapacity or (ii) the agreement was not valid or (iii) he was not given proper notice of the appointment of the Arbitrator or the proceedings and (iv) he was unable to present his case or (v) that the Award deals with a dispute beyond the arbitration agreement or (vi) beyond the jurisdiction of the Arbitrator or (vii) the procedure was not in accordance with the agreement of the parties or (viii) was contrary to law of the country where the arbitration took place or (ix) that the Award is not yet binding on the parties or (x) has been set aside or (xi) suspended by a competent authority of the country in which the Award was made or (xii) that the subject-matter is not capable of settlement by arbitration or (xiii) the enforcement

of the Award would be contrary to the public policy of India. An Award obtained by inducement or fraud or corruption is against the public policy of India.

On an application for enforcement of a foreign Award the court may adjourn the matter and order the other party to give suitable security. If the Award is severable the court may enforce the valid portion and set aside the invalid portion. If the court is satisfied about the validity of the foreign Award it shall enforce it as a Decree of that court.

Appealable orders. An appeal shall lie to the Appellate Court from an order of the Court granting or refusing to grant an interim order on an application before, during or after the arbitration proceedings. An appeal would lie from the order setting aside an Award or refusing to set aside an Award. Similarly, an appeal would lie from an order of Arbitrator granting an interim order or refusing to grant an interim order. The appeal will be to the court having the jurisdiction over the subject-matter of the arbitration. There is no second appeal. The parties however may approach the Supreme Court under the procedure available including by way of Special Leave Petition.

Schemes under s. 11 of the Arbitration and Conciliation Act 1996. The Calcutta High Court by a Notification published in the Calcutta Gazette of 25th January 1997 issued a Scheme for appointment of Arbitrators. The request to the Chief Justice under s. 11(4), (5) or (6) of the Act has to be made in writing. The application shall be accompanied by the original Arbitration Agreement or a duly certified copy thereof, the names and addresses of the parties and Arbitrator, if any, the name and address of the person, if any, to whom any function has been entrusted by the parties to the Arbitration Agreement under the appointment procedure agreed upon by them, the qualification required for the new Arbitrator, description of general disputes, point of common issue, the requirements and remedies sought. The application is to be supported by an affidavit with relevant documents that the conditions of sub-sec. (4) or (5) or (6) of s. 11, as the case may be, have been satisfied. The Chief Justice of Calcutta High Court has not delegated this authority to any other Judge or person or Institution.

The Delhi High Court by a Notification dated 2nd February 1996 issued under s. 11 of the Arbitration and Conciliation Ordinance 1996 has also provided for a request by an application in the above lines. But it has additionally provided that if the original Arbitration Agreement or a true copy thereof is not available then the applicant should make a prayer that the opposite parties should produce the original Arbitration Agreement or a true copy thereof. The Delhi High Court also delegated power to appoint Arbitrator to Civil Judge where the value of the subject-matter does not exceed Rs. 1 lakh, to the District Judge/Additional District Judge where the value of the subject-matter does not exceed Rs. 5 lakhs and to the Judge of the High Court exercising Ordinary Original Civil Jurisdiction where the

value of the subject-matter exceeds Rs. 5 lakhs. The application fee has been fixed at Rs. 250, Rs. 500 and Rs. 1000 respectively.

Public works contracts arbitration. Some of the State Governments have set up Tribunals for resolution of disputes relating to Public Works Contracts. The Gujarat Public Works Contracts Disputes Arbitration Tribunal Act 1992 provides the procedure for resolution of disputes by the Tribunal. Reference of all disputes regarding Public Works Contracts are to be made to the Tribunal. The jurisdiction of the Civil Courts has been barred. Even the Award cannot be challenged. The operation of Arbitration Act has been excluded.

Some aspects of the Act. For amicable settlement of commercial disputes the General Assembly of the United Nations recommended to all countries adoption of Model Law on Arbitration based on the United Nations Commission on International Trade Law (UNCITRAL).

- The Government of India has enacted the Arbitration and Conciliation Act 1996 on that model.

The Arbitration and Conciliation Act 1996 (Act) modelled on the UNCITRAL Model Law, consolidates and amends the existing law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards.

The underlying object of the Act is to galvanise the system of arbitration and to facilitate the conciliation in business matters. The Act recognises the autonomy of the parties in the conduct of arbitral proceedings. It promotes transparency in the matter of decision making by the arbitral tribunal by providing that the arbitral tribunal gives reasons for the arbitral Award.

The Act restricts the scope of judicial scrutiny of the award and minimises the supervisory role of courts. The grounds for challenging an award are (a) lack of capacity of a party (b) invalidity of the arbitration agreement (c) violation of principles of natural justice and (d) the arbitrator exceeding his terms of reference. The scope of judicial review is limited. The only residuary ground which empowers the courts to go into the merits of the award is that the award is in conflict with the public policy of India.

The Act dispenses with the requirement of making the arbitral award a rule of the court before it is enforced. The arbitral award itself, once it becomes final, is deemed to be a decree of the court for enforcement. A settlement agreement reached by the parties and signed by them with the help of the conciliator will be final and binding on them.

The Act allows resort to arbitration by parties for resolution of their disputes except certain disputes which cannot be submitted to arbitration under the Act.

The Act gives maximum freedom to the parties in the appointment of arbitrators by providing for institutional arbitration if parties agree to abide by the rules of procedure for appointment of arbitral institution.

A significant feature of the new law is that the Chief Justice of India or the Chief Justice of a High Court has been empowered to designate any person or institution to take the necessary steps for the appointment of arbitrators.

The Act empowers the arbitral tribunal to decide on its own jurisdiction and to consider the objections with regard to the existence or validity of the arbitration agreement. It provides that an arbitral tribunal will not be bound by the Code of Civil Procedure 1908 or the Indian Evidence Act 1872.

The Act provides that parties can agree to the rules for settlement of their disputes, on the procedure to be followed by the arbitral tribunal and the time schedule for the award. The idea is to eliminate delays and long procedure. This procedure Fast Track Arbitration (FTA) is suitable in cases which can be decided on the basis of the documents and where oral hearings and examination of the witnesses are not required such as preventing infringement of patent, trade mark, brand, copyright, licence, franchise, etc. and falsification, concealment or destruction of evidence. The Fast Track Arbitration (FTA) can also supplement normal arbitration, for example, in a large infrastructural project, an urgent dispute can be resolved of FTA whereas normal issues can be settled by the conventional mode of arbitration.

The Rules of Arbitration of the Indian Council of Arbitration also provides that the parties may opt for FTA and request the bench, before the commencement of the arbitration proceedings, to decide the reference in a fixed time frame agreed between the parties.

Generally an arbitration tribunal is constituted in accordance with the terms of contract, claimant submits his statement of facts and claims and the respondent submits his defence and counter claims. Both parties file documentary evidence with the pleadings. The arbitration tribunal applies its mind and may ask for further documents/information for making an award.

The main features of the Act are (1) restriction of judicial intervention with the process and product of arbitration. It provides that the judiciary too should give due credence to an arbitration agreement. The judicial authority has to direct the parties to resort to arbitration as mentioned in the agreement;

(2) the grounds on which award of an arbitrator may be challenged before the judiciary have been drastically reduced. The arbitration award can be challenged only on the basis of invalidity of the agreement, want of jurisdiction on the part of the arbitrator or lack of proper notice to a party about the appointment of the arbitrator or of arbitral proceedings or that it is in conflict with "the public policy of India" including fraud and corruption;

(3) the powers of the arbitrator relating to the application of law, venue of arbitration, appointment of experts and acting on their report, seeking assistance of the court in taking evidence, award of interest etc. have been amplified;

(4) it puts a check on the tendency of parties to withhold evidence for a period and then suddenly raise the procedural objection to thwart arbitration proceedings;

(5) it recognises the role of institution in promoting and organising arbitration;

(6) it provides for filling up vacancies in arbitrators if there is a difference of opinion between the parties by the Chief Justice or an institution or person designated by Chief Justice;

(7) it has deleted the time limit for making of award but enjoins an arbitrator to act expeditiously;

(8) it has deleted the provisions relating to arbitration through intervention of court;

(9) it recognises the importance of transnational commercial arbitration by providing that even where the arbitration is held in India, the parties to the contract are free to designate the law applicable to the substance of the dispute.

(10) (a) Unless the agreement provides otherwise, the arbitrator must give reasons for the award and (b) the award is executable as a decree.

The Act for the first time provides a detailed statutory framework for the conduct of independent conciliation proceedings outside the court. It encourages the arbitral tribunals to use mediation conciliation or other Alternative Dispute Resolution (ADR) procedure during the arbitral proceedings to encourage settlement of disputes.

A conciliation proceeding can be initiated by a party inviting the other party to conciliate under the provisions of the Act. Once the opposite party accepts in writing the invitation to conciliate the conciliation proceedings start. It is for the parties concerned to decide on the number of conciliators.

The role of the conciliator will be to assist the parties in resolution of disputes amicably in an independent and impartial manner. A conciliator is not a judge but only a facilitator. He derives authority from the parties. He is to be guided by the principles of objectivity, fairness and justice. He is to give due consideration to the usage of trade and the facts and circumstances of disputes.

At an appropriate stage of conciliation proceedings, the conciliator may make proposal for settlement of the dispute.

A settlement agreement reached by the parties and signed by them with the help of the conciliator will be final and binding on the parties. It will have the same status and effect as if it is an arbitral award on agreed terms and will be enforceable like a decree of court.

Since conciliation is a consensual proceeding, it is entirely dependent on the continued good will of the parties and can be terminated by any of the parties at any time before the signing of the settlement agreement.

The parties to a conciliation proceeding cannot initiate any arbitral or judicial proceeding during the continuance of the conciliation proceeding. The only exception being the resort to such proceedings for preserving the parties' rights.

A conciliator cannot, unless otherwise agreed to by the parties, act as an arbitrator, representative or counsel of a party in any arbitral proceeding by the parties at a later stage.

The confidentiality principle applies to all persons. The conciliator and the parties are under obligation to keep all matters relating to conciliation proceedings confidential, whether it has resulted in a settlement agreement or not. The law provides that notwithstanding anything contained in any other law, the principle of confidentiality shall be maintained by the parties as well as the conciliator except where its disclosure is necessary for parties for the implementation and enforcement of the settlement agreement.

The essential features of a valid arbitration agreement as observed by Russell¹ are that (i) it must be in writing intended to bind the parties; (ii) it must contemplate some disputes and differences already arisen between the parties to the agreement or one which may arise in future between them with regard to some specific subject-matters which they intend to conclude by the decision of a third party; (iii) the parties must be *ad idem*; and (iv) intention of the parties to have the dispute adjudicated by private tribunal. The element of dispute, whether in common law or under any statute relating to the agreement, gives the private tribunal jurisdiction.² There must be a right asserted by one party and denied and disputed by another. The arbitrator or arbitrators may be named by the parties in the body of the agreement itself or they may agree upon the method of choosing one or more arbitrators. Normally, when the agreement is in respect of some present dispute, the parties nominate one person as the sole arbitrator or more as they like, one on each side, and they may as well do the same in case of future disputes and differences. Unless a sole arbitrator is agreed upon, the arbitrators shall appoint an umpire at the commencement of the

1 15th Ed., p. 1.

2 *Nandram v Raghunath* AIR 1954 Cal 245.

proceedings who shall take upon the reference only in case the arbitrators shall differ as between themselves.

Sometimes trade associations like a Chamber of Commerce, Institute or Association, which are empowered under the provisions relating to their respective constitutions of which the parties or either of them are members, are named as the authorities to nominate or select an arbitrator when any dispute or difference shall arise as between them. In agreements to which the Government is a party, particularly in building and manufacturing contracts, arbitration under the Defence of India Act, etc., etc., the arbitrator or arbitrators are often designated not by the name of any individual or individuals but by the name of the office. In the result the individual or individuals holding that particular office or offices at the time when the dispute arises become the arbitrator or arbitrators by virtue of their office.

FORMS

(Validity of the Forms be checked with the Department)

Notice under section 11 of the Arbitration and Conciliation Act 1996

To
Builders India Private Ltd.
7A, Camac Street
Calcutta 700 016

Dear Sirs

Re: Arbitration of the disputes arising out
of Contract No. 3 entered with us.

You had entered into a Contract No. 3 with us undertaking to construct certain flats and guest houses on terms and conditions contained in said contract.

You have failed to complete construction and to make over delivery of possession of houses you had agreed to construct on our behalf.

We have paid you advances and also all your running bills. In spite of this, you are inordinately delaying the matter. Time was of the essence of the contract. You have failed to keep the time schedule.

The few apartments and guest houses that you have constructed and agreed for joint inspection were found to be defective and not suitable for occupation of the staff and they have not yet been made habitable.

In spite of requests you have failed and neglected to complete the work. As a result of your breach of the agreement we have suffered losses and we are still suffering losses every day. Our huge investment has been blocked and we have to pay interest to our Banker for the finance obtained to make payment to you.

Under the clause of the said contract, there is an agreement to refer the disputes to Arbitration of Mr. Rajib Khaitan, Advocate of 6 S.P. Mukherjee Road, Calcutta 700 025.

Under the provisions of section 11 of the Arbitration and Conciliation Act 1996 we hereby give you notice to concur with the appointment of Mr. Rajib Khaitan, Advocate, as the Sole Arbitrator in the matter of the differences and disputes that have arisen between the parties herein and the same be referred for adjudication to him.

The said disputes are, *inter alia*, the following:

- (a) Whether the construction of houses and guest-houses under the said Contract No. 3 have been in accordance with the contract?
- (b) Whether the construction has been completed in accordance with the specification and the terms and conditions of the contract?
- (c) Whether the contractor has delivered completed houses, flats?
- (d) Whether the Eastern India Enterprise has suffered any loss or damages due to non-compliance of the terms and conditions of the contract by Builders India Private Ltd?
- (e) What is the damage and compensation that the employer is entitled to get from the contractor?

Please give your concurrence within 7 days of receipt of this letter.

Yours faithfully

Application for Cancellation of Arbitration Agreement

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of Arbitration and
Conciliation Act 1996

And

In the matter of an application under
section 7 of the said Act

And

Builders India Private Ltd., a company registered under the Companies Act 1956 and carrying on business in 7A, Camac Street, Calcutta 700 016

Petitioner

And

S.N. Udyog Private Ltd. a company registered under the Companies Act 1956 and carrying on business at 6 S.P. Mukherjee Road, Calcutta 700 025

Respondent

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner above-named most respectfully

SHEWETH:

1. Your petitioner received on 15th November 1999 a notice dated 10th November 1999 from the respondent requesting the petitioner to appoint an arbitrator under an alleged Agreement of Arbitration contained in a Contract No. 3 dated 5th September 1995.

2. Your petitioner states that the alleged agreement to refer disputes to arbitration was invalid and not binding on the petitioner, *inter alia*, for the following reasons:

(a)

(b)

3. Your petitioner states that the subject-matter of the alleged disputes between the parties is within the jurisdiction of the Court at Mumbai.

4. Your petitioner reasonably apprehends that if the said agreement is allowed to remain outstanding further proceedings may be taken by the respondent pursuant to the said notice or otherwise and in that event your petitioner would be seriously prejudiced.

5. The existence and validity of the alleged Arbitration Agreement alleged to be in possession of the respondent have to be determined by this Hon'ble Court on production thereof by the respondent.

6. The respondent be directed to produce the alleged Arbitration Agreement before this Hon'ble Court for scrutiny and for cancellation.

7. Unless orders are made as prayed for your petitioner will suffer loss and prejudice.

8. This application is made *bona fide* and in the interest of justice.

Your petitioner therefore humbly prays to Your Lordships for the following Orders:

- (a) Direction on the respondent to produce the Arbitration Agreement to this Hon'ble Court;
- (b) Declaration that the said Arbitration Agreement is invalid, void and of no effect;
- (c) Cancellation of the alleged Arbitration Agreement as a nullity;
- (d) Direction that the said notice dated is invalid, void and of no effect;
- (e) Injunction restraining the respondent from giving any effect or further effect to the said notice;
- (f) Costs of this application be paid by the respondent;
- (g) Further Orders be made and directions be given as to this Hon'ble Court may deem fit and proper to afford complete relief to your petitioner.

And your petitioner as in duty bound shall ever pray.

Signature of Advocate for
the petitioner

Signature of petitioner

Verification

I, son of
..... aged about years, by occupation
service, working for gain at 7A, Camac Street, Calcutta 700 016 do hereby
solemnly affirm and say as follows:

- (1) I am a Director of Builders India Private Ltd. and a principal officer and a Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto. I am authorised and competent to verify and I do verify the aforesaid petition on behalf of Builders India Private Ltd.
- (2) The statements in paragraphs 1 to 8 herein are true to my knowledge based on information derived from records maintained by the petitioner Builders India Private Ltd. and believed by me to be true.

Solemnly affirmed by the said Mr.
..... pursuant to a Board Resolution dated of

Builders India Private Ltd. in the Court House at Calcutta this day of November 1999.

Petition for Appointment of an Arbitrator

Special Suit No. of

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of Arbitration and Conciliation Act 1996

And

In the matter of an application under section 8 of the Arbitration and Conciliation Act 1996

And

Builders India Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 7A, Camac Street, Calcutta 700 016

Petitioner

versus

S.N. Udyog Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 6 S.P. Mukherjee Road, Calcutta 700 025

Respondent

To

The Hon'ble Mr.
..... Chief Justice and
His Companion Justices of the said
Hon'ble Court

The humble petition of Builders India Private Ltd., the petitioner above-named, most respectfully

SHEWETH:

1. Your petitioner entered into a contract with the respondent for construction of certain flats and guest houses on terms and conditions contained in an Agreement dated 5th September 1995.

2. Your petitioner completed the work and offered delivery of flats and guest houses duly constructed and demanded from the respondent payment of the final bill.

3. The respondent failed and neglected to pay the outstanding amount and your petitioner in accordance with the arbitration clause in the agreement referred the disputes to the arbitration of Mr. Rajib Khaitan, Advocate and gave notice accordingly to the respondent.

4. No reply was received to the said notice and the arbitration proceedings could not commence.

5. Your petitioner has now been served with a Summons to appear and defend a suit which has been filed by the respondent for damages against the petitioner for breach of the said contract.

6. Your petitioner has to enter appearance and file a statement in the said suit. Your petitioner states that the said suit is in respect of the contract for construction of house, flats and guest houses which work the petitioner has completed and submitted the final bill but payment has not been received. The disputes and differences arose by and between the petitioner and the respondent in relation to the construction and also payment of bills of your petitioner.

7. By virtue of the arbitration clause in the said contract your petitioner duly served a notice on the respondent and appointed the Advocate as the sole arbitrator.

8. Your petitioner was and is still ready and willing to have the disputes and differences adjudicated upon by the Arbitrator to be appointed under the Arbitration Clause in the agreement notice whereunder was served on the respondent. However because of its failure to appoint the sole Arbitrator as stated by your petitioner, this Hon'ble Court will be pleased to appoint an Arbitrator under section 11 of the Arbitration and Conciliation Act 1996.

9. Your petitioner states that in the facts and circumstances of the case the proceedings in the said suit be stayed, an Arbitrator be appointed to resolve the disputes between the parties covered by the said suit and the Award be made.

10. Unless orders are made as prayed for your petitioner will suffer loss and prejudice.

11. This application is made *bona fide* and in the interest of justice.

Your petitioner therefore humbly prays Your Lordships for the following orders:

- (a) Stay of further proceedings in the above suit;
- (b) An Arbitrator be appointed to resolve the disputes raised in the suit or otherwise in the arbitration proceedings;
- (c) Costs of this application be the costs in the arbitration proceedings;

(d) Further orders be made and directions be given as to this Hon'ble Court may deem fit and proper.

And your petitioner, as in duty bound, shall ever pray.

Verification

I, son of aged about years, working for gain at 7A, Camac Street, Calcutta 700016 do hereby solemnly affirm and say as follows:

- (1) I am the Manager of Builders India Private Ltd., and a principal officer and a Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto. I am competent to affirm and I do affirm and declare and verify on behalf of the petitioner.
- (2) The statements contained in paragraphs 1 to 11 of the foregoing petition are true to my knowledge based on records maintained by the petitioner and believed by me to be true.

Solemnly affirmed by the said Mr. pursuant to a Board Resolution dated of Builders India Private Ltd. in the Court House at Calcutta on this day of November 1999.

Before me
Commissioner

Petition Praying for Interim Measures

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:
The Arbitration & Conciliation Act 1996

And

In the matter of:
An application under section 9 of the said Act

And

In the matter of:
An Arbitration Agreement contained in the Contract No. 3 dated

And

In the matter of:
Builders India Private Ltd., a company registered under the Companies Act 1956

and carrying on business at 7A, Camac Street, Calcutta 700 016

Petitioner

versus

S.N. Udyog Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 6 S.P. Mukherjee Road, Calcutta 700 025

Respondent

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner above-named most respectfully

SHEWETH:

1. The petitioner is engaged in construction of houses, flats, guest houses and other apartments.

2. The petitioner has a good reputation as a contractor in the construction business.

3. By and under a contract No. 3 dated entered into with the respondent, your petitioner agreed to build and construct several houses, flats and guest houses for and on behalf of the respondent in accordance with the specifications and on terms and conditions contained in the said contract.

4. Your petitioner carried out the work of construction in accordance with the said agreement and completed the work and obtained the completion certificate from the respondent.

5. Your petitioner submitted running bills from time to time but the respondent wrongfully deducted 10% from the same purported to be as Security Money.

6. The respondent also obtained the Performance Guarantee, from the petitioner issued by the petitioner's Banker. The respondent also obtained from the petitioner Bank Guarantees for the Earnest Money that were required to be deposited with the respondent.

7. The respondent has wrongfully refused to take delivery of the completed houses, flats and guest houses on some flimsy pretext and has withheld payment of the outstanding bills amounting to Rs. 50 lakhs.

8. In breach of the said agreement, the respondent has invoked the said Bank Guarantees but the same has not yet been paid by the bank concerned.

9. Your petitioner gave due notice to the respondent regarding the dispute to the sole Arbitrator Mr. Rajib Khaitan an Advocate in terms of the arbitration clause in the said Contract No. 3. The respondent has not yet replied to the said notice appointing the said sole Arbitrator by the petitioner.

10. The said Bank Guarantees were furnished pursuant to fraud practised by the respondent on your petitioner inasmuch as your petitioner was led to believe that the respondent intended to act in accordance with the terms of the agreement and that it would not create problems for any oblique motives. The said Guarantees were issued on terms and conditions dictated by the respondent unilaterally and were burdensome. The petitioner was not aware of such terms and conditions dictated by the respondent to the bank without any intimation to the petitioner.

11. There is special equity that the said Bank Guarantee should not be enforced or encashed inasmuch as your petitioner has duly complied with the terms and conditions of the said Contract No. 3 and the respondent cannot have any genuine grievance in relation to the performance of any obligation of the petitioner under the Contract No. 3.

12. The respondent is commercially insolvent and several petitions are pending for windingup of the respondent company.

13. If the company goes into liquidation then your petitioner being an unsecured creditor will not get any payment in the winding up proceedings from the Official Liquidator. If in the meantime the Bank Guarantees were encashed then on the one hand, your petitioner's huge amount will be taken away by the respondent and on the other hand, the outstanding bills amounting to Rs. 50 lakhs would remain outstanding and would never be recovered. The petitioner has a special equity in its favour for an Order of Injunction restraining invocation or encashment of the Bank Guarantees issued in relation to the Contract No. 3 namely Bank Guarantees Nos. 1 and 2 dated 5th and 10th January 1999 for Rs. 20 lakhs and Rs. 5 lakhs issued by State Bank of India, Camac Street Branch in favour of the respondent on behalf of the petitioner.

14. By reasons of the aforesaid, your petitioner prays for an Order of Injunction restraining the respondent from encashing the said Bank Guarantees until settlement of the disputes between the parties by the Arbitrator.

15. Unless Orders are made as prayed for herein your petitioner will suffer loss and prejudice.

16. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore, humbly prays Your Lordships for the following Orders:

- (a) Injunction restraining the respondent from enforcing the Bank Guarantees Nos. 1 and 2 issued by the State Bank of India, Camac Street Branch for Rs. 20 lakhs and Rs. 5 lakhs or encashing the same or receiving payment until the disposal of the arbitration proceedings in terms of the arbitration clause in the said contract;
- (b) Ad-interim Order in terms of prayer (a) above;
- (c) Costs incidental to this application be the costs in the proceedings.

And your petitioner, as in duty bound shall ever pray.

Signature of Advocate
for the petitioner

Signature of
the petitioner

Verification

I, son of
..... aged about years, by occupation service working
for gain at 7A, Camac Street, Calcutta 700 016 do hereby solemnly affirm
and say as follows:

- (1) I am the Manager of Builders India Private Ltd. and a Principal Officer and a Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify the aforesaid petition and I do verify the same on behalf of the petitioner.
- (2) The statements contained in the paragraphs No. 1 to 16 hereinabove are true to my knowledge based on information derived from records maintained by the petitioner company and I believe them to be true.

Solemnly affirmed by the said Mr..... pursuant
to Board Resolution of the Builders India Private Ltd. dated
in the Court House at Calcutta on the 5th day of November 1999.

Before me
Commissioner

Petition for Appointment of a Sole Arbitrator

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:
The Arbitration & Conciliation Act 1996

And

In the matter of:
An application under section 11 of the said Act

And

In the matter of:
An Arbitration Agreement contained in the Contract No. 3 dated

And

In the matter of:
Builders India Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 7A, Camac Street, Calcutta 700 016

Petitioner

versus

S.N. Udyog Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 6 S.P. Mukherjee Road, Calcutta 700 025

Respondent

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner above-named most respectfully

SHEWETH:

1. Your petitioner is engaged in construction business and has a good reputation.

2. By and under an agreement dated entered into with the respondent your petitioner agreed to build and construct specified houses, flats and guest houses for and on behalf of the respondent. The terms and conditions and the specifications will appear from the said agreement. Your petitioner carried out the work of construction in terms of the agreement and offered to deliver possession of the completed work to the respondent.

3. The respondent on some pretext or the other failed to take delivery of the houses flats and guest houses constructed by your petitioner, and to pay the final bills of your petitioner duly submitted to the respondent.

4. The said agreement contained a clause to the effect that all disputes and differences shall be referred to an Arbitrator to be appointed by the parties.

5. The disputes and the differences have arisen between the parties on or about Your petitioner requested the respondent to concur in the appointment of a sole Arbitrator and your petitioner appointed Mr. Rajib Khaitan, an Advocate of Old Post Office Street, Calcutta. A copy of the notice in this regard sent to the respondent is annexed hereto marked 'A'.

6. The respondent is carrying on business at the address given above within the said jurisdiction of this Hon'ble Court and the disputes arose and the respondent failed to give concurrence for the appointment of sole Arbitrator at the address of the respondent within the jurisdiction of this Hon'ble Court.

7. Your petitioner states that this Hon'ble Court will be pleased to appoint a sole Arbitrator as provided in the Arbitration Agreement dated a certified copy whereof is annexed hereto marked 'B'.

8. Unless Orders are made as prayed for herein, your petitioner would suffer loss and prejudice.

9. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore, humbly prays to Your Lordships for the following orders:

- (a) A suitable person be appointed as the sole Arbitrator to arbitrate in the disputes arising from the said agreement and to give his Award;
- (b) Costs of this application be the costs in the arbitration proceedings;
- (c) Further orders be made and directions be given as to this Hon'ble Court may deem fit and proper to afford complete relief to your petitioner.

And your petitioner as in duty bound shall ever pray.

Signature of the Advocate
of the petitioner

Signature of
the petitioner

Verification

I, son of
aged about years, by occupation service, working for gain at
7A, Camac Street, Calcutta 700 016 do hereby solemnly affirm and say as
follows:

- (1) I am the Manager of Builders India Private Ltd. and Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify the aforesaid petition and I do verify the same on behalf of the petitioner.
- (2) The statements contained in the paragraphs 1 to 9 herein are true to my knowledge based on information derived from records maintained by the petitioner and I believe them to be true.

Solemnly affirmed by the said Mr.
pursuant to Board Resolution dated of the Builders India Private Ltd. in the Court House at Calcutta on the 10th day of November 1999.

Before me
Commissioner

Petition for Substitution of Arbitrator upon Challenge

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:
The Arbitration & Conciliation Act 1996
And

In the matter of:
An application under section 12 read with
section 15 of the said Act
And

In the matter of:
An Arbitration Agreement contained in
the Contract No. 3 dated
And

In the matter of:
Builders India Private Ltd., a company
registered under the Companies Act 1956
and carrying on business at 7A, Camac
Street, Calcutta 700 016

Petitioner

versus

1. S.N. Udyog Private Ltd., a company
registered under the Companies Act 1956
and carrying on business at 6 S.P.
Mukherjee Road, Calcutta 700 025

2. Mr. D.N. Banerjee of 15 Old Post Office
Street, Calcutta 700 001

Respondent

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner
above-named most respectfully

SHEWETH:

1. By and under an agreement dated the petitioner undertook to construct houses, flats and guest-houses, for the respondent on agreed specifications, terms and conditions and price.

2. Your petitioner completed the work, obtained payment of the running bills, offered delivery of houses, flats and guest-houses and claimed payment of the final bill.

3. The respondent raised various minor objections with a view to withhold payment of the outstanding bills.

4. Some disputes and differences arose under the Agreement of Reference to arbitration dated The parties referred the disputes to the arbitration of Mr. Rajib Ikhaitan, an Advocate appointed by the petitioner and to Mr. S. Gupta an Engineer appointed by the respondent. The said arbitrators appointed Mr. D.N. Banerjee as the Umpire.

5. The Arbitrators entered into reference dated and held certain sittings.

6. At the sixth sitting differences of opinion arose between the said arbitrators. The matter was referred to the Umpire on who commenced the proceedings and held five sittings.

7. Since the said Umpire has not held any meeting or hearing of the said arbitration proceedings. The Umpire is not proceeding with the reference nor has made his Award although more than 4 months have passed since he entered on the reference.

8. The petitioner states that the said Umpire has no intention to complete the proceedings and he is incapable of doing so and as such this Hon'ble Court would be pleased to remove him from further acting as Umpire in the said arbitration proceedings.

9. Your petitioner states that a declaration be made that the Arbitration Agreement shall cease to have effect with respect to the differences and disputes referred to the said arbitrators and ultimately to the said Umpire.

10. Without prejudice to the aforesaid, but in the alternative, your petitioner states that this Hon'ble Court would be pleased to appoint a Sole Arbitrator to adjudicate the disputes among the parties. A Copy of the issues settled by the Arbitrators is annexed hereto marked 'B', from which it will appear the nature of the disputes among the parties to be settled by the Arbitrators to be appointed. The Arbitrator to be appointed be directed to enter into reference and complete the proceedings and give his Award within the time to be specified by this Hon'ble Court.

11. Unless orders are made as prayed for herein your petitioner will suffer loss and prejudice.

12. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore, humbly prays Your Lordships for the following orders:

- (a) The Umpire Mr. D.N. Banerjee be removed from further acting as Umpire in the reference made by the parties herein;
- (b) Declaration that the Arbitration Agreement has ceased to have any effect in respect of the disputes and differences referred to the said Arbitrators and/or the Umpire;
- (c) A suitable person be appointed as the sole Arbitrator to adjudicate the disputes among the parties and give his Award within the time that may be specified by this Hon'ble Court;
- (d) Costs of this application be the costs in the Arbitration proceedings;
- (e) Further orders be made and directions be given as to this Hon'ble Court may deem fit and proper to afford complete relief to your petitioner.

And your petitioner as in duty bound shall ever pray.

Signature of Advocate
for the petitioner

Signature of
the petitioner

Verification

I, son of
aged years, by occupation service, working for gain at 7A, Camac
Street, Calcutta 700 016 do hereby solemnly affirm and say as follows:

- (1) I am the Manager of Builders India Private Ltd. and Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I

am able to depose thereto. I am authorised and competent to verify the aforesaid petition and I do verify the same on behalf of the petitioner.

- (2) The statements contained in the paragraphs 1 to 12 herein above are true to my knowledge based on information derived from records maintained by the petitioner company and I believe them to be true.

Solemnly affirmed by the said Mr.
pursuant to Board Resolution datedof the Builders
India Private Ltd. in the Court House at Calcutta on the 15th day of
December 1999.

Before me
Commissioner

**Petition for Substitution of Arbitrator
upon Termination of Mandate**

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:

The Arbitration & Conciliation Act 1996

And

In the matter of:

An application under section 15 of the
said Act

And

In the matter of:

An Arbitration Agreement contained in
the Contract No. 3 dated

And

In the matter of:

Builders India Private Ltd. a company
registered under the Companies Act 1956
and carrying on business at 7A, Camac
Street, Calcutta 700 016

Petitioner

versus

1. S.N. Udyog Private Ltd., a company
registered under the Companies Act 1956
and carrying on business at 6 S.P.
Mukherjee Road, Calcutta 700 025

2. Mr. Somnath Banerjee of 7 Hindustan Park, Calcutta 700 029

Respondents

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner
above-named most respectfully

SHEWETH:

1. By and under an agreement dated the petitioner undertook to construct houses, flats and guest-houses, for the first respondent on agreed specifications, terms and conditions and price.

2. Your petitioner completed the work, obtained payment of the running bills, offered delivery of houses, flats and guest-houses and claimed payment of the final bill.

3. The first respondent raised various minor objections with a view to withhold payment of the outstanding bills.

4. Disputes and differences arose in relation to the said agreement. The said agreement contained an arbitration clause. According to the terms of the agreement, Mr. Anil Chaudhury was appointed as the sole arbitrator in respect of the matters in dispute between the parties.

5. The said arbitrator failed to enter into reference in spite of requests.

6. On application being made by the petitioner in this Hon'ble Court the said arbitrator was removed by an Order dated and respondent No. 2 was appointed in place and stead of Mr. Anil Chaudhury.

7. The disputes between the parties concerned fraud and forgery of the documents which form the foundation of the claims and contentions of the parties.

8. Your petitioner states that such disputes involved complicated questions of Criminal Law and detailed evidence to be taken including opinion from experts for that purpose and several witnesses have to be summoned, which could not be appropriately done and the matter adjudicated upon by the present arbitrator. In the premises, it will be more appropriate and convenient that his mandate be terminated.

9. The present arbitrator appointed by the said order removing the earlier arbitrator is a non-legal person and he will not be able to adjudicate the present disputes between the parties which involves complicated questions

of forgery of documents and fraud a new arbitrator be appointed interims of sub-section (2) of section 15 of the Act.

10. Unless orders are made as prayed for herein your petitioner will suffer loss and prejudice.

11. This application is made *bona fide* and in the interest of justice.

Your petitioner therefore humbly prays Your Lordships for the following orders:

- (a) Terminate the mandate of the present arbitrator;
- (b) Appoint by substitution a new and competent arbitrator in terms of section 15(2) of the Act;
- (c) Costs of this application be the costs in the court proceedings;
- (d) Further Orders be made and directions be given as to this Hon'ble Court may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

Signature of the Advocate
for the petitioner

Signature of
the petitioner

Verification

I, son of aged years by occupation service, working for gain at 7A, Camac Street, Calcutta 700 016 do hereby solemnly affirm and say as follows:

1. I am the Manager of Builders India Private Ltd., and its Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify the aforesaid petition and I do verify the same on behalf of the petitioner.
2. The statements contained in paragraphs 1 to 13 hereinabove are true to my knowledge based on information derived from records maintained by the petitioner company and I believe them to be true.

Solemnly affirmed by the said Mr. pursuant to Board Resolution dated of the Builders India Private Ltd. in the Court House at Calcutta on the 15th day of December 1999.

Before me
Commissioner

Petition seeking for Interpretation of Award

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:

The Arbitration & Conciliation Act 1996

And

In the matter of:

An application under section 33 of the said Act

And

In the matter of:

An Arbitration Agreement contained in the Contract No. 3 dated

And

In the matter of:

Builders India Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 7A, Camac Street, Calcutta 700 016

Petitioner

versus

1. Impressions India Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 6 S.P. Mukherjee Road, Calcutta 700 025
2. Mr. D.N. Banerjee of 7 Hindurthan Park, Calcutta 700 029

Respondents

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner above-named most respectfully

SHEWETH:

1. By and under an agreement dated the petitioner undertook to construct houses, flats and guest-houses for the first respondent on agreed specifications, terms and conditions and price.

2. Your petitioner completed the work, obtained payment of the running bills, offered delivery of houses, flats and guest-houses and claimed payment of the final bill.

3. The first respondent raised various minor objections with a view to withhold payment of the outstanding bills.

4. Disputes and differences arose between the parties and under the arbitration clause contained in the agreement these disputes and differences were referred to the respondent No. 2 for adjudication.

5. After hearing the parties, respondent No. 2 the sole arbitrator gave the Award dated

6. Your petitioner received a copy of the said Award on under section 31 of the Arbitration & Conciliation Act 1996.

7. The said Award a copy whereof is annexed hereto and marked 'A' is incomplete in several respects. Respondent No. 2 has not given his decision on the disputes as to escalation of costs. Respondent No. 2 failed to consider and decide the disputes as regards extra work done by the petitioner and the liability of first respondent to pay for the work duly accepted by the first respondent. For non payment of the outstanding bills under the agreement interest @ 18% per annum was payable by the first respondent. Though this issue was raised subsequently on this point the respondent No. 2 failed to adjudicate this issue.

8. Your petitioner states that this is a fit case that this Hon'ble Court will be pleased to remit the Award dated to the respondent No. 2 for determination of the disputes regarding escalation of costs, payment for extra work done benefit of which was received by the first respondent and the contracted rate of interest payable by the first respondent to the petitioner on the outstanding amount payable by the first respondent in respect of the final bill which included the escalation costs, costs for additional work done and interest on the outstanding amount upto the date of submission of the final bill. The respondent No. 2 is further required to adjudicate on the question of interest for the subsequent period till payment of the petitioner's claims by the first respondent.

9. In the facts of the case, your petitioner states that the Award be remitted to the respondent No. 2 with a direction to give his decision on the aforesaid points after hearing the parties if necessary even though all the relevant documents are on record of the said arbitration proceeding.

10. This Hon'ble Court will be pleased to fix a time within which the respondent No. 2 will give his Award including his decision on the above points.

11. Unless orders are made as prayed for herein, your petitioner will suffer loss and prejudice.

12. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore prays Your Lordships for the following orders:

- (a) Award dated given by respondent No. 2 be remitted to respondent No. 2 for submission of his decision on following points:
 - (i) whether the petitioner is entitled to and if so, to what extent, the escalation costs in the execution of the agreement?
 - (ii) whether the petitioner is entitled to payment for additional work done and if so upto what extent?
 - (iii) whether the petitioner is entitled to interest on its outstanding amounts, if so, the period for the same and the rate at which the petitioner is entitled to such interest?
- (b) A time limit be fixed within which respondent No. 2 has to give his decision on the issues mentioned in prayer (a) above.
- (c) Further orders be made and directions be given as to this Hon'ble Court may deem fit and proper in the facts of the case.

And your petitioner as in duty bound shall ever pray.

Signature of the Advocate
for the petitioner

Signature of
the petitioner

Verification

I, son of aged about years by occupation service, working for gain at 7A, Camac Street, Calcutta 700 016 do hereby solemnly affirm and say as follows:

1. I am the Manager of Builders India Private Ltd., and its Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify the aforesaid petition and I do verify the same on behalf of the petitioner.

2. The statements contained in paragraphs 1 to 12 hereinabove are true to my knowledge based on information derived from records maintained by the petitioner company and I believe them to be true.

Solemnly affirmed by the said Mr. pursuant to Board Resolution dated of the Builders India Private Ltd. in the Court House at Calcutta on the 15th day of December 1999.

Before me
Commissioner

Application for Setting Aside an Award

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:

The Arbitration & Conciliation Act 1996

And

In the matter of:

An application under section 34 of the said Act

And

In the matter of:

An Arbitration Agreement contained in the Contract No. 3 dated

And

In the matter of:

Builders India Private Ltd., a company registered under the Companies Act 1956 and carrying on business at 7A, Camac Street, Calcutta 700 016

Petitioner

versus

- 1. Eastern India Enterprise, a company registered under the Companies Act 1956 and carrying on business at 6 S.P. Mukherjee Road, Calcutta 700 025
- 2. Mr. D.N. Banerjee of 7 Hindusthan Park, Calcutta 700 029

Respondents

To
The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner
above-named most respectfully

SHEWETH:

1. By and under an agreement dated the petitioner undertook to construct houses, flats and guest-houses, for the first respondent on agreed specifications, terms and conditions and price.

2. Your petitioner completed the work, obtained payment of the running bills, offered delivery of houses, flats and guest houses and claimed payment of the final bill.

3. The first respondent raised various minor objections with a view to withhold payment of the outstanding bills.

4. Pursuant to the arbitration clause in the said agreement the parties herein that is the petitioner and respondent No. 1 appointed respondent No. 2 as the sole arbitrator to settle and adjudicate all the disputes and differences, between the petitioner and the first respondent arising out of the construction work done by the petitioner for the first respondent.

5. The differences and disputes arose on and thereafter the same were referred to the arbitration of respondent No. 2 on and respondent No. 2 entered into the reference on

6. Thereafter several sittings were held and both the petitioner and the first respondent adduced both documentary and oral evidence.

7. Respondent No. 2 gave his award on notified the same to the parties with a copy thereof on A copy of the Award is annexed hereto marked 'A'.

8. The said award is invalid and be set aside for, *inter alia*, the following reasons:

- (a) the said award deals with a dispute not contemplated by the parties;
- (b) the said award deals with a matter not falling within the terms of submission to arbitration;
- (c) the said award contains decisions on matters beyond the scope of the submission to arbitration.
- (d) the award does not deal with issue No. 5 raised and settled.

9. The disputes referred to respondent No. 2 for arbitration will appear from the statement of facts and counter statement of facts. Copies of those documents are annexed hereto marked 'B' and 'C' respectively.

10. The parties raised several issues. Thereafter respondent No. 2 settled these issues and the parties did not object.

11. After the award is given it is found that the award deals with issues not raised and the award omits to adjudicate on issue No. 5 which was raised and settled by respondent No. 2.

12. Your petitioner states that the said Award is bad in law and in fact. The said award is invalid and should be set aside.

13. Your petitioner states that this Hon'ble Court will be pleased to scrutinise the Award and documents filed along with award and direct further enquiry as may be necessary and thereafter set aside the said award.

14. Unless orders are made as prayed for herein your petitioner will suffer loss and prejudice.

15. This application is made *bona fide* and in the interest of justice.

Your petitioner therefore humbly prays Your Lordships for the following orders:

- (a) The Award given by respondent No. 2 on be set aside;
- (b) Costs of this application be paid by respondent No. 1;
- (c) Further orders be made and directions be given as to this Hon'ble Court may deem fit and proper;

And your petitioner as in duty bound shall ever pray.

Signature of the Advocate
for the petitioner

Signature of
the petitioner

Verification

I, son of aged about years by occupation service, working for gain at 7A, Camac Street, Calcutta 700016 do hereby solemnly affirm and say as follows:

1. I am the Manager of Builders India Private Ltd. and its Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify the aforesaid petition and I do verify the same on behalf of the petitioner.
2. The statements contained in paragraphs 1 to 15 hereinabove are true to my knowledge based on information derived from records maintained by the petitioner company and I believe them to be true.

Solemnly affirmed by the said Mr.
pursuant to Board Resolution dated of the Builders India Private
Ltd. in the Court House at Calcutta on the 15th day of December 1999.

Before me
Commissioner

Application for Setting Aside an Award and Interim Relief

Matter No. of 1999

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:
The Arbitration and Conciliation Act 1996

And

In the matter of:
An application under section 34 of the
said Act

And

In the matter of:
An Award dated 3rd July 1999 made and
published by Mr. S. Roychoudhury, the
Learned Sole Arbitrator

And

In the matter of:
Clarion Marketing Agency, carrying on
business at 99 Chowringhee Road,
Calcutta 700 071 within the said
jurisdiction

Petitioner

versus

1. Eastern India Publishers Ltd., a
company registered under the Companies
Act 1956 and carrying on business at
78 Mission Row, Calcutta 700 013 within
the said jurisdiction
2. Mr. S. Roychoudhury residing at
5 Alipore Road, Calcutta 700 070 outside
the said jurisdiction

Respondents

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of Distributors Ltd.
the petitioner above-named most
respectfully

SHEWETH:

1. Your petitioner carries on business as distributor of and dealer in books and other publications.
2. The first respondent is the publisher of the book called Principles and Forms of Pleading. Under an agreement your petitioner was appointed the distributor of the said book and the first respondent agreed to deliver 10,000 copies of 1998 Edition of the said book.
3. The first respondent delivered 8,000 copies of the said books of the said edition which the petitioner distributed and sold and paid the sale price of the said books to the first respondent after deducting the agreed commission. There is no dispute so far as these 8,000 copies of the said book are concerned.
4. In breach of the agreement the first respondent failed to deliver the balance 2,000 copies in spite of requests on the plea that these had been sold out and there was no stock of the said publication.
5. Under the said agreement the disputes and differences were to be referred to respondent No. 2 for settlement of the dispute by arbitration.
6. The dispute was referred to the respondent No. 2 and your petitioner filed the statement of claim and the respondent filed the counter-statement of claim.
7. At the arbitration proceedings your petitioner gave evidence that if the balance 2,000 copies were delivered by the first respondent then your petitioner would have earned an income of Rs. 50,000.
8. Your petitioner contended that your petitioner was entitled to receive the delivery of the said 2,000 copies of the said book from its next edition in addition to the agreed 10,000 copies of the next edition of the said book.
9. After hearing the parties the Learned Arbitrator gave an Award for Rs. 40,000 and interest at 10% per annum from the date of breach of agreement by the first respondent for not delivering 2,000 copies of the said book.
10. Your petitioner states that the said Award is invalid and could not be given effect to and is liable to be set aside as invalid.

11. The Learned Arbitrator acted beyond the scope of the agreement, did not consider the provisions of the Specific Reliefs Act and acted contrary to law applicable to the said arbitration proceedings and it contains decisions on matters not submitted to arbitration.

12. Your petitioner states that the said purported Award published by respondent No. 2 is bad, illegal, without jurisdiction and is a nullity. The said purported Award contains errors on the face of the Award, the respondent No. 2 misconducted the matters and/or the proceedings. The said purported Award is liable to be set aside on the grounds, *inter alia*, the following:

- (i) For that the purported Award contains errors both of fact and of law.
- (ii) For that the purported Award is invalid, illegal and without jurisdiction inasmuch as the Arbitrator did not grant the reliefs to the petitioner which the petitioner was entitled to under the contract.
- (iii) For that the respondent No. 2 failed to adjudicate upon the main issue as to whether the respondent No. 1 was liable to deliver to the petitioner 2,000 copies of the next edition of the book in addition to the contractual 10,000 copies of the book.
- (iv) For that the purported Award is vitiated by reason of violation of the principles of natural justice inasmuch as the petitioner was absent at two meetings though your petitioner's Advocate appeared and the respondent No. 2 proceeded with the proceedings in spite of the absence of your petitioner.
- (v) For that the Learned Arbitrator held the meetings behind the back of the petitioner.
- (vi) For that the subsequent opportunity given to your petitioner did not cure the defects of hearing *ex parte*.
- (vii) For that the Learned Arbitrator misconducted himself and/or the proceedings by purporting to curtail the scope of claim and confining the claim of your petitioner to monetary compensation.
- (viii) For that the said Award is otherwise wrong both in fact and in law and is not a reasoned one.

13. Your petitioner will crave leave to refer to and rely on the proceedings, meetings and documents used before the Learned Arbitrator at the time of hearing of the application.

14. In the facts and circumstances your petitioner states that the said Award be set aside and cancelled and be taken off the file.

15. An Order of Injunction be issued restraining the respondents from taking any further steps or any step prejudicial to the petitioner.

16. This application is made within 30 days of the said Award.
17. The orders prayed for are necessary and unless they are passed your petitioner will suffer loss and will be prejudiced.
18. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore, humbly prays Your Lordships for the following orders:

- (a) The purported Award be set aside and cancelled;
- (b) An order of Injunction be passed restraining the respondents from taking any steps prejudicial to your petitioner;
- (c) *Ad interim* orders in terms of prayers (a) and (b) above;
- (d) Costs of and incidentals to this application be paid by the first respondent;
- (e) Further orders be made and directions be given as to this Hon'ble Court may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

Verification

Application for Appointment of an Arbitrator

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:

The Arbitration and Conciliation Act 1996

And

In the matter of:

An application under section 11(6) of the said Act read with the scheme framed by the Hon'ble Chief Justice of the High Court at Calcutta by a Notification published in the Calcutta Gazette of 25th January 1997 for the appointment of Arbitrator

And

In the matter of:

Global Distributors Private Ltd., a company registered under the Companies

Act 1956 and carrying on business at 52 India Exxhange Place, Calcutta 700001 within the said jurisdiction

Petitioner

versus

Ruma & Company, a company registered under the Companies Act 1956 and carrying on business at 9 Old Court House Street, Calcutta 700 001 within the said jurisdiction

Respondent

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the Global Distributors Private Ltd., the petitioner above-named most respectfully

SHEWETH:

1. Your petitioner is carrying on business as distributor of and dealer in books, journals and allied publications.
2. The respondent is the publisher, *inter alia*, of a book on Computers.
3. By an agreement dated 15th September 1998, it was agreed by and between the parties that the respondent would deliver to the petitioner 50,000 copies of each edition or re-print of the said book for distribution and sale on a commission of 25% of the published price of the book.
4. The said agreement also contains an arbitration clause providing that all disputes and differences between the parties in relation to the said book and/or the said agreement and the rights, duties and claims of the parties would be referred to the arbitration of Mr. XY for decision in the arbitration proceedings.
5. In respect of the sixth edition of the said book published in March 1999 the respondent delivered to your petitioner only 2,000 copies of the said book which copies your petitioner has already sold and distributed within two months and paid the last published price of the book less the commission of your petitioner to the respondent for which the respondent has issued a receipt to your petitioner.

6. In breach of the said agreement the respondent failed to deliver the balance copies of the said book to your petitioner on the plea that all copies of the said book had been sold out within the first four months of its publication.

7. Your petitioner claimed compensation by way of commission at 25% of the published price of balance 48,000 copies of the said book not delivered to your petitioner.

8. The claim of your petitioner against the respondent for breach of the agreement is Rs. 15 lakhs. Your petitioner also claims interest at the applicable rate of 18% per annum.

9. The respondent has not paid the claims of the petitioner in spite of demand.

10. Disputes and differences arose between the petitioner and the respondent. Your petitioner by a letter dated requested the respondent to refer the disputes to a named Arbitrator for adjudication. More than 30 days have elapsed but the respondent has not concurred in such an appointment.

11. Your petitioner by a letter requested the named Arbitrator to enter into reference and commence the arbitration proceedings but no reply has been received and more than 30 days have elapsed.

12. A certified copy of the agreement containing the arbitration clause is annexed hereto and marked "A". A copy of the letter addressed to the respondent requesting to concur in referring the dispute to the arbitration of the named Arbitrator is annexed hereto marked "B". A copy of the letter requesting the named Arbitrator to enter into reference relating to the disputes between the parties is annexed hereto marked "C".

13. Your petitioner's cause of action arose at 32 India Exchange Place, Calcutta 700 001 and the respondent is carrying on business at the aforesaid address at Calcutta both within the jurisdiction of this Hon'ble Court.

14. The respondent has raised certain untenable defences. The respondent has suggested that it would print the next edition of the said book and deliver 48,000 copies of the same to your petitioner for distribution and sale as promised in the said agreement.

15. In the facts and circumstances of this case, your petitioner states that this Hon'ble Court will be pleased to take necessary measure for securing the appointment of an Arbitrator.

16. As the said Arbitrator to be appointed will have to decide a question mainly under the Indian Contract Act, no special knowledge or

technical knowledge will be required for the personnel to be appointed as Arbitrator.

17. Your petitioner states that an Arbitrator be appointed as prayed for herein with directions to enter into reference, complete the proceedings and give the Award within the time that might be fixed.

18. Unless orders are made as prayed for your petitioner will suffer loss and will be prejudiced.

19. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore, humbly prays Your Lordships for the following orders:

- (a) An Arbitrator be appointed with directions to enter into reference, complete the proceedings and give the Award within such time as this Hon'ble Court will be pleased to determine;
- (b) Further Orders be made and directions be given as to this Hon'ble Court may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

Signature of the Advocate
for the petitioner

Signature

Verification

I, son of
aged about years by occupation service, working for gain
at 32 India Exchange Place, Calcutta 700 001 do hereby solemnly affirm
and say as follows:

1. I am the Manager of Global Distributors Private Ltd., and its Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify and I do verify this aforesaid petition on behalf of the Global Distributors Private Ltd.
2. The statements in paragraphs 1 to 19 hereinabove are true to my knowledge based on information derived from the records maintained by the petitioner Global Distributors Private Ltd. and believed by me to be true.

Solemnly affirmed by the said Mr. pursuant to
a Board Resolution dated of Global Distributors Private Ltd.
in the Court House at Calcutta on the 5th day of December 1999.

Application for Court Assistance in taking Evidence

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:

The Arbitration and Conciliation Act 1996

And

In the matter of:

An application under section 27 of the
said Act

And

In the matter of:

Global Distributors Private Ltd., a
company registered under the Companies
Act 1956 and carrying on business at 32
India Exchange Place, Calcutta 700 001
within the said jurisdiction

Petitioner

versus

1. Eastern Law House Private Ltd., a
company registered under the Companies
Act 1956 and carrying on business at
54 G.C. Avenue, Calcutta 700 013 within
the said jurisdiction

2. Mr. S.N. Chawla, Advocate of 5 Old Post
Office Street, Calcutta 700 001

Respondent

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of Global Distri-
butors Private Ltd., the petitioner above-
named most respectfully

SHEWETH:

1. Your petitioner is carrying on business as distributor of and dealer in books, journals and allied publications.

2. The first respondent is the publisher of, *inter alia*, of a book on Computers.

3. By an agreement dated 15th September 1998, it was agreed by and between the parties that the respondent would deliver to the petitioner 50,000 copies of each edition or reprint of the said book for distribution and sale on a commission of 25% of the published price of the book.

4. The said agreement also contains an arbitration clause. Pursuant to the said arbitration agreement on failure of the parties to appoint an Arbitrator an application was made to this Hon'ble Court under section 11(6) of the Arbitration & Conciliation Act 1996. On such application respondent No. 2 has been appointed as the Sole Arbitrator. Respondent No. 2 has duly entered into reference and has been proceeding with the arbitration matter.

5. During the arbitration proceedings it appeared that the evidence of the printer, the book printing company of 6A, S.N. Banerjee Road, Calcutta 700 013 will be necessary. It further transpired that the evidence of the proof reader who gave the print order is also necessary.

6. The person who gave the print order, namely, Mr. Ajoy Gupta is unable to move freely about in view of injury to his legs. In view of this, a Commission is necessary to examine Mr. Ajoy Gupta at his residence.

7. By reasons of the aforesaid your petitioner states that a Summons be issued on the printer Mr. P. Goenka of 6A, S.N. Banerjee Road, Calcutta 700 013 to appear before the respondent No. 2 and give evidence in the proceedings before him.

8. Your petitioner states that a commission be issued for examining Mr. Ajoy Gupta at his residence as regards the subject-matter of the said arbitration.

9. This application is being made with the consent of respondent No. 2.

10. Your petitioner states that the Orders prayed for herein be made for quicker and expeditious adjudication and disposal of the matter before respondent No. 2.

11. Unless Orders are made as prayed for your petitioner will suffer prejudice.

12. This application is made *bona fide* and in the interest of justice.

Your petitioner therefore humbly prays Your Lordships for the following orders:

- (a) Summons and processes be issued by this Hon'ble Court commanding Mr. P. Goenka to appear before respondent No. 2 to give evidence with reference to the subject-matter of the arbitration proceedings pending before him;

- (b) Commissioner be appointed to take evidence of Mr. Ajoy Gupta at his residence with liberty to the parties to examine and cross-examine the said Mr. Ajoy Gupta with direction to the Commissioner to submit his report direct to the respondent No. 2;
- (c) Costs of the witness and the commission be paid by the parties in equal proportion;
- (d) Further Orders be made and directions be given as to this Hon'ble Court may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

Signature of the Advocate
for the Petitioner

Signature

Verification

I, son of
aged about years, by occupation service working for gain
at 32 India Exchange Place, Calcutta 700 001 do hereby solemnly affirm
and say as follows:

1. I am the Manager of Global Distributors Private Ltd., and its Principal Officer and Constituted Attorney. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto. I am authorised and competent to verify and I do verify this aforesaid petition on behalf of Global Distributors Private Ltd.

2. The statements in paragraphs 1 to 12 hereinabove are true to my knowledge based on information derived from the records maintained by the petitioner Global Distributors Private Ltd. and believed by me to be true.

Solemnly affirmed by the said Mr. pursuant to
a Board Resolution dated of Global Distributors Private Ltd.
in the Court House at Calcutta on the 5th day of December 1999.

Before me

Commissioner

**Award made by Arbitrator Appointed by Court under
section 11 of the Arbitration and Conciliation Act 1996**

In the matter of the Arbitration and
Conciliation Act 1996

And

In the matter of Application No.
of 1999

This is the Award of the Arbitrator made this day of
..... 1999.

WHEREAS in pursuance of an Order dated made by the Hon'ble High Court at Calcutta in Application No. of 1999 I was appointed Arbitrator and I entered into the reference, the parties filed Statement of claim, counter-statement and documents and the parties have adduced both documentary and oral evidence, issues were framed and arguments were heard from both sides and ultimately there were only two issues raised namely,

- (a) whether the Executive Engineer of the State Government received 500 M.T. of Bitumen and
- (b) whether the Contractor—Claimant is entitled to carrying charges amounting to Rs. 2 lakhs.

I have considered the averments in the statement of claim and in the counter-statement, the documentary evidence produced and oral evidence given by the Executive Engineer as also the Contractor. I deal with the two issues as follows:

Issue No. 1. From the documents and from the evidence of the Executive Engineer it is clear that the Contractor transported 500 M.T. of Bitumen from Haldia and offered delivery to the Executive Engineer, P.W.D. but he directed to deliver the goods to Assistant Engineer, P.W.D. at some other place specified by him. The Contractor delivered the goods to the specified Asstt. Engineer. The Asstt. Engineer did not issue any receipt for the goods delivered on the ground that there was no office order for purchase of the Bitumen by his section and as such he could not give the receipt. The Executive Engineer has admitted that he also could not issue any receipt for the Bitumen inasmuch as payment for the goods would be made by the Section of the Asstt. Engineer. He has stated that unless the higher authorities gave definite direction as to who would issue the receipt and who would be responsible for payment the Executive Engineer could not do anything in the matter. It was admitted that the goods were received by the P.W.D. of the State Government and that the Asst. Engineer was accountable to the Executive Engineer. It is further admitted by the Executive Engineer that the Bitumen in question was used by the P.W.D. of the State Government. In the premises I hold that the contractor delivered 500 M.T. of Bitumen to the Chief Engineer/Executive Engineer/P.W.D. and the P.W.D. received and appropriated the goods.

Issue No. 2. As the P.W.D. has received the goods it is apparent that the Contractor has discharged his obligations of carriage of goods from Haldia to the destination and is entitled to carriage charges. The Contractor is

entitled to payment of Rs. 2 lakhs being the agreed carriage charges with interest at 18% per annum on Rs. 2 lakhs from till payment.

I award Rs. 2 lakhs to be paid by the Executive Engineer, P.W.D. State Government to the Contractor with interest thereon at 18% per annum from till payment.

I award Rs. 20,000 as costs to be paid to the Contractor by the Executive Engineer, P.W.D. State Government.

Dated this day of

Arbitrator

(Name)

Award by Arbitrator Appointed by Party

In the matter of the Arbitration and Conciliation Act 1996 and In the matter of an Arbitration Agreement dated BETWEEN AB of and CD of

This is the Award of the Arbitrator made this day of

In pursuance of an agreement and/or submission in writing dated day of and made between the above-named AB and CD, the said AB and CD referred to me, XY for my decision and award on the matters in dispute and difference between them. The dispute was as to whether CD carried 500 M.T. of Bitumen from Haldia to the place of AB and delivered the same and as to whether CD is entitled to payment of carriage charges interest and costs.

I entered into the reference, the parties filed their statement of claim counterstatement and documents, the issues were framed. The parties adduced both documentary and oral evidence and arguments were heard at length.

By consent of the parties, two issues were raised namely:

- (a) whether AB received 500 M.T. of Bitumen carried by CD, and
- (b) whether CD is entitled to carrying charges amounting to Rs. 2 lakhs, interest and costs.

I have considered the statements in the pleadings, examined the documents and the oral evidence given by AB and CD. I deal with the two issues as follows:

Issue (a). From the documents and evidence of AB it is clear that CD carried 500 M.T. of Bitumen from Haldia and offered delivery to AB. AB however directed CD to deliver the goods to Assistant of AB at another place. CD delivered the goods to the Assistant at the other place. The said Assistant however did not issue any receipt on the plea that he has no authority to issue the receipt or to make payment for the goods. The said AB also did not issue any receipt for the goods on the plea that he did not physically receive the goods and he could not make payment without orders from the higher authorities, and after the question of liability to pay *inter se* AB and his Assistant holding charge of two different sites be settled no payment could be made to CD for carrying charges. From the evidence on record and from the oral evidence of AB it is clear that the CD carried the goods from Haldia and delivered the same to AB and/or to his order. I answer the issue No. (a) in favour of CD and against AB and hold that AB received 500 M.T. of Bitumen carried by CD from Haldia and delivered to the order of AB.

Issue (b). From the documentary evidence and from the oral evidence of AB and CD it is established that CD carried 500 M.T. of Bitumen from Haldia and delivered the same to AB and/or to his order. CD has performed his part of the contract and is entitled to the carrying charges of Rs. 2 lakhs, as also interest and costs.

I award against AB and in favour of CD Rs. 2 lakhs as carrying charges and interest at 18% per annum from till payment.

I award Rs. 20,000 against AB and in favour of CD as Costs of the arbitration proceedings.

Dated

Arbitrator
(Name XY)

Award by Umpire

In the matter of the Arbitration and
Conciliation Act 1996

And

In the matter of Arbitration Agreement
dated BETWEEN AB and CD

WHEREAS by an Agreement in writing and/or submission dated day of made between AB residing at and CD residing at the matters in dispute and differences between them as specified therein were referred to the decision and

arbitration of X and Y as Joint Arbitrators who thereafter appointed me Z, as the Umpire at the commencement of the Reference on the day of

AND WHEREAS the said X and Y having disagreed and differed as between themselves over the subject-matter of the Arbitration and the Award to be made thereon during the pendency of the proceeding I the said Umpire took upon myself the reference.

From the statement of claim counter-statement and documents the Arbitrators raised two issues namely,

- (a) whether AB received 500 M.T. of Bitumen, and
- (b) whether CD is entitled to carrying charges amounting to Rs. 2 lakhs.

At the hearing before the Arbitrators CD wanted to raise a third issue as to whether CD was entitled to additional carrying charges from the specified place of delivery to AB to the place where actual delivery was made at the direction of AB. The Arbitrators did not agree to raise the issue and as such the matter has come before me.

I have gone through the statement of claim, counter-statement documentary evidence produced by the parties and I have considered the oral evidence adduced by AB and CD before me.

It is admitted by AB in his oral evidence that the carriage contract was from Haldia to the residence of AB where he has a godown and the carrying charges was fixed at Rs. 2 lakhs for a distance of 200 miles. At the direction of AB the goods brought by CD to the address of AB was diverted to another place 100 miles away with direction to deliver the goods to the godown-keeper there. Admittedly CD carried the goods from the residence of AB to the said godown 100 miles away, and delivered the same to the godown-keeper there. The godown-keeper there refused to give any receipt. AB also did not give any receipt for the goods delivered by CD.

In view of the pleadings, documentary evidence on record and the oral evidence of AB and CD the following issues arise:

- (a) whether AB received 500 M.T. of Bitumen;
- (b) whether CD is entitled to the agreed carrying charges of Rs. 2 lakhs for the distance of 200 miles from Haldia to the residence of AB;
- (c) whether CD is entitled to further carrying charges of the further 100 miles from the residence of AB to the specified godown in proportion to the agreed rate;

Issue (a). From the evidence on record and as admitted by AB I hold that CD carried 500 M.T. of Bitumen and delivered the same to or to the Order of AB and AB received the same.

Issue (b). From the evidence and oral evidence of the parties and admission of AB I hold that CD is entitled to the carrying charges from Haldia to the residence of AB a distance of 200 miles at the agreed rate of Rs. 2 lakhs.

Issue (c). From the documentary evidence and also the oral evidence of the parties and admission of AB I hold that CD carried the goods for extra 100 miles from the residence of AB to the godowns specified by AB and this CD did not do gratuitously but under an implied term that CD would be paid at the agreed rate of Rs. 2 lakhs per 200 miles. I hold that CD is entitled to payment for the extra 100 miles carriage of the goods at the request of AB at the agreed rate.

I therefore award against AB in favour of CD Rs. 2 lakhs for carriage of 500 M.T. of Bitumen from Haldia to the residence of AB and offering to deliver the same.

I hold that CD carried 500 M.T. of Bitumen from Haldia to residence of AB and thereafter another 100 miles at the direction of AB to the godown and delivered the said goods. I award Rs. 1 lakh in favour of CD and against AB for such extra carriage at the agreed rate of Rs. 2 lakhs for 200 miles.

I award interest at 18% per annum on the said sums of Rs. 2 lakhs and Rs. 1 lakh from the date of filing of statement of claim till realisation.

I award the cost of Rs. 20,000 in favour of CD and against AB.

Dated this day of

Umpire
(Name Z)

Application Seeking for Interim Measures

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:
Arbitration and Conciliation Act 1996

And

In the matter of:
Section 9 of the said Act

And

In the matter of:
An Agreement of Lease bearing No. 2
dated 10th January 1999 entered into
between the parties

And

In the matter of:

21st Century Finance Limited, a Company registered under the Companies Act 1956 having its Corporate Office at 5 N.S. Road, Calcutta 700 001 within the said jurisdiction

Petitioner

versus

1. Duncans Tea Co. Limited, a Company registered under the Companies Act 1956 having its registered Office at 6 A.T. Road, Dibrugarh 1, Assam

2. S. Bardhan, working for gain at 6 A.T. Road, Dibrugarh 1, Assam

3. K. Barua, working for gain at 6 A.T. Road, Dibrugarh 1, Assam all outside the said jurisdiction

Respondents

To

The Hon'ble Chief
Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of the petitioner
above-named most respectfully

SHEWETH:

1. The petitioner has its corporate office at 5 N.S. Road, Calcutta 700 001 within the said jurisdiction.

2. Under a Lease Agreement your petitioner leased out to the first respondent Tea Processing Machinery with attachments and accessories described in Schedule I. A copy of the said Lease Agreement is annexed hereto marked "A". The said Agreement was entered into at the office of the petitioner at 5 N.S. Road, Calcutta 700 001 within the said jurisdiction.

3. By reason of your petitioner leasing out the said machinery to the respondent No. 1 at the request of the respondents Nos. 2 and 3, the respondents Nos. 2 and 3 executed the said agreement and unconditionally and irrevocably guaranteed due performance of the obligations of first respondent in payment of instalments, costs and expenses and compensation recoverable by your petitioner from the respondent No. 1 under the said lease agreement.

4. By way of security the respondents executed a Demand Promissory Note and made over the same to your petitioner at Calcutta within the said jurisdiction.

5. Under the Agreement the respondents were liable to pay monthly instalments of rent at the rate of Rs. each commencing from

6. The first respondent committed default and failed to pay the instalment on and from and a sum of Rs. has now become due and payable by the respondents to your petitioner particulars of whereof are given hereunder:

<i>Particulars</i>	
Monthly instalment of rent which fell due on and thereafter	Rs.
Agreed overdue interest and/or compensation from the respective due dates	Rs.
Lease Rental for unexpired lease period	Rs.
Total	Rs.

7. On the defaults of the respondent No. 1 your petitioner became entitled to claim overdue charges from subsequent period and to terminate and did terminate the said Agreement by a notice dated A copy of the aforesaid letter together with acknowledgment cards evidencing receipt by the respondents are annexed hereto and collectively marked "B".

8. After termination of the said Agreement your petitioner became entitled to take possession of the said machinery. The respondents have not given back possession of the machinery to your petitioner. The respondents are wrongfully utilising the said machinery and are liable to pay damages and/or compensation to your petitioner at the rate of Rs. per day till possession of the machinery is given to the petitioner for which notice has been given.

9. Your petitioner is the owner of the machinery and is entitled to have possession thereof and claims specific delivery of the same in good condition. In the event specific delivery of the same cannot be had by your petitioner then your petitioner will claim a sum of Rs. being the approximate value of the said machinery.

10. In spite of demands the respondents have failed and neglected to pay your petitioner's claims herein and to make over possession of the machinery.

11. The said Lease Agreement contained an Arbitration Clause to which your petitioner will refer. In the facts and circumstances aforesaid disputes

and differences have arisen in relation to and/or concerning and/or touching the said Lease Agreement which are referable to Arbitration. Under section 9 of the Arbitration and Conciliation Act 1996, this Hon'ble Court is empowered to pass orders for the purpose of preservation and protection of the assets and properties of the petitioner prior to commencement of the Arbitration Proceedings.

12. The said machinery require proper handling, constant maintenance and expert care. The first respondent is using the petitioner's machinery at its factory at Tinsukhia, Assam but not keeping them in good condition and repair. Your petitioner being the owner is entitled to take possession of the machinery and deal with the same in such manner as it thinks fit and proper. The said machinery are being used unauthorisedly and illegally by the respondents. Your petitioner prays that an order of injunction be passed restraining the respondents from dealing with, disposing or, alienating, encumbering and/or using the said machinery in any manner whatsoever. Further more, the facts and circumstances of this case justify passing an order appointing a Receiver as prayed for with a direction to take possession of the machinery and remove the same at your petitioner's godown.

13. The said Agreement provides that your petitioner is entitled to enter the premises of the Lessee and take possession of the machinery, but in order to avoid any complications, your petitioner is praying for appointment of a Receiver to take possession of the machinery and remove the same. The said Agreement further provides that on the Agreement being determined before expiry of the full term, the respondents would deliver to your petitioner all certificates and policy of insurance and other documents relating to the said machinery and your petitioner prays that appropriate directions be given accordingly in this regard. If notice of this application is served upon the respondents, they would immediately take steps to render the proceedings infructuous. Facts of this case justify passing of an *ex parte Ad interim* Order.

14. The respondents are disposing of and depleting their assets and properties and the sale proceeds are being diverted and secreted. They are likely to deal with, sell or remove the machinery of your petitioner as well as their own assets to prevent execution of the Award which is likely to be passed in favour of your petitioner after the disputes are referred to arbitration in terms of the agreement. In the circumstances your petitioner prays that the respondents be directed to furnish security for Rs. within days from the date of passing of the order and in default thereof the assets and properties of the respondents be attached. Particulars of such assets and properties are given in the first respondent's Balance Sheet a copy whereof is annexed hereto marked "C". The particulars of assets and properties of respondents Nos. 2 and 3 are given in a Schedule annexed hereto marked "C-1".

15. Your petitioner prays that an order of injunction be passed restraining the respondents, their servants and agents from disposing of, alienating, encumbering or dealing with any of their assets and properties until further order.

16. The subject-matter of the relief claimed is valued at more than Rs. 10 lakhs. Part of the cause of action as pleaded in paragraphs and arose within the jurisdiction of this Hon'ble Court. The Agreement was executed at the petitioner's office and breaches and defaults were committed by non-payment of instalments at the petitioner's Calcutta Office within the said jurisdiction. The respondents are wrongfully detaining the machinery at Tinsukhia outside the said jurisdiction. In the premises your petitioner prays for leave under Clause 12 of the Letters Patent to institute these proceedings before this Hon'ble Court. Arbitration will be held in Calcutta and the Award will be filed in this Hon'ble Court. This Hon'ble Court has the jurisdiction to entertain this application.

17. Unless orders are made as prayed for your petitioner will suffer irreparable loss and injury.

18. This application is made *bona fide* and in the interest of justice.

Your petitioner, therefore, humbly prays Your Lordships for leave under Clause 12 of the Letters Patent and for an order that:

- (a) A Receiver be appointed over the leased-out machinery and fully described in Schedule I to the Lease Agreement which is now lying at Tinsukhia, Assam or wherever the same may be found with a direction to take possession of the same forthwith with the help of an Agent, if necessary, make inventory and remain in symbolic possession thereof;
- (b) Receiver be authorised to take police help and Officer-in-Charge of the local Police Station in Tinsukhia, Assam do render such assistance to the Receiver or his Agent, as may be required;
- (c) Injunction restraining the respondents, their servants and agents from disposing of, alienating, encumbering or dealing with the machinery mentioned in the Schedule to the Lease Agreement;
- (d) Respondents be directed to show cause as to why they should not be asked to furnish security within a period to be specified by this Hon'ble Court for Rs. 90 lakhs;

- (e) In case of respondents showing cause or showing insufficient cause they be directed to furnish security for Rs. 90 lakhs within 15 days and in default, their assets and properties mentioned in the Balance Sheet and Schedule annexed hereto be attached and kept attached till they are sold;
- (f) *Ad interim* Orders in terms of the prayers above;
- (g) Costs of and incidental to this application be paid by the respondents;
- (h) Such further or other Orders be made and/or directions be given as to this Hon'ble Court may seem fit and proper.

And your petitioner as in duty bound shall ever pray.

Advocates on Record

Signature

Verification

I, Constituted Attorney and the Law Officer of the petitioner do hereby solemnly affirm and say that the statements made in paragraphs 1 to of the foregoing petition are true to my knowledge based on information derived from records maintained by the petitioner and I believe them to be true and those made in paragraphs hereinabove are my respectful submissions before this Hon'ble Court.

Solemnly affirmed by the said in the Court House at Calcutta this day of 1999.

Before me
Commissioner

Notice for Hearing of Application

In the High Court at Calcutta Ordinary Original Civil Jurisdiction

In the matter of:
Arbitration & Conciliation Act 1996

And

In the matter of:
Section 9 of the said Act

And

In the matter of:

An Agreement of Lease bearing No. 2 dated 10th January 1999 entered into between the parties

And

In the matter of:

21st Century Finance Limited, a company registered under the Companies Act 1956 having its Corporate Office at 5 N.S. Road, Calcutta 700 001 within the said jurisdiction

Petitioner

versus

1. Duncans Tea Co. Limited, a Company registered under the Companies Act 1956 having its registered office at 6 A.T. Road, Dibrugarh 1, Assam

2. S. Bardhan, working for gain at 6 A.T. Road, Dibrugarh 1, Assam

3. K. Barua, working for gain at 6 A.T. Road, Dibrugarh 1, Assam all outside the said jurisdiction

Respondents

To

1. Duncans Tea Co. Ltd.
2. S. Bardhan
3. K. Barua

All of 6 A.T. Road
Dibrugarh 1, Assam

Dear Sirs

PLEASE TAKE NOTICE THAT on the day of 2000 at the hour of 10-30 o'clock, in the forenoon or so soon thereafter as Counsel can be heard an application will be made on behalf of the petitioner above-named before the Hon'ble Judge taking Arbitration and Conciliation Act 1996 matters for the following orders:

- (a) A Receiver be appointed over the Tea Processing Machinery with attachments and accessories described in the Agreement of Lease with a direction to take possession of the same with the help of an Agent, if necessary;

- (b) Injunction restraining the respondents, their servants, and agents from dealing with, disposing of, alienating and/or encumbering the machinery mentioned in the Schedule to the Agreement;
- (c) Receiver be authorised to take police help and officer-in-charge of the local Police Station in Dibrugarh, Assam do render such assistance to the Receiver or his agent as may be required;
- (d) Respondents be directed to show cause as to why they should not be asked to furnish security in favour of the Registrar, Original Side of this Hon'ble Court to the extent of Rs. 90 lakhs within 10 days from the date of order;
- (e) In default of showing cause or showing insufficient cause the respondents be directed to furnish securities for Rs. 90 lakhs within 15 days and in default the entire assets and properties of the respondents be attached;
- (f) *Ad interim* orders in terms of prayers above;
- (g) Costs of and incidentals to this application be paid by the respondents;
- (h) Further orders be made and/or directions be given as to this Hon'ble Court may deem fit and proper.

Dated this day of 2000

Yours faithfully
Advocate-on-Record

Grounds: Petition of the petitioner verified by an affidavit of S. Ghose, affirmed on day of 2000 and the records and proceedings of the above matter.

PLEASE TAKE FURTHER NOTICE that this application being moved on before the Hon'ble Justice when His Lordship was pleased to pass the following order:

“Leave is given under Clause 12 of the Letters Patent.

Liberty to serve by Courier, Returnable on

This matter will appear as New Motion on Parties shall act on a xerox of the signed copy of the minutes of this order on the usual undertaking.”

Advocate-on-Record
of the petitioner

Sd/-
Asstt. Registrar
High Court O.S.
Calcutta

Notice under Arbitration and Conciliation Act 1996

By Speed Post with A./D.

Date

Dhillon Industrial Corporation Ltd.
15/1/A, J.P. Nagar
Bangalore 560 078

Dear Sirs

Client: Smart Finance Co. Ltd. of Calcutta

Re: Lease in respect of Computer machinery

Under instructions from and on behalf of my client, Smart Finance Co. Ltd., I address you as follows:

You entered into a Lease Agreement dated 5th December 1999 with our client above-named in respect of machinery referred to above and agreed, *inter alia*, to pay to them monthly Lease Rent of Rs. 50,000 commencing from 5th January 2000. The tenure of the said Lease was for 3 years from the date of commencement.

You have failed and neglected to perform your part of the obligation, defaulted in payment of the lease rentals and in furnishing the Security Deposit. You have, therefore, committed breaches of the Agreement and defaults in payment and are liable to the consequences, thereof.

My client has, therefore, instructed me to terminate and determine the said Lease Agreement which I hereby do. You have also become liable to pay lease rentals for the unexpired period of lease and other charges.

After giving credit for all sums paid by you, a sum of Rs. 20 lakhs is due and payable by you to my client.

<i>Particulars</i>	
Monthly Instalment which fell due on 5th January 2000	Rs. 50,000.00
Monthly lease rentals from 5th February 2001 to 5th December 2001	Rs. 5,50,000.00
Interest at the agreed rate provided under the Agreement from the respective due dates calculated up to 5th December 2001	Rs. 1,50,000.00
Expenses incurred in attempting to collect the rentals	Rs. 50,000.00
Lease rentals for the unexpired period of the Lease	Rs. 12,00,000.00
Total:	Rs. 20,00,000.00

My client has, therefore, instructed me to call upon you which I hereby do that if you fail to pay the aforesaid sum with further overdue compensation at the agreed rate from until payment within 7 days from the receipt hereof, my client will be compelled to initiate appropriate legal proceedings including referring the matter to arbitration in terms of the relevant Arbitration Clause contained in the Agreement without any further reference to you.

Your are not entitled to use or possess the said equipment. Your are hereby requested to forthwith deliver the said machinery to my client, failing which you will be held liable to pay compensation and/or mesne profits at Rs. 2,000 per day till delivery thereof to my client for wrongful use or possession or depriving my client of the benefit of the same.

Yours faithfully
Advocate

Copy forwarded to:

By Speed Post with A/D.

1. Mr.

2. Mr_i

Both of:

Copy forwarded to: Smart Finance Co. Ltd.

Assignment of Copyright etc.

In England, a debt was looked upon as a personal obligation and an assignee could only bring an action at law against the debtor. The Court of Equity, however, recognised the title of an assignee of a debt regarding it as a piece of property. The Transfer of Property Act has effected an important change in the law having recognised an actionable claim as a valuable property. An assignment of an actionable claim in order to be valid must be in writing and signed by the transferor or his authorised agent.

Assignment of Actionable Claims

Actionable claim.¹ Actionable claim means a claim to any debt, other than a debt secured by a mortgage of immovable property, or by hypothecation or pledge of movable property, or to any beneficial interest in the movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

Transfer of actionable claim how effected.² The transfer of an actionable claim, whether with or without consideration, can be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent (attestation and registration not being compulsory), and will be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, will vest in the transferee, whether such notice of the transfer as hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person, from or against whom the transferor would, but

1 Section 3 of the Transfer of Property Act.

2 Section 130 of the Transfer of Property Act.

for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, will (save whether the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer. The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceeding, and without making him a party thereto.

Every notice of transfer of an actionable claim must be in writing, signed by the transferor or his agent duly authorised in this behalf, or in case the transferor refuses to sign, by the transferee or his agent, and must state the name and address of the transferee.³

Warranty of solvency of debtor. Where the transferor of a debt warrants the solvency of a debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, whether the transfer is made for consideration to the amount or value of such consideration.⁴

Incapacity of officers connected with Courts of Justice. No judge, legal practitioner, or officer connected with any Court of Justice can buy, or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim.⁵

Saving of negotiable instruments, etc. The above provisions relating to assignment of actionable claims do not apply to stocks, shares or debentures, or to instruments which are for the time being by law or custom negotiable, or to any mercantile documents of title to goods.⁶

Assignment of Copyright

Copyright. Copyright in India is a purely statutory right. In the United Kingdom, the first Copyright Act (8 Anne C 19) was passed in the year 1709. The statute gave the author of books already then printed the right of publication for a continuous period of 20 years and for books not published for 14 years. The statute curtailed considerably the protection granted under the Common Law in published works. All enactments were finally repealed by the Copyright Act 1842 (5 & 6 Vict C 45). In India, the Indian Copyright Act (XX of 1847) was correspondingly placed on the statute book. The Copyright Act 1957, amended and consolidated the law on the subject. The Act fixed the time of copyright in published literary, dramatic, musical and

- 3 Section 131 of the Transfer of Property Act.
- 4 Section 133 of the Transfer of Property Act.
- 5 Section 136 of the Transfer of Property Act.
- 6 Section 137 of the Transfer of Property Act.

artistic works to 60 years next after the death of the author since the beginning of the following calendar year⁷ and prescribed the mode of its assignment under s. 18 of the said Act. An assignment must be in writing and signed by the assignor or his authorised agent.

Rectification. It is an equitable relief granted by the Court of Equity on the doctrine of mistake. In order that rectification may be granted there must be mutual mistake and that the document does not represent the true intention between the parties⁸ and the mistake relates to some facts and not of law.⁹ A mistake of foreign law has the same force as mistake of facts.¹⁰ When parties to a deed agree to modify or vary, add to or subtract from the terms of any previous deed, it is necessary that the intention of the parties should be expressed in a written instrument, as oral testimony of such agreement is not admissible in evidence. Such deeds require registration if the principal deed was registered. A relief action may be granted by the court even in the case of fraud to carry out the real intention of the parties. This is entirely discretionary and when granted the order does not prejudice the rights acquired by third parties in good faith and for value.¹¹

Patent and Trade Mark

The law on Patents as contained in the Patent & Design Act 1911 and the Patent Act 1970 has since been replaced by Patents (Amendment) Act 1999 and the Designs Act 2000 (Act 16 of 2000). Similarly the Trade and Merchandise Marks Act 1958 has been repealed and replaced by the Trade Marks Act 1999 (Act 47 of 1999).

FORMS

Deed of Assignment of Business Debts

THIS DEED OF ASSIGNMENT made the day of, BETWEEN AB of, etc. (hereinafter called the ASSIGNOR), of the one part, and CD of, etc. (hereinafter called the ASSIGNEE), of the other part.

7 Section 22 of the Copyright Act 1957 as amended by Act 13 of 1992 wef 28.12.1991.

8 *Amanti Bibi v Lachman* 14 Cal 308.

9 Section 20 of the Indian Contract Act 1872.

10 Section 21 of the Indian Contract Act.

11 Section 26, Specific Relief Act 1963.

WHEREAS the ASSIGNOR has for some time past carried on the trade or business, of, etc., at, etc., in the course whereof the several persons, whose names, addresses and occupations are mentioned in the schedule hereunder written, have become lawfully indebted to him in respect of the several sums of money written opposite to their respective names, AND WHEREAS the ASSIGNOR has contracted with the ASSIGNEE for the absolute sale to him of the said business debts at and for the sum of Rs. NOW THIS DEED WITNESSES that in consideration of the sum of Rupees now paid to the ASSIGNOR by the ASSIGNEE (the receipt of which sum the ASSIGNOR hereby acknowledges), the said AB, as beneficial owner, do hereby grant, transfer, sell and assign unto and to the use of the said CD ALL the several said debts, and/or sums of money specified in the said schedule which are now lawfully due and owing to the ASSIGNOR together with all interest due thereon and all benefits of the security or securities held on account therefor, if any, TO HAVE AND TO RECEIVE AND APPROPRIATE them for his absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by suit or otherwise AND that the ASSIGNOR do hereby covenant with the ASSIGNEE that all several debts are lawfully due and payable to him and further that the parties by whom they are payable are alive and not insolvent, and furthermore that he has not entered into any compromise agreement or arrangement with any of them nor committed himself in any way as to any time, indulgence or concession nor written off any of them with a view to exonerate any of them from all liability on that account. AND that the ASSIGNOR shall at all times hereafter co-operate with the ASSIGNEE and do, execute and perform all such further and other acts, deeds, things or writings as may be reasonably required for realisation of the said debts and/or further and better and more effectively transferring and/or assuring them or any of them unto and in favour of the ASSIGNEE as may be reasonably required.

Schedule above referred to

<i>Name and address of the debtor</i>	<i>Amount of debt</i>	<i>Securities if any</i>	<i>Remarks</i>	<i>Other particulars</i>

IN WITNESS WHEREOF the parties herein have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
the ASSIGNOR in the presence of:

Signed, sealed and delivered by CD
the ASSIGNEE in the presence of:

Deed of Assignments of Bond Debt

THIS DEED OF ASSIGNMENT is made the day of BETWEEN AB of, etc., (ASSIGNOR), of the one part, and CD of, etc. (ASSIGNEE), of the other part.

WHEREAS by a bond bearing date, executed by one EF described therein as obligor in favour of the said AB, the said EF (OBLIGOR) became bound to the said AB in the sum of Rs. subject to the condition for discharge as thereunder provided AND WHEREAS the said bond is still in full force and virtue AND WHEREAS the principal sum secured under the said bond together with arrears of interest thereon at present, amounts to Rs. AND WHEREAS the said AB has agreed to transfer, assign and sell the said bond debt to the said CD at and for the sum of Rs. Now THIS DEED WITNESSES that in consideration of the sum of Rs. now paid to AB by the said CD the receipt whereof the said AB do hereby admit, acknowledge and confirm the said AB as the beneficial owner, hereby transfers and assigns unto the said CD ALL THAT the principal sum of Rs. secured by the said bond, and the sum of Rs. now due for arrears of interest thereon and all further interest hereafter to become due and payable from time to time for the same, and all his right, title, interest, claim and demand whatsoever under the said bond and the full benefit and advantage thereof: TO HAVE AND HOLD the same to the CD absolutely with full authority, liberty and power to enforce the bond and realise all moneys due and payable thereunder by suit or otherwise.

AND the said AB hereby declares that the said bond is still in full force and virtue and the said principal sum of Rs., together with the sum of Rs. due for arrears of interest thereon is lawfully due and payable to the ASSIGNOR under and by virtue of the same. And that the ASSIGNOR had and still has good right, full power and absolute authority to grant, transfer and assign the same in the manner hereinbefore indicated. AND further that the ASSIGNOR shall at all times hereafter do, execute and perform all such acts, deeds, things as may be reasonably required for further and better transferring or assigning the same at the cost and expenses of the ASSIGNEE.

IN WITNESS WHEREOF the parties herein have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
the ASSIGNOR in the presence of:

Signed, sealed and delivered by CD
the ASSIGNEE in the presence of:

Assignment of a Bond Debt

(SHORT FORM)

IN CONSIDERATION of the sum of Rs. paid by the ASSIGNEE Sri to me the ASSIGNOR Sri the receipt whereof is hereby acknowledged, the ASSIGNOR as beneficial owner do hereby transfer to the ASSIGNEE all that the debt due and payable to the transferor by CD and to become due thereon under the bond dated executed by CD in his favour TO HAVE AND TO HOLD the same absolutely and forever.

The said debt is still due and owing to the assignor from the said CD.

IN WITNESS WHEREOF

Assignment of a Bond Debt

(SHORT FORM)

IN CONSIDERATION of the sum of Rs., paid by the ASSIGNEE Sri to the ASSIGNOR Sri the receipt whereof is hereby acknowledged, the ASSIGNOR as the beneficial owner do hereby transfer to the ASSIGNEE all that the debt due and payable to the transferor by CD on a bond dated and all interests due and to become due thereon: TO HAVE AND TO HOLD the same absolutely and forever. The said debt is still due and owing to the ASSIGNOR from the said CD.

IN WITNESS WHEREOF the parties have executed these presents on the 15th day of December 1999.

Signed, sealed and delivered by AB
in the presence of:

Signed, sealed and delivered by CD
in the presence of:

Deed of Assignment of Bond Debt

THIS DEED OF ASSIGNMENT is made this day of BETWEEN AB son of residing at (hereinafter referred to as the ASSIGNOR which term shall include his heirs and legal representatives) of the one part and CD son of residing at (hereinafter referred to as the ASSIGNEE of the other part.

WHEREAS by a Bond bearing executed by one EF described therein as obligor in favour of the said AB, the said EF (obligor) became bound to the said AB in the sum of Rs. subject to the condition for discharge

as thereunder provided and whereas the said bond is still in full force and virtue and whereas the principal sum secured under the said bond together with arrears of interest thereon, at present amounts to Rs. and whereas the said AB has agreed to transfer, assign and sell the said bond debt to the said CD at, and for the sum of Rs. : Now this deed witnesses that in consideration of the sum of Rs. now to the said AB paid by the said CD (the receipt whereof the said AB does hereby admit and acknowledge), the said AB, as beneficial owner, hereby transfers and assigns unto the said CD the principal sum of Rs. secured by the said bond, and the sum of Rs. now due for arrears of interest thereon and all interests henceforth to become due and payable for the same, and all his right, title, interest, claim and demand whatsoever under the said bond and the full benefit and advantage thereof: TO HAVE AND HOLD the same to the CD absolutely with full authority, liberty and power to enforce the bond and realise all moneys due and payable thereunder by suit or otherwise.

IN WITNESS WHEREOF the parties have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
in the presence of:

AB

Signed, sealed and delivered by CD
in the presence of:

CD

Deed of Assignment of Business Debts

THIS DEED OF ASSIGNMENT is made this day of BETWEEN AB son of residing at (hereinafter referred to as the ASSIGNOR which term shall include his heirs and legal representatives) of the one part and CD son of residing at (hereinafter referred to as the ASSIGNEE) of the other part.

WHEREAS the ASSIGNOR has for some time past carried on the trade or business of, etc., at, etc., in the course whereof the several persons whose names, addresses and occupations are mentioned in the schedule hereunder written, have become lawfully debtors to him and so for the several sums of money set opposite to their respective names, and whereas the ASSIGNOR has contracted with the ASSIGNEE for the absolute sale to him of the said business debts at and for the sum of Rs. NOW THIS DEED WITNESSES that in consideration of the sum of Rs. now paid to the ASSIGNOR by the ASSIGNEE (the receipt of which sum the ASSIGNOR hereby acknowledges), the said AB, as beneficial owner, does hereby transfer, sell and assign unto and to the use of the said CD all the several said debts, and sums of money

specified in the said schedule which are now due and owing to the ASSIGNOR TO HAVE AND TO RECEIVE them for his absolute use and benefit with absolute power, authority and liberty to enforce payment thereof by suit or otherwise AND that the ASSIGNOR does hereby covenant with the assignee that all the several debts are lawfully due to him and the parties by whom they are payable are alive and, further, that he has not entered into any arrangement with any of them AND that the ASSIGNOR shall at all times hereafter do, execute and perform all such and other acts, deeds, things or writing as may be reasonably required for further and better transferring and/or assuring them or any of them.

Schedule above referred to

Signed, sealed and delivered, etc.

AB
CD

Assignment of Cinematograph Rights in a Play or Novel

AN AGREEMENT made the day of BETWEEN AB of etc., (hereinafter called the AUTHOR) of the one part and CD of etc., (hereinafter called the ASSIGNEE) of the other part.

Whereas the AUTHOR is the sole proprietor of the playright or copyright in the play or story or novel entitled "....." AND WHEREAS the AUTHOR has agreed to sell the right of making film and/or cinematograph rights in the said play (or story or novel) NOW IT IS HEREBY AGREED by and between the parties as follows:

1. In consideration of the sum of Rs. paid by the assignee to the AUTHOR (the receipt whereof the AUTHOR hereby admits and acknowledges) the AUTHOR does hereby grant, sell, assign, transfer and assure to the ASSIGNEE the sole, exclusive and monopoly right to produce cinematographic films, scenes, scenery and other reproductions of the said play (story or novel) or any part thereof and to present, exhibit or perform the said play, story, or rewrite the novel or any part thereof in public by means of sound or silent films or any other similar contrivance which may be mechanically represented, exhibited or performed in all parts of the world in which the said rights are subsisting or may be acquired by the ASSIGNEE.

2. The AUTHOR warrants to the ASSIGNEE that he is the sole owner of the valid and subsisting copyright and playright in the said play (story or novel) and that he has not granted any licence or otherwise parted with any interest in the right to produce the same by means of cinematograph films or other similar contrivances.

3. The ASSIGNEE shall at all times hereafter be entitled to produce or cause to be produced and exhibited for sale or hire any film of the said play (story or novel) and, in case he fails to do so, it shall be optional on the part of the AUTHOR, by notice in writing and subject to repayment of the purchase money to terminate this agreement and the cinematograph rights in the said play (or novel) shall forthwith be reassigned to the AUTHOR.

4. The ASSIGNEE agrees to the publication of the AUTHOR'S name in conjunction with the title of the film of the said play (story or novel) in all books, literature advertisements, programmes and notices under his control.

5. The ASSIGNEE agrees not to make any alteration of a substantial nature in the story of the said play (story or novel) or in climax situations or in the characterisation thereof without the previous consent in writing of the AUTHOR.

IN WITNESS WHEREOF THE parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
in the presence of:

Signed, sealed and delivered by CD
in the presence of:

Apology for Infringement of Copyright

Dear Sirs

I am extremely sorry to learn the infringement of your copyright in the which have been published in my book.

At the time when the publication of the book first commenced I was not at all aware that you are the owner of its copyright and, in fact, until I received your letter of complaint I was completely ignorant of the same. I was first approached only as far back as last when a representative of the offered me the series on certain terms to which I readily agreed more so because the series has been already published in that journal without being aware of the fraud practised on me.

However, I deeply regret for the innocent infringement of your rights and undertake not to publish any more of these series in future in any book, journal, literature or other publications.

Yours very truly

.....

Assignment of Copyright of Book Reserving Royalty

THIS DEED OF ASSIGNMENT is made this 5th day of December 1999 BETWEEN CD son of residing at (hereinafter called the AUTHOR) of the one part and Eastern Law Ltd. a company registered under the Companies Act 1956 having its Registered Office and carrying on business of Publishers and Booksellers at 54 Ganesh Chunder Avenue, Calcutta 700 013 (hereinafter called the PUBLISHER which term shall include its successors and assigns) of the other part. WHEREAS the AUTHOR is entitled to the copyright of the book known as AND WHEREAS the PUBLISHERS approached the author for assignment thereof which the AUTHOR has agreed to do on terms hereunder contained.

Now THIS DEED OF ASSIGNMENT WITNESSES as follows:

(1) In consideration of and subject to the covenants on the part of the publishers as hereinafter contained, the AUTHOR does hereby grant, convey, transfer, sell, assign and assure unto and to the use of the PUBLISHERS all that copyright as defined in section 14 of the Copyright Act 1957, of the book entitled on the subject of TO HAVE AND TO HOLD the same as absolute owners thereof for the full term of copyright as prescribed by law.

(2) The PUBLISHERS shall, so long as the said work or any adaptation, modification or translation thereof is published and sold, submit to the AUTHOR twice every year, once during the month of January and the other by June, a statement of account showing details of the copies printed, published, held in stock and sold or disposed of (except otherwise by sale of damaged or destroyed copies) and of the profits, if any, earned thereunder.

(3) The PUBLISHERS shall pay or cause to be paid to the author or his nominee or nominees a royalty at the rate of per cent on the sale proceeds of the copies of the work or adaptations or translations thereof that may be actually published and as disclosed in the statement of account referred to in clause (2). No royalty shall be payable on any copies of work that may be damaged or destroyed or disposed of otherwise than by regular sale.

(4) That the PUBLISHERS shall also pay to the AUTHOR half the net profits earned by them, if any, from transfer, sale or assignment of any of the rights comprising the copyright or from grant of any interest or licence therein: PROVIDED THAT the PUBLISHERS shall not be entitled to and shall not do or cause anything to be done in derogation of the AUTHOR'S other rights, particularly the right to royalty reserved hereunder.

(5) That the AUTHOR does hereby agree to revise the work and bring it up to date or otherwise modify, alter, adapt or translate it or get it translated whenever reasonably required by the PUBLISHERS: PROVIDED ALSO THAT the PUBLISHERS will not normally require the AUTHOR to do so more than once in two years; PROVIDED FURTHER THAT in case the AUTHOR shall fail and/or neglect,

and/or refuse to revise, modify, alter, translate the work or get it translated as and when reasonably required by the PUBLISHERS, they shall be at liberty to get the same done on his account by any person or persons of their choice after due notice to the AUTHOR and deduct all costs, charges and expenses out of moneys payable to the author. PROVIDED ALSO THAT in selecting the person proposed to revise, modify, alter, adapt or translate the work and in fixing the remuneration to be paid therefor, the author's wishes, if any, shall so far as possible be respected by the PUBLISHERS.

(6) That the AUTHOR has delivered or shall deliver (within a period of months from the date hereof) the manuscript of the said work to the PUBLISHERS.

(7) That the AUTHOR does hereby declare that the work of which the copy is being hereunder assigned is entirely original work of the AUTHOR and that the same does not in any manner whatsoever violate or infringe any existing copyright or any other right of any other person or other persons; and further that it does not contain anything which may be considered as obscene, libellous, scandalous or defamatory.

(8) The AUTHOR HEREBY AGREES to indemnify and keep the PUBLISHERS indemnified against all claims, demands, suits and other actions and proceedings, if any, that may be instituted or taken and also against all damages, costs, charges, expenses which the publishers shall or may suffer, on account of printing, publication or sale of the said work or any part thereof, or by reason of such printing, publication and/or sale being an infringement of some other person's copyright or other rights in the work or by reason of its containing anything which may in any sense be obscene, libellous, scandalous or defamatory.

(9) The PUBLISHERS shall print and publish the work or cause the same to be printed and published as soon as practicable within a period of 12 months from the date of this contract, and in default thereof the AUTHOR may, by a notice in writing, call upon the publishers to print and publish the work within two months of the receipt of the said notice; and if the publishers shall still fail and/or neglect to print and/or publish the work within the said period, save and except in so far as they are prevented from doing so by circumstances beyond their control, the AUTHOR shall be at liberty to rescind the contract on giving a notice to that effect to the publishers when the copyright shall revert fully to the author and all the rights of PUBLISHERS shall, as from that date, stand determined.

(10) That in case of dispute or difference arising between the parties touching the meaning, construction, interpretation, breach or fulfilment or non-fulfilment of the terms of these presents or any clause or condition thereof, the same shall be referred to the decision of arbitrator(s) in accordance with the provisions of Arbitration and Conciliation Act 1996.

(11) That the words AUTHOR and PUBLISHERS, "party" or "parties", unless there be something contrary in the context, include their respective heirs, survivors, successors, representatives, executors, administrators and assigns and successors in business.

IN WITNESS WHEREOF the parties hereto have executed these presents, the date, month and year first hereinbefore mentioned.

Signed, sealed and delivered by CD
the AUTHOR in the presence of:

Signed, sealed and delivered
by Mr. M.K. Chawla pursuant to
Board Resolution of Eastern Law
Ltd. dated in the
presence of:

Deed of Assignment of Growing Crops

THIS ASSIGNMENT is made the, day of BETWEEN AB of etc. (VENDOR), of the one part, and CD of, etc. (PURCHASER), of the other part.

WHEREAS the said AB has agreed to sell to the said CD the crops of, etc., and grass now growing on the pieces of land hereinafter described, and all the benefits and advantages thereof, at the price of Rs. NOW THIS DEED WITNESSES that in consideration of the sum of Rupees, the receipt whereof the said AB hereby acknowledges, the said AB, as beneficial owner, hereby grants, sells and assigns to the said CD ALL the crops of, etc., and grass, which are now growing, arising and being on the pieces of land, etc. (*describe the pieces of land specifically*); TOGETHER WITH full right, liberty and powers for the said CD and the servants, agents, labourers and other person or persons employed by him for that purpose either with or without cattle, carts, etc., from time to time, and at any time during the ensuing months of, etc., to enter upon the said piece of land or any part thereof for the purpose of checking the condition of the said crops and for the purpose of reaping, mowing and cutting the said crops, of, etc., and grass and removing the same, AND ALSO to do all such other acts and things as may be necessary or required for the purpose of obtaining the full benefit of this deed: TO HOLD the same to the said CD absolutely.

IN WITNESS WHEREOF etc.

Signed, sealed and delivered

AB

Assignment of Copyright and Trade Name in a Newspaper by a Limited Company to the Trustee of an Intended Association

THIS DEED OF ASSIGNMENT made this day of 2000 BETWEEN, a company registered under the Companies Act 1956 having its registered office at (hereinafter called the ASSIGNOR which expression shall where the subject or context allows or admits of be deemed to include its successors and assigns) of the one part and Mr. son of.....residing at.....(hereinafter called the ASSIGNEE which term shall where the subject or context allows or admits of be deemed to include his heirs and successors and assigns and persons being members of the intended association) of the other part.

WHEREAS the ASSIGNOR is the sole proprietor and owner of the newspaper known as for over years free from all encumbrances with all rights hereby assigned which are valid and subsisting.

NOW THIS DEED OF ASSIGNMENT witnesseth as follows:

1. In consideration of a sum of Rs. paid by the ASSIGNEE to the ASSIGNOR (the receipt whereof the ASSIGNOR doth hereby admit, acknowledge and confirm) the ASSIGNOR as beneficial owner of the copyright in the said newspaper do hereby grant, convey, sell, transfer, assign, assure the same unto and to the use of the ASSIGNEE absolutely and for ever and other right, title and interest and claim therein AND all goodwill, benefits and other advantages and connections of the newspapers throughout the world together with all contracts and orders outstanding on this day with full and absolute right to print, reproduce, multiply, circulate and sell the same or any translation thereof to the intent and with the object that the ASSIGNEE shall own the said newspaper as trustee for the members of the intended association and for the benefit of all its members.

2. The ASSIGNOR doth hereby covenant with the ASSIGNEE and agree as follows:

- (i) Notwithstanding any act, deed or thing whatsoever heretofore done or executed, performed or knowingly suffered to the contrary, the assignor had good right, full power and absolute authority to grant, convey, transfer, assign and sell the copyright and the trade name of the said newspaper unto and to the ASSIGNEE in the manner hereinbefore indicated.
- (ii) The said copyright and also the trade name and also the goodwill are free from encumbrances and attachments and there is no injunction or prohibitory order.
- (iii) The ASSIGNOR shall hereafter do execute and perform any further or other act, deed or thing and writings for further and better assuring the said copyright and trade name unto and to the use of ASSIGNEE as may be reasonably required.

Description

ALL THAT the copyright of the ASSIGNOR, the trade mark and trade name in the daily newspaper in named "....." now printed and circulated from the premises No. and its goodwill, benefits and other advantages and all pending orders and contracts and business connections together with the right to print, reproduce, multiply, publish, circulate and sell the same or any translation or version thereof.

IN WITNESS WHEREOF the common seal of the company is hereunto affixed and these presents are also executed by the ASSIGNEE at Calcutta in the presence of:

The common seal of the ASSIGNOR company is hereunto affixed pursuant to the resolution of the Board of Directors dated theday of by Mr. in the presence of:

EXECUTED by the ASSIGNEE Mr. at Calcutta in the presence of:

Assignment of Patent

THIS DEED OF ASSIGNMENT OF PATENT is made this day of 1999 BETWEEN AB son of residing at (hereinafter called the ASSIGNOR which term shall include his heirs, legal representatives and assigns) of the one part and CD son of residing at (hereinafter called the ASSIGNEE which term shall include his heirs, successors and assigns) of the other part.

WHEREAS the ASSIGNOR is the inventor and patentee in respect of a machine (state here the nature of the patent).

AND WHEREAS the said patent was duly registered on the day of 19 as number.....in the Patent Office at and the patentee, *viz.*, the said AB has thus the exclusive privilege and authority to use the same for a period of years from the aforesaid date subject to payment of prescribed fee within time.

AND WHEREAS the said AB has agreed to assign and the said CD has agreed to purchase the benefit of the said invention and the patent at and for the price of Rs. :

NOW THIS DEED OF ASSIGNMENT WITNESSES that in pursuance of the said agreement and in consideration of the said sum of Rs., paid by the

said CD to the said AB which the ASSIGNOR AB doth hereby admit, acknowledge and confirm as having had and received from the ASSIGNEE CD the said AB as beneficial owner hereby grant, transfer and assign unto CD the said ASSIGNEE, all that the said invention and patent and the full and exclusive benefit and advantage thereof AND all and every improvement, extension or renewal thereof TO HAVE AND TO HOLD the same AND the said ASSIGNOR hereby covenants with the said ASSIGNEE that notwithstanding anything done or omitted or knowingly suffered the said patent is now valid and subsisting.

AND the said ASSIGNOR further covenants with the said ASSIGNEE that he will at the cost of the person requiring the same do all such things for further assuring this transfer unto the said ASSIGNEE as may be required for the registration of assignment with the authorities under the provisions of the Designs Act 1911 and the Patent Act 1970.

The Schedule

IN WITNESS WHEREOF the parties have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
the ASSIGNOR in the presence of:

Signed, sealed and delivered by CD
the ASSIGNEE in the presence of:

Assignment of Policy of Life Insurance by Nomination
(For endorsement on policy)

I, AB of, etc. holder of Policy No. issued by the Life Insurance Corporation of India pursuant to section 39 of the Indian Insurance Act 1938, do hereby nominate CD of, etc. as the person to whom the money secured by this Policy of Insurance shall be paid in the event of my death and request the Life Insurance Corporation to register this my nomination and issue a written acknowledgment thereof in accordance with section 39(3) of the said Insurance Act.

Signed

AB

**Deed of Assignment of Policy of Life Insurance
by way of Gift with Reservation**

THIS DEED OF ASSIGNMENT made the day of BETWEEN AB of, etc. (ASSIGNOR), of the one part and CD of, etc. (ASSIGNEE), of the other part

WITNESSES that in consideration of natural love and affection between the said AB and CD, the said AB does hereby and hereunder transfer and assign as and by way of gift to the said CD all the benefits of and all moneys now due or shall hereafter become payable under the Policy of Insurance No. dated on the life of the said AB PROVIDED ALWAYS that in the event of the said CD predeceasing the said AB the benefit of and right to receive moneys under the said policy shall to all intents and purposes revert to the said AB as if this assignment had never been made nor intended. AND THAT the said AB do hereby covenant with the said CD that the said policy is still in *force* and further that the said AB has not charged *nor* encumbered the same in any way and furthermore there is no injunction or prohibitory order against him from assigning the same in the manner hereunder effected.

IN WITNESS, etc.

Signed, sealed and delivered

AB

Deed of Assignment of Policy of Life Assurance

THIS ASSIGNMENT made the day of BETWEEN AB of, etc. (ASSIGNOR), of the one part, and CD of etc. (ASSIGNEE), of the other part.

WHEREAS a policy of assurance being No. for Rs. was issued by the Life Insurance Corporation of India on the life of the ASSIGNOR on the day of to be paid to the ASSIGNOR on maturity or to his nominee or heirs, the executors, administrators or assigns after his death, subject to payment of the annual premium of Rs. AND WHEREAS the said AB has agreed to transfer and assign unto and in favour of the said CD the said policy of assurance for a sum of Rs. NOW THIS DEED WITNESSES that in consideration of the sum of Rupees, paid by the said CD the receipt whereof the said AB does hereby admit and acknowledge, the said AB does hereby transfer and assign unto and to the use and for the benefit of CD the above recited policy of assurance together with the benefit of the said sum of Rs. thereby assured and all the other moneys, profits, benefits and advantages thereof to be had, recovered or obtained under or by virtue of the said policy: TO HAVE AND TO HOLD the same unto and to the use of the said CD absolutely, subject to the conditions as to payment of future premiums and otherwise to be henceforth observed in respect of the said policy: AND the said AB hereby covenants with the said CD that he, the said AB, shall not do, execute or perform or knowingly suffer anything to the contrary whereby or by reason or means whereof the said policy may be rendered void or voidable, or the said CD or his heirs, executors, administrators or assigns may be prevented from receiving the said sum of Rs. or any benefit or advantage thereunder.

IN WITNESS WHEREOF the parties herein have signed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
the ASSIGNOR in the presence of:

Signed, sealed and delivered by CD
the ASSIGNEE in the presence of:

Deed of Assignment of Shares in a Company

THIS ASSIGNMENT is made the day of BETWEEN AB of, etc. (hereinafter called the ASSIGNOR), of the one part, and CD of, etc. (hereinafter called the ASSIGNEE), of the other part, WITNESSES that in consideration of the sum of Rupees paid by the ASSIGNEE to the ASSIGNOR, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns and transfers to the said CD ordinary shares of Rs. each, numbered to, under Folio number which stand in the name of the ASSIGNOR in the books of.....Co., Ltd.: TO HAVE AND TO HOLD the same to the ASSIGNEE absolutely, subject nevertheless to the conditions of the Memorandum and Articles of Associations of the company on which the ASSIGNOR held the same up to date. AND the ASSIGNEE hereby agrees to take the said shares subject to such conditions.

IN WITNESS, etc.

Signed, sealed and delivered

AB

Assignment of a Registered Trade Mark

THIS DEED OF ASSIGNMENT OF TRADE MARK made this day of 1999 BETWEEN AB son of residing at (hereinafter referred to the ASSIGNOR which term shall include his heirs, successors and legal representatives) of the one part and CD son of residing at (hereinafter called the ASSIGNEE which term shall include his heirs, legal representatives and assigns) of the other part.

WHEREAS the said AB is the owner and the proprietor of a Trade Mark number.....duly registered in the Register of Trade Marks maintained by the Trade Mark Registration Office at

AND WHEREAS the said AB has made actual and *bona fide* use of the said Trade Mark in India in relation to the toilet goods manufactured by him at his factory in

NOW THIS DEED OF ASSIGNMENT WITNESSES that in pursuance of the said agreement and in consideration of the said sum of Rs. paid by the said CD to AB the receipt whereof he the said AB hereby admits, acknowledges and confirms, he the ASSIGNOR AB does hereby grant, transfer and assign upon the terms hereinafter mentioned, the exclusive use and all benefits of the aforesaid Trade Mark in relation to the goods of toiletry manufactured by him at his factory at

AND the said ASSIGNOR hereby covenants with the ASSIGNEE that he will not infringe nor use a mark identical with the Trade Mark hereby assigned nor use another Trade Mark nearly resembling it as to be likely to deceive or cause confusion, in the course of trade, in relation to the goods in respect of which it is registered and in a manner as to render the use of this mark likely to be taken either as being a use of the said Trade Mark or to import a reference to the ASSIGNOR.

AND the ASSIGNOR further covenants that he, the ASSIGNOR, shall at the costs of CD or any person claiming through him do or cause to be done any other act, deed or thing as may be required for more perfectly assuring the aforesaid assignment.

The Schedule

IN WITNESS WHEREOF the parties hereto have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB the
ASSIGNOR in the presence of:

Signed, sealed and delivered by CD the
ASSIGNEE in the presence of:

Deed of Assignment of Rent

THIS DEED OF ASSIGNMENT OF RENT made this day of 2000 BETWEEN AB son of residing at (hereinafter referred to as the VENDOR which term shall unless the context requires otherwise include his heirs, legal representatives and assigns) of the one part and CD son of residing at (hereinafter called the PURCHASER which term shall include his heirs, successors and assigns) of the other part.

WHEREAS by a Deed of Sale dated the day of AB has sold and conveyed to CD absolutely the land (*describe the property*), subject to the existing tenancy or tenancies of person or persons named in the schedule hereunder AND WHEREAS it has been agreed by and between AB and CD that the said AB shall also transfer and assign unto and to the use of the said CD all rents payable by all such tenants accrued up to and inclusive of the

date of sale at and for the sum of Rs. NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs. paid by CD the receipt whereof the said AB hereby admits, acknowledges and confirms, the said AB does hereby grant, transfer and assign unto and in favour of the said CD ALL those rents and sums of money particulars whereof are specified in the Schedule hereunder and all benefits and advantages thereof and empower and authorise, CD TO HAVE, receive, collect and realise the same either amicably or through court and appropriate the same for his absolute use and benefit. AND THIS Indenture further witnesses that the said AB does hereby covenant with the said CD that all and every item of such rents and sums of money are still lawfully due and payable by the said respective tenants AND that the said AB never received any advance against such rent or rents nor any part payment or any other deposit or deposits adjustable with the said rents nor released or committed to release or remit the same or any portion thereof nor written off any amount with intent to exonerate any tenant or tenants from his or their liability on that account. AND FURTHER there is no injunction or prohibitory order against him from realising the same or any portion thereof nor from assigning all such amounts in the manner hereunder effected.

The Schedule above referred to

<i>Serial No.</i>	<i>Name of tenants</i>	<i>Monthly rent</i>	<i>Due for</i>	<i>Amount due</i>	<i>Remarks</i>

IN WITNESS WHEREOF the parties herein have executed these presents on the day, month and year first above-written.

Signed, sealed and delivered by AB
the VENDOR in the presence of:

Signed, sealed and delivered by CD
the PURCHASER in the presence of:

Bail Petition

Any person arrested by police in connection with a bailable offence is entitled to bail as a matter of right (s. 436, Cr PC). The Officer-in-Charge of police station on arresting an accused on bailable offence shall offer him bail. If he can furnish bail the officer shall release him on bail on condition of his appearing before the Magistrate concerned on a date fixed. If the person is unable to furnish bail he shall be produced before the Magistrate within twenty-four hours of his arrest. The Magistrate has to release him on bail with or without surety or on personal bond.¹

In case of non-bailable offence the bail is granted at the discretion of the Magistrate. Under the conditions mentioned in s. 437, Cr PC the person may be released on bail. Magistrate may impose appropriate conditions. If, however, the investigation is not completed within (a) ninety days of the first order of detention and the offence is punishable with death, imprisonment for life or imprisonment for a term of not less than seven years or (b) within sixty days when investigation relates to any other offence, the Magistrate will release him on bail on his furnishing a bail bond. The Magistrate cannot postpone his release to enable the police to submit charge-sheet.² It is not defeated by lapse of time or subsequent filing of charge-sheet.³

An affidavit may be filed in support of the petition for bail or the petition may be sworn. When the bail is refused by the Magistrate under s. 437, Cr PC the petitioner may approach the Sessions Judge first and also the High Court for bail. Normally the petitioner approaches the Sessions Judge first for bail under s. 439, Cr PC and then the High Court. When the power

1 *Dharma v Rabindra Nath* 1978 Cr LJ 864.

2 *Umashankar v State* 1982 Cr LJ 1186 (MP).

3 *Raghubir Singh v State* AIR 1987 SC 149; 1987 Cr LJ 157.

of the Sessions Judge and of High Court under s. 439, Cr PC is concurrent there is no bar to the petitioner first moving High Court. But some High Courts expressed the view that when concurrent power is there in two forums the lower forum should be approached first unless the applicant can assign reasons as to why he was approaching the higher forum. There is however no legal bar for the High Court entertaining the bail petition even if the petitioner did not approach Sessions Judge first.⁴

The Appellate Court, including High Court as Appellate Court, may order release of the accused on bail pending hearing of an appeal. When the hearing of an appeal is likely to be delayed bail should be granted by the Appellate Court.⁵ When the accused is likely to serve out the full or substantial part of the sentence pending hearing of the appeal bail should be granted.⁶

FORMS

Application for Anticipatory Bail before High Court

In the High Court at Calcutta
(Criminal Miscellaneous Jurisdiction)

In the matter of an Application for
anticipatory bail under section 439,
Cr PC

AB son of MN residing at,
..... *Petitioner*

versus

The State *Respondent*

To

The Hon'ble Mr.
Chief Justice and His Companion
Justices of the said Hon'ble Court

The humble petition of AB, the petitioner
above-named

4 *Abdul Kasim v State* AIR 1960 MP 54; *Daini alias Raju v State* 1989 Cr LJ (NOC) 149 (MP); *Thakur Prasad v State* 1977 Cr LJ 471; *Chajjuram v State* 1977 Punj LR 619.

5 *Anurag v State* AIR 1987 Pat 274 (FB).

6 *Harbhajan v State* 1977 Cr LJ 1424 (P&H).

MOST RESPECTFULLY SHEWETH:

1. That the petitioner is a reputed businessman having a long-standing business in Calcutta and is an income-tax and sales-tax assessee.
2. That the petitioner has his permanent residence in Calcutta.
3. That due to business rivalry, his business rival, Z Co. Ltd., lodged a false complaint against the petitioner before the police alleging cheating and forgery.
4. That the intention of the *de facto* complaint is only to harass and humiliate the applicant and to tarnish his clean image in business circle.
5. Your petitioner apprehends that pursuant to the said complaint the police may arrest your petitioner and thereby put the petitioner to harassment and mental agony and physical inconvenience.
6. That the petitioner undertakes to abide by all the terms and conditions that may be imposed upon him in the order of bail.
7. That if the anticipatory bail is not granted the petitioner shall suffer irreparable injury.
8. That the application is made *bona fide* and in the interest of justice.

In the circumstances the petitioner humbly prays that Your Lordships may be graciously pleased to direct that in the event of the petitioner being arrested in connection of this case the petitioner will be released on bail forthwith and/or may pass such other order or orders as Your Lordships may deem fit and proper.

And your petitioner as in duty bound, shall ever pray.

Advocate of AB

Sd. AB

Verification

I, AB, son of MN, by occupation business, residing at, Calcutta do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know the facts of this case and I am able to depose thereto.
2. The statements in paragraphs 1 to 8 in the foregoing petition are true to my knowledge and belief.
3. I sign this verification on the 11th day of June 2000 in Calcutta.

Solemnly affirmed by the said AB on 11th day of June 2000 in the Court House at Calcutta.

Before me
Commissioner

Sd. AB

Application for Anticipatory Bail before Sessions Judge

In the Court of Sessions Judge at
Criminal Misc. Case No. of

In the matter of:

An application for anticipatory bail under
section 438 of the Code of Criminal
Procedure 1973

And

In the matter of:

AB Petitioner

versus

The State of West Bengal ... Respondent

The humble petition of the petitioner
above-named

MOST RESPECTFULLY SHEWETH:

1. That the petitioner is a senior Government servant working under the Central Government in the Department of Customs and Excise.
2. That in connection with his official duties he has to undertake various raids against criminals and anti-socials.
3. That some known criminals of the area, namely, hatched a conspiracy to harass and malign your petitioner in public by implicating him by and in lodging an FIR at the Police Station at
4. That the petitioner being a permanent Government servant has no chance of going underground and if necessary he shall co-operate with the police in investigation and anticipatory bail be granted to your petitioner.
5. That if no anticipatory bail is granted he shall suffer irreparable injury.
6. That the petitioner undertakes to abide by all the terms and conditions of the order of bail if passed.

Hence it is prayed that Your Honour will be pleased to grant the petitioner anticipatory bail and pass such other order or orders as Your Honour deem fit and proper.

And for this act of kindness your petitioner shall ever pray.

Advocate of AB

AB

Verification

I, AB, son of MN, residing at do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know the facts and circumstances of this case.
2. The statements in paragraphs 1 to 6 hereinabove in the petition are true to my knowledge and belief.
3. I sign this verification on this 7th day of June 2000 at Howrah.

Solemnly affirmed by the said AB
on this 7th day of June 2000 at
Court House at

AB

Before me

Notary/Magistrate

Application for Anticipatory Bail under section 438, Cr PC

In the Court of the Sessions Judge at Howrah

AB son of MN resident of ... *Petitioner*
versus

The State of West Bengal ... *Respondent*

The humble petition of the petitioner
above-named

MOST RESPECTFULLY SHEWETH:

1. That a burglary was said to have been committed in a village which is contiguous to the village Dhubli where the petitioner's house is situated on the night of 6th June 2000..

2. That the owner of the house, in which the burglary had been committed, has enmity with the petitioner for several years over landed properties and he is trying to implicate the petitioner in the said dacoity case falsely.

3. That the petitioner has reasons to believe that your petitioner may be arrested on accusation of having committed the said offence of burglary which is a non-bailable offence by police at the instance of the said owner of the house where burglary is said to have been committed.

4. That the petitioner undertakes to obey all the conditions mentioned in clauses (i) to (iii) of sub-sec. (2) of section 438, Cr PC and to obey any other conditions if imposed by Your Honour.

In the circumstances your petitioner
prays that Your Honour may be graciously

pleased to issue a direction to the Officer-in-Charge of Police Station Dhubli that in the event of your petitioner being arrested he may be released on bail on any conditions that Your Honour may be pleased to impose on your petitioner.

And your petitioner, as in duty bound, shall ever pray.

Verification

I, AB, son of MN, residing at, Howrah do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know the facts and circumstances of the case.
2. The statements in paragraphs 1, 2, 3 and 4 of the foregoing petition are true to my knowledge and belief.
3. I sign this verification on this 7th day of June 2000 at the Court House in Howrah.

Solemnly affirmed by the said AB
on this 10th day of June 2000 at
Court House in Howrah.

Before me
Notary/Magistrate

Application for Bail before High Court under section 439, Cr PC

In the High Court at Calcutta
(Criminal Miscellaneous Jurisdiction)

In the matter of:

An application for bail under section 439,
Cr PC

And

In the matter of:

AB

Petitioner

(in Jail Custody)

versus

The State of West Bengal

Respondent

To
The Hon'ble Mr.
Chief Justice and his companion
Justices of the said Hon'ble Court

The humble petition of AB the petitioner
above-named

MOST RESPECTFULLY SHEWETH:

1. The petitioner is a respectable person having his own business. He is an income-tax payer.
2. Shri CM being the *de facto* complainant in order to harass and humiliate the petitioner has engineered a false case against the petitioner because of business rivalry and got him arrested by the police.
3. The evidence collected during investigation so far against the petitioner is very meagre.
4. The petitioner applied for bail before the Sub-divisional Judicial Magistrate on 2nd May 2000 but his bail was refused.
5. That the petitioner then applied for bail before the Sessions Judge, Alipore in Criminal Misc. Case No. of on but the Sessions Judge has also refused bail.
6. The petitioner is in custody over a month and the police duly interrogated him during the police custody and his further detention in custody is not necessary for the purpose of investigation of the case.
7. That the petitioner has his permanent residence at, and carries on business and he has no chance of absconding.
8. The petitioner undertakes to abide by the terms and conditions that may be imposed upon him by the Hon'ble High Court and shall attend the Court of the Learned Magistrate as and when required.
9. That the petition is *bona fide* and made in the interest of justice.

In the circumstances the petitioner humbly prays Your Lordships may be graciously pleased to direct the release of the petitioner on bail or pass such other order as Your Lordships may deem fit and proper.

And your petitioner as in duty bound shall ever pray.

Advocate of AB

Sd. AB

Verification

I, AB, son of MN, by occupation business, resident of at preset in Alipore Jail custody do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named and I know the facts and circumstances of this case.
2. The statements in paragraphs 1 to 9 of the foregoing petition are true to my knowledge and belief.
3. I sign this verification on

Solemnly affirmed by the said AB
on at the Court
House in

Before me
Commissioner

Petition for bail under section 389, Cr PC

In the Court of the Sessions Judge at Alipore, 24-Parganas
Case No. ... of under s. 379, IPC

The State

versus

Accused AB Son of MN,
Village:, Thana:

In the matter of petition for bail of the
accused-petitioner pending the hearing of
the appeal.

The humble petition of the accused in the
above case

MOST RESPECTFULLY SHEWETH:

1. That your petitioner was convicted by the Sub-Divisional Judicial Magistrate of Alipore under s. 379, IPC on 5th March 2000 and sentenced to undergo three months Rigorous Imprisonment.

2. That your petitioner has this day filed an appeal before Your Honour against the said order of conviction and sentence.

3. That the cycle alleged to have been stolen by the petitioner was purchased by him at an auction held by court on 28th February 2000 for Rs. 300 and that the fact was proved by no less than six witnesses.

4. That your petitioner was a *bona fide* purchaser of the cycle for value and had no knowledge or even suspicion that the cycle was a stolen property.

5. That your petitioner is a newspaper hawker of fairly good means and he has a stall at and there is no apprehension of your petitioner absconding pending the hearing of the appeal.

6. Your petitioner states that bail be granted to your petitioner pending disposal of the appeal in which your petitioner has a good chance of success.

7. Unless bail is granted your petitioner will lose all the regular customers and the main source of livelihood.

Your Petitioner prays that Your Honour may be pleased to grant *ad interim* bail to your petitioner pending the hearing of the appeal.

And your petitioner, as in duty bound, shall ever pray.

Verification

I, AB, son of MN, by occupation business, residing at, do hereby solemnly affirm and say as follows:

- 1. I am the accused petitioner above-named and I know the facts and circumstances of this case.
- 2. The statements in paragraphs 1 to 7 hereinabove petition are true to my knowledge and belief.
- 3. I sign this verification on this 3rd April 2000 at Alipore.

Solemnly affirmed by the said AB on this 3rd day of April 2000 at the Court House in Alipore.

Before me
Notary/Magistrate

Petition for Bail under section 439, Cr PC before Sessions Judge

In the Court of the Sessions Judge at Alipore
Case No. 10 of 1999 pending in the Court of
the Sub-divisional Magistrate of Alipore

The State

versus

Accused AB son of GH, Village:
Thana:

In the matter of an application of AB the
accused for bail

The humble petition of AB the accused above-named

MOST RESPECTFULLY SHEWETH:

1. That it was alleged that there was a burglary in the house of ZEE on the night of 3rd May 2000 and your petitioner was arrested by the police some two weeks afterwards on 18th May 2000 at his house. The charge-sheet was submitted on 16th June 2000. Your petitioner's prayer for bail was rejected by Mr. JM, Sub-divisional Judicial Magistrate at on 10th July 2000. Being aggrieved by the order of the Learned Magistrate refusing to grant bail to your petitioner, he begs to move your Honour for bail on the following amongst other grounds.

Grounds

- (i) That the name of your petitioner does not appear in the First Information Report.
- (ii) That no incriminating article was found in the house of your petitioner on a search by the police, and that he was arrested on mere suspicion and that your petitioner is perfectly innocent of the charge.
- (iii) That no inmate of the house of ZEE identified your petitioner in the identification parade held inside the Alipore Jail by Mr. M, a Second Class Magistrate.
- (iv) That the accused has a Ration Shop at and that he resides there with his wife and children.

2. Your petitioner states that there is no possibility of your petitioner escaping or absconding during trial or otherwise.

3. Your petitioner has a good defence and the prosecution case is based on false allegations.

4. That your petitioner is willing to furnish proper security for appearance in the court to take his trial.

5. In view of the aforesaid your petitioner states that the bail be granted to your petitioner as prayed for herein in the interest of justice.

Your petitioner therefore prays that Your Honour may be pleased to call for the records and issue notice to the Public Prosecutor and on hearing the parties be graciously pleased to pass an order directing release of your petitioner on bail.

And your petitioner, as in duty bound, shall ever pray.

Dated

Signature

Advocate

Verification

I, AB, son of GH, by occupation business, residing at
....., do hereby solemnly affirm and say as follows:

1. I am the accused petitioner above-named and I know the facts and circumstances of this case.
2. The statements in paragraphs 1 to 5 in the above petition are true to my knowledge and belief.
3. I sign this verification on this 4th day of August 2000 at the Court House at Alipore.

Solemnly affirmed by the said AB
on this 4th August 2000 at the
Court House at

AB

Before me
Notary/Magistrate.

Bail Petition before a Magistrate during
Police Enquiry under s. 437, Cr PC

In the Court of Magistrate

The State

versus

Accused AB son of TZ, Village:
Thana:

In the matter of petition for bail of accused
AB, during police enquiry

The humble petition of AB the accused
above-named

MOST RESPECTFULLY SHEWETH:

1. That your petitioner was arrested by the police on 5th March 2000 on mere suspicion. That nearly a month has passed after the arrest but still the Investigating Police Officer has not submitted a charge-sheet.
2. That your petitioner was not identified by any inmate of the house of CM where the burglary is alleged to have taken place, nor any incriminating article was found in his house.
3. That your petitioner has reason to believe that one GS with whom your petitioner is on bad terms and who is looking after the case for the complainant has falsely implicated your petitioner in the case out of grudge.

- 4. That your petitioner shall fully co-operate with the police.
- 5. That your petitioner is not likely to abscond or leave the country.

Your petitioner prays that your Honour may be pleased to call for police papers and after perusing the same be pleased to direct the release of your petitioner on bail.

And your petitioner, as in duty bound, shall ever pray.

Advocate

AB

Verification

I, AB, son of TZ, residing at, by occupation business, do hereby solemnly affirm and say as follows:

- 1. I am the petitioner above-named. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto.
- 2. The statements in paragraphs 1 to 5 of the foregoing petition are true and correct to my knowledge and belief.
- 3. I sign this verification on the 6th day of May 1999.

Solemnly affirmed by the said AB
on 6th May 2000 at the Court
House at

AB

Before me
Notary/Magistrate.

**Bail Petition before a Magistrate
in a Pending Case under section 437, Cr PC**

In the Court of Magistrate of
Case No. ... of under section IPC

The State

versus

Accused AB son of MN, residing at
.....

In the matter of petition for bail of accused
AB

The humble petition of AB the accused in
the above case

MOST RESPECTFULLY SHEWETH:

1. That your petitioner was arrested by the police on 5th April 1999 on suspicion. That he was not named in the FIR nor was he identified by any inmate of the house, where the burglary is said to have taken place during the identification parade by Mr. JM, a Judicial Magistrate.

2. That nothing incriminating was found in the house on search by the police.

3. That your petitioner is a family man and is not likely to abscond.

4. Your petitioner be granted bail inasmuch as there is no valid ground for continued detention and the trial is not likely to be completed within the near future.

Your petitioner prays that after issuing the notice to the State and hearing both sides Your Honour may be pleased to pass Order for releasing your petitioner on bail.

And your petitioner as in duty bound, shall ever pray.

Advocate

AB

Verification

I, AB, son of MN, aged about 30 years, by occupation business, residing at, do hereby solemnly affirm and say as follows:

- 1. I am the petitioner above-named and I know the facts and circumstances of this case.
- 2. The statements in paragraphs 1 to 4 in the foregoing petition are true and correct to the best of my knowledge and belief.
- 3. I sign this verification on this 20th day of June 1999.

Solemnly affirmed by the said AB on 20th day of June 2000 at the Court House at

AB

Before me
Notary/Magistrate

Bail Petition

In the Court of the Sub-Divisional Judicial Magistrate at

The State

versus

- 1. AB
- 2. CD

3. EF

4. GH

Case—under section 188, IPC; section 116, Cr PC; section 29, Police Act; section 151, Cr PC

The humble petition of the accused persons named-above

MOST RESPECTFULLY SHEWETH:

1. That your petitioners were arrested by Police under section 151, Cr PC on 5th May 2000 at 3 P.M. and were kept in the lock up in the police station and the bail offered by your petitioners was refused by the police.

2. That your petitioners have been produced before Your Honour this day and they have been charged under section 188, IPC.

3. That the offences mentioned in the paragraph 2 above are all bailable.

Under the circumstances, your petitioners pray that they be released on bail pending the disposal of the case.

And your petitioners, as in duty bound, shall ever pray.

Advocate

AB, CD, EF & GH

Verification

We, AB, CD, EF and GH, sons of MN, by occupation business, residents of, do hereby solemnly affirm and say as follows:

1. We are the petitioners above-named and know the facts and circumstances of the case.
2. The statements made in paragraphs 1, 2 and 3 of the foregoing petition are true to our knowledge and belief.
3. We sign this verification on 15th May 2000.

Solemnly affirmed by AB, CD, EF and GH on 15th May 2000 at the Court House at

AB
CD
EF
GH

Before me

Notary/Magistrate

Bonds

Bonds. The dictionary meaning of the word 'bond' is a writing of an obligation to pay a sum or perform a contract. A bond according to s. 2(5) of the Stamp Act means—

- (i) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
- (ii) any instrument attested by a witness, and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
- (iii) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another.

A simple bond is distinguished from a promissory note inasmuch as no money is payable under a bond to the order of the obligee or to the bearer of the instrument. A simple bond is also distinguishable from the mere acknowledgment of indebtedness inasmuch as in an acknowledgment there is usually no undertaking to pay in expressed terms. Bottomry bonds are contracts of the nature of mortgage of the ship for money borrowed by the owner or the master in case of unforeseen necessity, distress, to execute repairs, or to pay for repairs executed and to complete the voyage against security of the bottom of the ship. The lender shall also undertake sea risk. This is now obsolete in practice.¹

A bond is either single or double, *i.e.* with a condition. If a bond be merely for the payment of money, or for the performance of some particular act, without any condition annexed to it, the bond is said to be single. In a bond with a condition, the obligor binds himself to pay, by way of penalty

1 Halsbury's *Laws of England*, 4th Ed., vol. 43, p. 138.

or liquidated damages, an amount larger (usually double) than he actually borrows, or an amount equivalent to the amount of damages that he would be liable to pay if he fails to perform a specified act, on condition that the bond will become void if he repays the loan with interest, or only performs the specified act, as the case may be, on a specified date, otherwise that it will remain in full force.²

A conditional bond contains explanatory recitals which follow the obligation and precedes the condition.³

The obligation of a double bond is in the same form as intended to operate as in a single one except that the sum of money which is the subject-matter is described as penalty or liquidated damages according to the true intention of the parties. The distinction between the penal bond and other bonds flows from the well-known principles of law and equity as to reliefs against penalty. The question as to whether any particular clause in an obligation bond is penalty or not depends upon the intention of parties to be gathered from the interpretation of the whole document in the light of circumstances under which it was executed. In England, a bond acknowledging debt must bear the seal of the obligor, but the law is not rigid in India. Bonds in India are of various types: (a) Money Bond; (b) Indemnity Bond; (c) Customs Bond; (d) Administration Bond; (e) Security Bond; (f) Bottomry Bond; (g) Respondentia Bond; and (h) Hypothecation Bond.

The person who binds himself to pay money or to perform a particular act is called the *obligor*; and the person in whose favour a bond is executed is called the *obligee*.

Instruments amounting to agreements only. If a party to an instrument binds himself, in the event of a breach on his part of any of the conditions of the instrument, to pay the other party thereto a penalty not being a certain sum of money, the instrument amounts to an agreement only; and so also an indemnity note passed to a railway company by a consignee in respect of goods delivered to the consignee, and for which he is unable to produce the railway receipt, by which note he undertakes to keep the railway company, its agents and servants, harmless and indemnified against all claims to the said goods, since the indemnity note does not contain a contract that the indemnification should be in *money* necessarily, as the company might have been indemnified in some other way, such as by delivering the goods in perfect order to the real owner.

Execution and attestation—registration—signature by scribe. A bond must be signed, or a mark made on it, by the executant at the end on the right

2 Section 74 of the Indian Contract Act 1872.

3 Halsbury's *Laws of England*, 4th Ed., vol. 12, p. 557.

side of the instrument, in the presence of the witness or witnesses, who should sign on the opposite left side, also in the presence of the executant. Registration for any kind of bond is not compulsory; but if a bond by itself creates an interest in immovable property of the value of Rs. 100 and upwards, its registration will be compulsory.

Signature by the writer of the bond, as in any other instrument, in itself, is not an attestation, and the scribe is not an attesting witness, though there is nothing to prevent a scribe from being a witness provided he signs in the proper place. Attestation must appear, as such, on the face of the instrument.

FORMS

Simple Money Bond

BY THIS BOND I, AB of, etc., am hereby held and firmly bound to CD of etc. in the sum of Rs. only to be paid to the said CD, his heirs, executors or administrators or assigns, for which payment faithfully and truly to be made, I bind myself, my heirs, executors or administrators by these presents.

SIGNED and delivered by me at this day of

THE CONDITION of this bond is such that, if the above bound AB, his heirs, executors or administrators, do and shall faithfully and truly pay or cause to be paid, to the said CD, his heirs, executors, administrators or assigns, the sum of Rs. only, with interest thereon at the rate of per cent. per annum, on the day of, THEN the above-written bond or obligation shall be void and of no effect, otherwise the same shall remain in full force and value.

Signed, sealed and delivered

AB (*Debtor*)

ANOTHER FORM

KNOW ALL MEN by these presents I, AB son of etc., am hereby held and firmly bound unto and in favour of CD son of etc., in the sum of Rs. for which payment to be truly and faithfully made. I bind myself, my heirs, executors and administrators. Sealed with my seal. Dated this day of

Now the condition of the bond, etc. (see PREVIOUS PRECEDENT).

Signed, sealed and delivered etc.

Instalment Money Bond

KNOW ALL MEN by these presents, we the undersigned, viz., AB, son of etc., hereinafter referred to as the borrower of the first part and CD, son of etc., hereinafter referred to as the surety of the second part are by these presents held and firmly bound unto and in favour of EF, son of etc., hereinafter referred to as the lender in the sum of Rs. of good and lawful money of the Republic of India for which payment to be truly and faithfully made by instalments in the manner provided in the schedule below and for that purpose we, the undersigned AB and CD, bind ourselves, our respective heirs, executors, administrators and representatives.

Sealed with our seal, dated this day of 19.....

WHEREAS the borrower AB approached the lender EF for a loan and/or accommodation of Rs. to be repaid with interest of% per annum by instalments in the manner hereunder indicated and secured by a bond in terms hereunder contained. Now the condition of this above-written bond or obligation is such that if the borrower AB or the surety CD or either of them shall repay or cause to be repaid the said sum of Rs. with interest thereon at% in the manner hereunder indicated, then and in such an event the bond or obligation shall be void and stand automatically cancelled, otherwise the same shall remain in full force and virtue.

Schedule of Instalments

Signed, sealed and delivered

AB

Money Bond with Surety

This BOND is made the day of, by AB, son of etc.

(Debtor) and CD, son of, etc. (Surety).

WHEREAS EF, son of etc., has this day lent and advanced to me, viz., the said AB, a sum of Rupees (Rs.) only at the request and on the assurance and guarantee of the said CD, the surety, as to its repayment personally with interest at% per annum in case of default on my part. Now by this bond we, the said AB and CD, hereby and hereunder jointly and severally hold and bind ourselves, our respective heirs, executors, administrators and representatives unto the said EF his heirs, executors, administrators, representatives and assigns for payment to him or them, as the case may be, of the sum of Rupees (Rs.) only, on demand (or, on or before the day of or, by instalments,

etc.) with interest thereon at the rate of per cent per annum from the date hereof until such payment.

IN WITNESS whereof, we, the said AB and CD, have set and subscribed our respective hands and seals the day, month and year first above-written.

In the presence of:

Signed, sealed and delivered

AB

CD

Administration Bond under section 291 of the Indian Succession Act⁴

KNOW ALL MEN by these presents we, AB son of etc. (ADMINISTRATOR) and CD son of, etc., (SURETY), are held and jointly and severally bound to EF the Judge, etc., in the sum of Rs. only, of lawful good money to be paid to the said Judge, or to his successor in office, for which payment to be truly and lawfully made, we do hereby bind ourselves, and each of us and also our respective heirs, executors, administrators or assigns firmly by these presents for the whole of the amount.

Sealed with our seals, this day of

WHEREAS by an order of the Court of Judge, etc., made on the day of under section 290 of the Indian Succession Act, the above-named AB has been appointed administrator of the estate of GH (*deceased*), subject to his furnishing security by execution of a bond of Rs., with one surety: AND WHEREAS the said CD has agreed to stand surety for the said AB and was approved by the court subject to his entering into the above-written bond as surety for the said AB: NOW THE CONDITION OF this bond or obligation is such that, if the said AB, do and shall, within six months from the grant to him of letters of administration of the estate of GH deceased, or such further time as the said court may allow, do make or cause to be made a full and true inventory containing a full and true estimate of all the property, assets and credits of the estate which have or shall come in his hands, possession or to his knowledge in course of administration and also all the debts and outstandings due and payable by the estate and exhibit the same in the said court and do and shall, within one year from the said grant or such further time as the said court may allow, exhibit an account of the estate of the said deceased, showing the assets which have

⁴ *Surendra Nath Pramanik v Amrita Lal Pal Chowdhury* 47 Cal 115, 120. Bond taken to ensure due administration of the estate. The court may dispense with the surety altogether taking only the bond from the Administrator (Coote: *Probate Practice*, 16th Ed., p. 154).

come to his hands and the manner in which they have been applied, appropriated or disposed of, and do and shall well and truly administer the property, assets and credits of the deceased according to law, and all and every the rest and residue of the said property, credits and estate, which shall be found remaining and shall assent to and deliver and pay to such person or persons as shall be lawfully entitled thereto, THEN and in such an event the above-written bond or obligation shall be void and of no effect, otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered

AB

CD

Administration Bond under section 34 of the Guardians and Wards Act 1890

KNOW all men by these presents I, AB of, etc. (GUARDIAN), am held and firmly bound to CD, the Civil Judge, etc., in the sum of Rs. of lawful and good money to be paid to the said CD or to his successors in office, for which payment to be faithfully and truly made we, EF, of, etc., and GH, of etc. (*sureties*), are hereby also jointly and severally held and firmly bound to the said CD in the said sum of Rs. and further I, the above-bound AB and we, the above-bound EF and GH, bind ourselves and each of us, jointly and severally, and also our respective heirs, executors, administrators or assigns firmly by these presents.

Sealed with our seals this day of

WHEREAS by an order of the Court of the Civil Judge, etc., made on the of, under the Guardians and Wards Act, the above-named AB has been appointed certificated guardian of the property of IJ, minor son of KL, subject to furnishing security to the satisfaction of the court as provided therein AND WHEREAS the said EF and GH have been approved of as sureties by the court subject to their executing a bond jointly with the said AB as herein contained to which they both have agreed: NOW THE CONDITION of this bond or obligation is such that, if the said AB does and shall justly and truly account for, whenever called upon to do so, for what he may have received in respect of the property, assets and credits of the said minor and otherwise act according to and observe and perform all orders and directions of the court and in all matters and things conduct himself properly, THEN and in such an event the above-written bond or obligation shall be void and of no effect, otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered

AB

EF

GH

Security Bond on Grant of Succession Certificate
(The Indian Succession Act 1925, section 375)

BY THE BOND we, AB of, etc. (PRINCIPAL), and CD of, etc., (SURETY), are jointly and severally held and firmly bound to EF Judge, etc., in the sum of Rs. of lawful and good money to be paid to the said Judge, or to his successors in office for the time being as the case may be for which payment to be truly and faithfully made, we bind ourselves and also our respective heirs, executors, administrators and representatives jointly and severally by these presents.

Sealed with our seals this day of

WHEREAS by an order dated made in Case No. of of the Court of Judge, etc., a succession certificate in respect of the estate of MN deceased has been ordered to be issued under section 373 (read section 375) of the Indian Succession Act, to the above-named AB subject to his entering into a bond for Rs. with one surety as herein contained and WHEREAS the said AB has agreed to enter into the above-written bond AND WHEREAS the said CD has agreed to join with the said AB in the same bond as surety for the said AB and has been approved by the court: NOW THE CONDITION of this bond or obligation is that, if the said AB does and shall justly and truly account for the debts and securities for which the certificate is granted, indemnify and keep indemnified against all the claims brought by the lawful heirs of the deceased GH and do otherwise administer according to law the said properties and credits and deliver and pay and/or cause to be delivered and paid the same to person or persons lawfully entitled thereto and otherwise act and conduct himself properly in all other respects THEN the above-written bond or obligation shall be void and of no effect, and shall automatically stand discharged, otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered

AB

CD

Security Bond from Receiver

KNOW all men by these presents we, AB of, etc. (RECEIVER), and CD of, etc. (SURETY), are jointly and severally bound to EF Judge, etc., in the sum of Rs. to be paid to the said Judge, or to his successors in office, as the case may be, for which payment to be truly and faithfully made, we bind ourselves, and each of us, as also our respective heirs, executors or administrators, jointly and severally, by these presents.

Sealed with our seals this day of

WHEREAS a suit being T. Suit No. of (cause title) has been instituted in this court by the said GH against IJ for reliefs *inter alia* as appearing from the plaint, (*state the object of the suit*): AND WHEREAS by an order dated made in the said suit by the said court the said AB has been appointed Receiver of the rents, issues and profits of the immovable property and all the outstanding movable property of KL as mentioned in the plaint of the said suit subject to his furnishing security for Rs. with one surety: AND WHEREAS the said AB offered the said CD as such surety which was approved and accepted by the said court subject to his joining with the said AB in a bond on terms herein appearing: NOW THE CONDITION of this bond or obligation is such that, if the above-bound AB shall duly account for all and every sum or sums of money or moneys and other property or properties which he shall so receive as Receiver and also on account of the rents, issues and profits of the immovable property at such periods as the said court shall appoint, and shall duly pay the balance or balances, which shall from time to time be due from him, as the said court has directed or shall hereafter direct, THEN and in such an event this bond or obligation shall be void and of no effect, otherwise it shall remain in full force and virtue.

Signed, sealed and delivered

AB

CD

Bond by Manager of Property of Mentally ill Person⁵

WHEREAS AB son of has been adjudged as a mentally ill person and by an Order dated passed in Case No. of CD has been appointed as Manager of the properties of the said AB by the District Judge, Alipore who has, under section 56 of the Mental Health Act directed CD to enter into a Bond for Rs. 50,000 with one Surety unto and in favour of the District Judge, Alipore or his Successor in office.

AND WHEREAS the said CD as Manager of the properties of the said and EF as surety hereby furnish the said Bond as called for.

NOW THE CONDITION of the Bond or obligation is that if the said CD shall honestly and faithfully manage the properties of the said AB and otherwise administer the same according to law and act and conduct himself properly in all respects then the above-written Bond shall be no effect and shall stand automatically discharged, otherwise it shall remain in full force and virtue.

5 Section 56 of the Mental Health Act provides for appointment of Manager of the properties of a mentally ill person; sections 59 to 64 of the Act lay down the duties and powers of the Manager.

I, EF son of do hereby declare myself surety for the above-named CD and that I will have the said CD properly discharge his duties and responsibilities as Manager of the properties of the aforesaid AB and in case of his failure or default or negligence in so doing, I bind myself to forfeit to the District Judge, Alipore or his successor in office the sum of Rs. 50,000 (Rupees fifty thousand) only.

Signed, sealed and delivered
this day of at Alipore

CD
EF

Security Bond for Stay of Execution of Decree
(Or. 41, r. 5 of CPC)

KNOW ALL MEN by these presents we, AB son of etc. (JUDGMENT-DEBTOR) and CD son of etc., (SURETY) hereby and hereunder are held and firmly bind ourselves jointly and severally to Sri or his successor in office for the time being in the sum of Rs. of lawful good money to be truly and faithfully paid, for which payment we bind ourselves and our respective heirs, executors and administrators and representatives as hereunder stated.

Sealed with our seals this day of

WHEREAS a decree for Rs. was made on the day of against the said AB in a suit being Suit No. of the court etc. (*cause title*) AND WHEREAS the said AB has preferred an appeal against the said decree being Appeal No. of of the court of which is now pending. AND WHEREAS by an order dated made in the said appeal the Court of Appeal has granted stay of execution of the said decree upon the said AB furnishing security to the satisfaction of the court for the sum of Rs. AND WHEREAS the said AB has offered the said CD as surety he having been approved by the court subject to his entering into a bond for Rs. creating thereunder a first charge on the undermentioned property for satisfaction of the said decree as may be confirmed or varied by the Court of Appeal.

NOW THE CONDITION of the above-written bond or obligation is such that in the event the said decree being eventually passed and/or confirmed and/or upheld in appeal, the said AB and/or CD shall pay or cause to be paid to the decree-holder the full decretal amount inclusive of interest and costs and/or shall otherwise satisfy and/or discharge the same or in case the suit is ultimately dismissed, then and in all such events the above-written bond or obligation shall stand cancelled and be of no effect and the property charged shall stand redeemed, otherwise the same shall remain in force and virtue.

PROVIDED, HOWEVER, in case the decree is modified by the Court of Appeal, the property hereunder charged shall continue to remain charged as security for whatever amount is due and payable to the decree-holder.

Schedule of the property charged

Signed, sealed and delivered

AB

CD

**Bond to a Firm with Surety for
Securing the Faithful Service of an Employee**

KNOW ALL MEN by these presents that we, M (EMPLOYEE) son of residing at and N (SURETY) son of residing at are hereby held and firmly bound unto AB and CD carrying on business in co-partnership under the name and style of at premises No. in the sum of Rs. (Rupees) of lawful good money to be paid to the said AB and CD or their successors and assigns constituting the said partnership firm for which payment is to be truly and faithfully made we bind ourselves and also our respective heirs, executors, administrators and representatives.

SEALED with our respective seals this day of 19..... WHEREAS the above-named firm has agreed to provide the EMPLOYEE with a job and for that purpose appointed him at present as the cashier and accountant combined provisionally on terms and conditions contained in an agreement bearing the same date with these presents and executed almost simultaneously and upon the said employee and the above SURETY entering into a bond in favour of the said AB and CD for the amount and on terms hereunder contained.

Now THE CONDITION of the above-written bond or obligation is such that if the said EMPLOYEE while in employment whether in the original or in any promotion or transferred post under the said partners or the survivor of them or other person or persons for the time being constituting the firm shall duly and faithfully devote to and execute, perform and discharge all the duties of his office without causing any injury, loss or damage by reason of any act, default, negligence or error in judgment to the employer or in the alternative if the said EMPLOYEE and/or the SURETY or either of them shall from time to time and at all times hereafter indemnify and keep indemnified the said partners and other persons constituting the firm for the time being against all loss, damages, costs, charges and expenses which he or they or any of them shall or may sustain by reason of any act, default, misconduct, negligence, error in judgment, breach of duty, embezzlement and mismanagement on the part of the said employee, then and in such an

event the above-written bond shall stand void and cancelled and be of no effect, otherwise the same shall remain in full force.

Signed, sealed and delivered
In the presence of:

M
N

**Guarantee, Deposit and Charge as
Security for Advances to a Third Person**

To
ELH & Co.
XY Road, Calcutta

IN CONSIDERATION of your having lent and advanced to AB of etc. at my request a sum of Rs. (Rupees) as a loan or accommodation bearing interest at the rate of per cent per annum and such further or other sum or sums to be hereafter advanced as the said AB may require from time to time not exceeding in any case the sum total of Rs. (Rupees), all such sums to carry interest at the aforesaid rate and shall be repaid on or before the day of 2000.

I, the undersigned, do hereby stand surety for and guarantee repayment of the aforesaid loan or loans to you personally and place on record as follows:

1. I have deposited with you the title deeds/securities mentioned in the schedule hereto as collateral security for repayment of the said loan or loans with interest as aforesaid.

2. The said title deeds/securities which are all hereby pledged by me for repayment of the said loan(s) with interest or any of the properties shall not be charged, encumbered nor otherwise dealt with by me in any way without your consent first had and obtained in writing so long as the said loan(s) or any part thereof shall remain outstanding to you or any account in respect thereof unsettled.

3. I shall, whenever required by you so to do, execute at my own costs and expenses a deed or deeds of transfer such as mortgage, charge, etc., of such of the said property or properties/security or securities together with power of sale and all other necessary powers for securing and/or enforcing the payment of the said loan(s) and interest or otherwise for liquidation of the same.

4. No change whatsoever in the constitution of your firm shall impair or discharge my liability hereunder notwithstanding section 38 of the Partnership Act 1932, or any other enactment.

List of title deeds/securities

Dated this day 19.....

Yours faithfully
MN

Bond to Preserve Trade Secret

KNOW ALL MEN by these presents that I, B son of A hereinafter referred to as the obligor hereby firmly hold and bind myself unto X son of Y hereinafter referred to as the obligee in the sum of Rs. of lawful good money as agreed and liquidated damages and not as a penalty which sum to be truly and sufficiently paid for which payment I, the said B bind myself, my heirs, executors, administrators and representatives.

Dated this day of 2000.

WHEREAS the said obligee has imparted and is still to impart special knowledge to the said obligor about the secret of art or process of manufacturing a 'Patent' known as on the assurance and guarantee of the obligor as to preservation and maintenance of strict secrecy and confidence thereof for which purpose to give a bond or obligation as is hereafter given.

Sealed with my seal this day of 2000.

NOW THE ABOVE-WRITTEN BOND OR OBLIGATION is conditioned to be void in case the said obligor shall at all times hereafter whether in service or not under or otherwise connected with or not with the obligee well and truly keep, preserve and maintain or cause to be kept, preserved and maintained the secrecy of the said art or process and never to reveal the same to anyone under any circumstances, otherwise the same shall remain in full force and virtue.

Signed, sealed and delivered

B

Indemnity Bond in Case of Loss or Non-production of Title Deeds

KNOW ALL MEN BY THESE PRESENTS that I, AB (VENDOR) of etc. hereby hold and firmly bind myself unto CD (PURCHASER) of etc. in the sum of Rs. of good and lawful money to be paid to the purchaser, his heirs, etc., for which payment to be truly and faithfully made, I bind myself, my heirs, executors, administrators and representatives.

Sealed with my seal this day of 19

WHEREAS by an agreement dated etc. and made between the parties hereto, it was witnessed that the said AB (vendor) agreed to sell and the said CD (purchaser) agreed to purchase subject to a good and marketable title being made out All That Piece or Parcel of land, hereditament etc. fully mentioned and described in Schedule A hereto as an estate in fee simple and free from encumbrances, attachments, trust and lien, etc. at and for the sum of Rs. AND WHEREAS in course of the investigation of the title of the said vendor it appeared that certain documents, namely, the documents mentioned or described in Schedule 'B' to these presents which

are essential and necessary links in the chain of title were reported as missing not being in the possession of the vendor or anybody else on his behalf to his knowledge and it is not further known up till now in whose possession or custody and power the same were or are or likely to be at present. AND WHEREAS in answers to the Requisitions on Title the vendor has declared them as lost or mislaid and not pledged or deposited anywhere as security for any debt or claim AND WHEREAS the said purchaser on such declaration and assurance of the vendor as aforesaid has agreed to complete the said purchase upon the said vendor executing the conveyance of the said premises in favour of the said purchaser with all usual covenants including the covenant as to indemnity but nevertheless and in addition thereto upon the vendor entering into the above-written obligation conditioned as hereinafter expressed for the protection and indemnity of the purchaser. Now the above-written bond or obligation is conditioned to be void only in either of the cases following, that is to say:

1. In case all the said documents be hereafter discovered anywhere and shall be delivered to the said purchaser or his heirs, executors, administrators or assigns free of any costs, charges and expenses on that account and be effectually discharged from any estate, right, title interest or claim, demand etc. whatsoever if any in, to or upon the said premises acquired by any third party or parties adverse to or in derogation of the title of the said purchaser, his heirs, executors, administrators or assigns under or by virtue of the said documents or any of them.

2. Alternatively if for a period of 12 years or more from the date of these presents the purchaser, his heirs, etc., shall peacefully and quietly hold, possess and enjoy the said lands, hereditaments and premises, etc., without any claim, demand, interruption or disturbance whatsoever by any person or persons claiming any right, title or interest in the said property under or by virtue of the said documents or any of them, otherwise the same shall remain in full force and virtue and the said AB (*vendor*), his heirs, executors, administrators shall at all times hereafter remain liable for and shall fully and effectually indemnify and keep indemnified the said CD (*purchaser*), his heirs, executors, administrators and assigns against all loss and damage, costs, charges and expenses which he or they or any one of them may be put to or reasonably incur or suffer by reason thereof the said documents not having been delivered to the purchaser simultaneously with the completion of the said purchase.

A

Schedule of the property sold

B

Schedule of the title deeds not delivered

Signed, sealed and delivered
at in the presence of:

AB

Indemnity Bond

In case of non-production of Title Deeds (another form)

BY THE PRESENT INDEMNITY BOND executed by me on this day of2000, I, AB s/o MN residing at (hereinafter called the OBLIGOR) my successors and legal representatives in favour of C s/o XY residing at hereinafter called the OBLIGEE, which expression shall mean and include his heirs; successors and legal representatives, in the sum of Rs. of lawful money paid to me by the said C.

Signed by me with my seal this day of 2000.

WHEREAS by an agreement dated made between the parties, I, the OBLIGOR, agreed to sell and the said OBLIGEE agreed to purchase subject to a good and marketable title being made out the property situated in which is fully mentioned and described in Schedule 'A' annexed hereto and which is free from all encumbrances, attachments, trust and lien, etc. for the sum of Rs. (Rupees only) AND WHEREAS in course of the investigation of my title it has transpired that the documents described in Schedule 'B' to these presents which are essential and necessary to complete the title are missing and are not being in my possession or anybody else on my behalf to my knowledge and it is not further known up till now in whose possession or custody and power the same were or are likely to be at present.

AND WHEREAS in answer to the requisitions on title I have declared them as lost or mislaid and not pledged or deposited anywhere as security for any debt or claim.

AND WHEREAS the said OBLIGEE on such declaration given by me as aforesaid agreed to complete the said purchase upon my executing the conveyance of the said premises in his favour with all usual covenants including the covenant as to indemnity but nevertheless and in addition thereto upon my entering into the above-written obligation conditioned as hereinafter expressed for the protection and indemnity of the purchaser. Now the above-written bond or obligation is conditioned to be void only in either of the cases following, that is to say:

1. In case all the said documents shall be hereafter discovered anywhere and delivered to the said purchaser or his heirs, executors, administrators or assigns free of any costs, charges and expenses on that account.

2. Alternatively if for a period of over twelve years from the date of these presents the purchaser, his heirs, etc. shall peacefully and quietly hold, possess and enjoy the said lands, hereditaments and premises, etc., without any claim, demand, interruption or disturbance whatsoever by any person or persons claiming any right, title or interest in the said property under or

by virtue of the said documents or any of them, otherwise the same shall remain in full force and virtue and I, my heirs, executors, administrators, shall at all times hereafter remain liable for and shall fully and effectually indemnify and keep indemnified the said (PURCHASER) his heirs, executors, administrators and assigns against all losses and damages, costs, charges and expenses which he or they or any one of them may be put to or reasonably incur or suffer by reason of the fact of the said documents not having been delivered to the purchaser simultaneously with the completion of the said purchase.

Schedule 'A'

Schedule 'B'

Signed, sealed and delivered

AB

Indemnity Bond with a Surety in Favour of a Bank on the Death of an Account-holder

By the present indemnity bond, I, namely, P, s/o
r/o hereinafter called the PRINCIPAL OBLIGANT and S,
s/o r/o hereinafter called the SURETY, are hereby
held and firmly bind ourselves to People's Bank Limited, Chandni Chowk
Branch, New Delhi, in the sum of Rs. (Rupees only) of
lawful good money for which payment to be truly and faithfully made, we
bind ourselves as well as our respective heirs, executors, administrators
and representatives.

Sealed with our seal this day of 19.....

WHEREAS one E since deceased had at the time of his death which occurred
on the day of 2000, the following accounts with the said bank
(or etc.) namely (GIVE PARTICULARS).

AND WHEREAS one C claims the proceeds of the said accounts as sole heir
of the said late E and further represent that inasmuch as the deceased had
died intestate, no representation to the estate was necessary.

AND WHEREAS the bank has agreed to pay the proceeds of the said accounts
to the said C aggregating to Rs. on his furnishing security with
one surety in terms hereunder contained. Now the condition of the above-
written bond or obligation is such that in the event of any claim being at
any time hereafter made to the proceeds of the said accounts by any other
person or persons whomsoever if the said P and S shall forthwith pay or
cause to be paid to the bank the said sum of Rs. with interest at
12% per annum and further pay for all losses, damages, costs, charges and
expenses which bank may suffer and/or otherwise indemnify and keep

indemnified the bank, its officers and agents in all other respects on account therefor, then and in such an event the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

IN WITNESS, whereof the said P and S have signed, sealed and delivered this bond on day, month and the year first above-mentioned.

Signed, sealed and delivered in the presence of the witnesses:

WITNESSES:

- 1. Name P
Address
- 2. Name S
Address

Indemnity to a Company and its Directors on Issue of a Duplicate to Replace Lost Share Certificate (O)

To ELH Limited and AB, CD and EF its Directors

Gentlemen

I have lost or mislaid the certificate of title dated and numbered relating to (fully paid up) (Ordinary) Shares Folio number in the above-named Company of (Rs. 10) each numbered to both inclusive and of which I am the registered holder.

The said certificate has not been pledged or deposited by me by way of security, nor have I sold or transferred any of the shares to which it relates, and I am entitled to the custody of the certificate of title relating to such shares.

I request you to issue to me a fresh certificate of title to the said shares and I hereby undertake to indemnify you and each of you against all proceedings, claims, expenses and liabilities whatsoever which may be taken or made against or incurred by you or any of you by reason of the issue of such fresh certificate or the registration of a transfer of the said shares or any of them without the production of the said original certificate.

Dated the day of 2000.

WITNESS to the Signature of the said

Signed XY (Shareholder)

Deed of Guarantee by a Bank on Behalf of a Company for the Performance of a Contract in Favour of State Government

THIS DEED OF GUARANTEE MADE THIS day of BETWEEN the Bank of Credit (hereinafter called the BANK) of the one part and the State of West Bengal represented by its Governor Sri (hereinafter called the STATE) of the other part.

WHEREAS by Acceptance of Tender No. dated made between X Ltd. a COMPANY incorporated under the Indian Companies Act having its registered office at (hereinafter called the COMPANY) it was witnessed that the COMPANY agreed with the State of West Bengal for supply of plants, machinery and equipment in accordance with terms, specifications and conditions therein contained which *inter alia* provided for an advance of Rs. 2 lakhs being equivalent to 10% of the total F.O.B. value of the contract price (such payment to be secured by a Bank Guarantee);

AND WHEREAS the BANK has at the request of the COMPANY agreed to stand surety for and guarantee refund of the said advance in case the plants, machinery and equipment of the value 20 lakhs aforesaid is not delivered to the State of West Bengal in accordance with the terms and conditions of the said agreement, and the STATE of agreed to make the said advance on such bank's guarantee as aforesaid:

Now THIS DEED WITNESSES AS FOLLOWS:

1. In consideration of the STATE of having agreed to advance a sum of to the COMPANY, through the BANK, for the purpose hereinbefore indicated, the BANK do hereby guarantee that in case the COMPANY shall fail and/or neglect to supply the STATE the plants, machinery and equipment of the value of in accordance with the specifications and conditions contained in the Acceptance of Tender dated the subject to any amendments or modifications thereof, if any, when made, the BANK shall repay to the STATE such amount or amounts, as the BANK may be called upon to pay subject to the maximum limit of

2. This guarantee of the BANK shall be effective immediately upon receipt of the sum of from the STATE for and on behalf of the COMPANY and shall continue in force until and unless the supply of plants, machinery and equipment of the value of aforesaid is fully effected.

3. The guarantee hereinbefore contained shall not be affected by any change in the constitution of the BANK or of the company nor in the event of any winding-up order being made against the COMPANY.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day, month and year first above-written.

For and on behalf of the State
of West Bengal

Bank of Credit

1.
2.

Guarantee for the Performance of a Contract

THIS DEED OF GUARANTEE made the day of BETWEEN GB son of etc. (hereinafter called the GUARANTOR) which expression shall of the one part and PD son of etc. (hereinafter called the PRINCIPAL) which expression shall of the other part.

WHEREAS BY AN AGREEMENT dated made between CF son of etc., therein referred to as *the contractor* of the one part and the said PD therein referred to as PRINCIPAL of the other part, it was *inter alia* agreed by and between the parties as follows:

(State the nature of work to be done by the contractor).

AND WHEREAS the said work was entrusted to the contractor upon the GUARANTOR having agreed with the PRINCIPAL as to its guarantee of performance by the contractor and to indemnify and keep indemnified the principal against all losses, damages, costs, charges and expenses arising out of performance or non-performance thereof. Now it is agreed and declared by and between the parties as follows:

1. The GUARANTOR will see that the contractor unless relieved from the performance by operation of any clause of the contract or by statute or by virtue of the decision of any tribunal or court of competent jurisdiction, shall carry out, execute and perform the contract without any exception or reservation and in case he commits any breach thereof the guarantor will indemnify and keep indemnified the PRINCIPAL and his estate against all losses, damages, costs, expenses, or otherwise which he may suffer or otherwise incur by reason of any act, negligence, default or error in judgment on the part of the contractor in performing or non-performing the contract.

2. In case of any dispute or difference as regards the quantum of such losses or damages or costs, charges and expenses, the same shall be decided by reference to arbitration of one architect or engineer if the parties so agree or otherwise of two architects or engineers, one to be appointed by each, the two would appoint an Umpire and whose decision shall be final and binding on all parties.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribed their respective hands and seals the day, month and year first above-written:

Signed, sealed and delivered
in the presence of:

GB

General Form of Security Bond to be Executed by an Employee with Two Sureties

KNOW ALL MEN by this Security Bond we, AB (EMPLOYEE) of, etc. etc. and CD (*first surety*) of etc. etc. and EF (*second surety*) of etc. are firmly held and bound unto GH (EMPLOYER) of etc., in the sum of Rupees (Rs.) only of lawful good money to be paid to the said employer, or his heirs, executors, administrators and representatives for which payment will and truly to be made, we bind ourselves and our respective heirs, executors, administrators and representatives jointly, severally and respectively.

Sealed with our seals this day of 2000.

WHEREAS the above-bound AB was on the day of 2000 provided with a job under the employer and now holds and exercises the office of Cashier in terms of an agreement dated made between the said AB and the employer (or in terms of the letter of appointment dated issued by the employer) AND WHEREAS by virtue of such office and other office or offices so which the employee may hereafter be promoted or transferred or appointed the said employee is presently and in future will be entrusted with the care and responsibility of handling and keeping in safe custody of various money, currency, shares and other valuable securities, papers, documents and also property and goods belonging to the employer subject to the supervision and check of the employer or any person appointed by him AND WHEREAS the employee in such course of employment is also bound to keep and maintain or cause to be kept and maintained a true and faithful account of the said money, shares, securities etc.

NOW THE CONDITION of the above-written bond or obligation is such that if the employee shall all along during the continuity of his service under the employer whether, in the original or in any promoted or transferred post, keep and maintain or cause to be kept and maintained a true and proper account of all such money, cash, shares, securities, etc., and/or otherwise always duly and faithfully perform and discharge the duties of such office or offices which he shall hold and exercise for the time being or in the alternative if the said AB, CD and EF shall indemnify and keep indemnified the employer, his heirs, executors, administrators or assigns against all and every loss and damage or injury caused to and costs, charges and expenses incurred by the employer by reason of any act, default, error in judgment on the part of the said AB, then the above-written bond or

obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue.

PROVIDED, HOWEVER, notwithstanding anything hereinbefore contained, it is hereby mutually agreed and declared by and between the parties that none of the two sureties, viz., the said CD and EF shall in any case be at liberty or shall have the power to terminate their suretyship under this bond except upon giving to the employer three weeks' prior notice in writing of his or their intention so to do and in any event such termination shall not take effect and so be without prejudice to the right of the employer to seek redress on all claims then already arisen and this bond shall, accordingly, continue and remain valid in respect of all acts, defaults, omissions, error in judgment on the part of the employee as against them as their past liability under this bond.

IN WITNESS WHEREOF we have hereto set our respective hands and seal this day of 2000.

Signed, sealed and delivered
in the presence of:

CD
EF

Indemnity Bond by Building Contractor

BY THIS BOND we, AB of, etc., (BUILDER), and CD of, etc., (surety), are jointly and severally held and firmly bound unto EF of, etc., (OWNER), in the sum of Rupees, to be paid to the said EF or his heirs, executors, administrators or assigns, for which payment to be truly and faithfully made, we bind ourselves, and each of us, and also our respective heirs, executors, administrators or assigns, jointly and severally, by these presents.

Sealed with our seal, this day of

WHEREAS the said AB has entered into a contract with the said EF to build and complete a certain dwelling house with buildings and out-buildings thereto (or, etc.) in accordance with the plans and specifications which have already been agreed upon and kept signed by the said AB and EF within calendar months from the date hereof, upon a piece or parcel of land, situate at, etc., for the sum of Rs. AND WHEREAS it is expressly provided in the said contract that the said AB would enter into a bond with one surety in terms hereinbefore contained: Now THE CONDITION of the above-written bond or obligation is such that, if the said AB shall duly and punctually, within calendar months aforesaid, build, complete and finish the said dwelling-house with the out-buildings thereto (or, etc.) in accordance with the said plans and specifications to the reasonable satisfaction of the said EF and his architect, or surveyor (delay caused by fire accident, mob violence, attack from the air or strikes of workmen or other major disturbances only excepted), THEN, and in such an event the

above-written bond shall be void, but otherwise it shall remain in full force and virtue.

IN WITNESS WHEREOF ETC.

Signed, sealed and delivered

AB
CD

**Indemnity Bond against Possible
Claim of a Co-sharer believed to be Dead**

THIS DEED OF INDEMNITY made this day of BETWEEN AB son of etc. (VENDOR) of the one part and CD son of etc. (PURCHASER) of the other part.

WHEREAS by a conveyance bearing even date with these presents made between the parties hereto the property mentioned and described in the schedule below was granted, conveyed, sold, transferred and assigned by the said AB unto and in favour of the said CD.

AND WHEREAS the said property was owned by the said AB jointly with his brother EF who left home on or about the 5th day of and has not since returned nor been heard of at all in spite of diligent enquiries and is believed to be dead AND WHEREAS the said EF was unmarried at the time when he left home and as such he could not have left any heir other than the vendor. AND WHEREAS ever since the said EF left home, the vendor was at all times and is still now openly in exclusive use, possession, control and enjoyment of the entirety of the said property to all intents and purposes and thus declared himself to be its sole and absolute owner. AND WHEREAS the vendor agreed to sell the said property and the purchaser agreed to purchase the same subject to the vendor executing a separate deed of indemnity in favour of the purchaser in terms hereunder contained.

Now THIS DEED OF INDEMNITY witnesseth that in consideration of the purchaser having purchased the property on the assurance and guarantee of the vendor as to protection and indemnity against any possible claim by the said EF if he is discovered to be still alive or by any person or persons through or under him the vendor do hereby and hereunder agree to indemnify and at all times keep indemnified the purchaser and his heirs, executors, administrators and representatives and also estate against all such possible claims or demands made or any actions and proceedings, if any, commenced by the said EF if alive or by any person or persons claiming through or under him in respect of the said property and also against all costs, charges and expenses reasonably incurred for defending any such claim, action or proceedings

The Schedule of the property sold

IN WITNESS WHEREOF, etc.

Signed, sealed and delivered

AB

Indemnity Bond in favour of Bank or Limited Company

KNOW ALL MEN by these presents we, AB of, etc., (PRINCIPAL DEBTOR), and CD of, etc. (SURETY), are hereby held and firmly bind ourselves unto bank, a company etc., in the sum of Rs. of lawful good money for which payment to be truly and faithfully made, we bind ourselves as well as our respective heirs, executors, administrators and representatives.

Sealed with our seal this day of 2000.

WHEREAS one EF since deceased had at the time of his death which occurred on the day of 2000 the following accounts with the said bank (or, etc.), namely, etc.: AND WHEREAS the said AB claims the proceeds of the said accounts as the sole heir of the said late EF and further represented that inasmuch as the deceased had died intestate, no representation to the estate was necessary and, as such, the same has not been taken out. AND WHEREAS the bank has agreed to pay the proceeds of the said accounts to the said AB aggregating to Rs. on his furnishing security with one surety in terms hereunder contained. Now the condition of the above-written bond or obligation is such that in the event of any claim being at any time hereafter made to the proceeds of the said accounts by any other person or persons if the said AB and CD shall forthwith pay or cause to be paid to the bank the said sum of Rs. with interest at 18% per annum and further pay for all losses, damages, costs, charges and expenses which the bank may reasonably incur or suffer and/or otherwise indemnify and keep indemnified the bank, its officers and agents in all other respects on account therefor, then and in such an event the above-written bond or obligation shall be void, otherwise the same shall remain in full force and virtue.

IN WITNESS, etc.

Signed, sealed and delivered

AB

CD

Bottomry Bond⁶

BY THIS BOND, I, AB of, etc., Master of the ship, etc., of the port of, etc., official number, am held and firmly bound to CD of, etc., in the sum of Rupees, for which payment will and truly to be made to the said CD, his heirs, executors, administrators and assign, I hereby bind myself, my heirs, executors and administrators firmly by these presents.

AND for further security of the said CD, I, the said AB, do by these presents pledge the said ship and her freight, together with her tackle and apparel

6 Now obsolete in practice. See Halsbury's *Laws of England*, 4th Ed., vol. 43, p. 138.

(*if necessary, add*—and also the cargo now on board the said ship); AND IT IS HEREBY DECLARED that the said ship and her freight (and cargo) are thus pledged for the security of the money advanced to me, and shall not be pledged or mortgaged to any other person until payment of this bond is first made, with the interest that may become due thereon. Sealed with my seal at, this day of

WHEREAS the above-named ship having been compelled to put into the port, of, etc., for repairs and necessaries AND WHEREAS the owners of the said ship and her freight, and the shippers and consignees of the cargo on board of her, having refused to provide the money required to pay for the said repairs and necessaries, the above-bound AB has been compelled to borrow at bottomry and has received from the said CD the sum of Rs., which sum is to run at bottomry on the hull and freight of the said ship from the port of, etc., on a voyage to the port of, etc., (*if necessary add*—having permission to touch, stay at and proceed to all ports and places within the limits of the voyage), at the rate of per cent. for the voyage: Now THE CONDITION of this bond is such that, if the above-bound AB, his heirs, executors or administrators shall pay or cause to be paid to the said CD, his heirs, executors, administrators or assign, the sum of Rs. being the principal of the bond, together with the interest which shall become due thereon, within 30 days after the safe arrival of the ship at her place of discharge in the port of, etc., or in case the said ship be lost during the said voyage THEN and in such an event this obligation and pledge shall be void and of no effect, otherwise it is to remain in full force and effect.

Three bonds of the same tenor and date have been signed, the one of which being accomplished, the others to be void and of no effect.

Signed, sealed and delivered
at in
the presence of:

Signature of the Master