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## Patents and Trade Marks

The Patents Act 1970 amended and consolidated the law relating to Patents. 'Patent' means a Patent or exclusive right granted by the Government. Certain methods or processes of manufacture are patentable. Certain inventions have been made not patentable. A person claiming to be the true and first inventor may make an application for a Patent. An Assignee of the original inventor may also make an application for a Patent in respect of his rights. This application is to be made to the Controller of Patents and/or the appropriate Authority in the prescribed form.

A mere inventor of a process of manufacturing does not give the inventor any right for its exclusive use. He has to apply to the Government for grant of a Patent Right in respect of his specialised article or to his specialised process of manufacturing an article. Such article or process must have the utility, novelty and productivity. Whether the specialised article or process of manufacturing an article is patentable or not will be decided by the Controller of Patents or the Government on the application of the inventor and after hearing objections thereto of any member of the public or interested persons.

A Patent confers on the Owner of Patents (Patentee) the exclusive right to make, use, sale or distribute the patented article in India. If the Patent relates to a process of manufacturing then the Patentee shall have the exclusive right to the method or process of manufacturing the article or substance in India. An amendment introduced in 1999, effective from 1st January 1995, has the object of granting products patents in respect of medicine and drug and exclusive marketing rights to sell or distribute such products with certain restriction.

A Patent may be granted to two or more persons jointly. It is granted generally for 14 years. If the patent relates to manufacture of food or an article intended or capable of being used as food or medicine or drug, then the Patent is granted for 5 years. Such patent for a limited period is renewable.

A Patent or a share in Patent can be assigned or mortgaged or can be given on licence. Such transfer of interest in the Patent must be in writing containing the terms and conditions and it should be filed in the Office of the Patents for registration within 6 months or within further 6 months if permitted by the Controller. Normally the transferee makes an application in the prescribed form.

The Agreement of Assignment or transfer of the Patents should not contain monopolistic reservation of rights or imposition of obligations. Any such monopolistic reservation of rights or imposition of obligations either in the same contract of assignment or in a separate contract contrary to the provisions of the Patents Act shall be void. The Patentee on grant of the Patent has the exclusive right to manufacture or sale the patented article to the exclusion of all others and any infringement of this right is actionable. The Patentee can restrain such wrongful infringement and can also claim damages against the wrongdoer.

The Agreement relating to the transfer or assignment or licensing of the Patents or any rights therein attracts the Stamp Duty and it is required to be registered with the Patents Office. The Registration Act of 1908 is not generally attracted to such agreements.

## FORMS

### Agreement to Assign a Patent

THIS AGREEMENT IS MADE on this 10th day of September 2000 BETWEEN Mr. AB residing at ..... (hereinafter referred to as the ASSIGNOR which term shall include his successors and assigns) of the one part and CD Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the ASSIGNEE which term shall include its successor and permitted assigns) of the other part.

WHEREAS the ASSIGNOR has invented a specialised process of manufacturing Pocket Airconditioner and on his application sanction has been given for the Patent to be registered as "PAC" under the Patents Act 1970.

AND WHEREAS the said patented process of manufacture of article require investment of Capital for its exploitation and marketing.

AND WHEREAS the ASSIGNEE has approached the ASSIGNOR for exploitation and marketing of the patented article and to invest the requisite capital for that purpose.

AND WHEREAS the ASSIGNOR has agreed to allow the ASSIGNEE to exploit the patented manufacturing process of the article.

NOW THIS AGREEMENT WITNESSETH and the parties hereby agree as follows:

1. The ASSIGNOR agrees to transfer and assign to the ASSIGNEE all the rights, title and interest of ASSIGNOR in the said Patent and the ASSIGNEE has agreed thereto.

2. In consideration of the said agreement to assign the right, title and interest of the ASSIGNOR in the said Patent, the ASSIGNEE agrees to pay to the ASSIGNOR Rs. 10 lakhs out of which Rs. 2 lakhs has been paid by the ASSIGNEE by way of Earnest Money receipt of which is acknowledged hereby and the Assignee agrees to pay the balance amount on or before execution of the Deed of Assignment.

3. The Deed of Assignment will be executed after the ASSIGNEE exploits the market and finds out the prospect of successfully marketing the patented article but if the Deed of Assignment be not executed within 6 years from the date of execution of these presents then the agreement to execute the Deed of Assignment will stand terminated.

4. Till the execution of the Deed of Assignment of the Patent or termination of these Presents the ASSIGNEE will be at liberty to exploit and use the patent and/or patented manufacturing process and article and sell the patented article and for sale of each article the patentee shall pay a royalty of Rs. 95 per article to the ASSIGNOR. Such payment should be made every six months commencing from June 2000 and thereafter by the last day of every 6th month.

5. The ASSIGNEE shall not be entitled to sub-assign or give licence for manufacture or sale of the patented article.

6. The ASSIGNEE shall maintain proper books of accounts in respect of manufacture and sale of the patented article and such record should be made available to the ASSIGNOR and his representative for inspection and to take copies thereof.

7. The ASSIGNEE shall not do anything which may result in cancellation of the registration of the Patent.

8. The ASSIGNEE shall exploit the Patent by manufacturing and selling the patented article to the full extent and would invest the requisite capital required for full exploitation of and use of the patented article.

9. The ASSIGNOR shall maintain registration of patents by getting it renewed from time to time. But he does not warranty or guarantee the continued validity or registration of the said patent or that the manufacture or sale of the patented article will not infringe any other patent or other rights of other persons.

10. The ASSIGNOR however agrees that in any action taken by the ASSIGNEE or against the assignee the ASSIGNOR will assist the ASSIGNEE in protecting

his right, title or interest in relation to the manufacture and sale of the patented article.

11. All disputes and differences arising between the parties herein in relation to the meaning, scope and effect or validity of this Agreement or the right, title or interest of the parties herein and matters in relation to or arising out of this Agreement shall be referred to the arbitration of the Bengal Chamber of Commerce whose decision shall be final and binding on the parties.

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

Signed and delivered by the said Mr. AB the ASSIGNOR in presence of:

- 1. .... Signature
- 2. ....

Signed, sealed and delivered by Mr. XY pursuant to Board Resolution dated ..... of CD Co. Ltd. in the presence of:

- 1. .... Signature
- 2. ....

**Agreement of Assignment of Patents**

THIS AGREEMENT IS MADE on this 5th day of September 2000 BETWEEN Mr. AB residing at ..... (hereinafter referred to as the ASSIGNOR which term shall include his successors and assigns) of the one part and CD Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the ASSIGNEE which term shall include its successors and assigns) of the other part.

WHEREAS the ASSIGNOR is the owner of Patent 'PAC' for manufacture and sale of Pocket Airconditioner and the said Patent was registered and continues to be registered under the Patents Act 1970.

AND WHEREAS the ASSIGNOR has been exploiting and using the said Patent under an agreement to assign dated 10th September 1999 providing for ultimate assignment of the said Patent in favour of the ASSIGNEE.

AND WHEREAS the ASSIGNEE has duly performed its obligations under the said Agreement to assign the patent and has requested the ASSIGNOR to execute the Deed of Assignment of the Patent to which the ASSIGNOR has agreed.

NOW THIS DEED OF assignment witnesseth and the parties herein agree as follows:

1. In consideration of payment of Rs. 20 lakhs by the ASSIGNEE to the ASSIGNOR receipt whereof is acknowledged hereto, the ASSIGNOR transfers and assigns all rights, title and interest in the said Patent 'PAC' in favour of the ASSIGNEE.

2. The ASSIGNEE has satisfied itself by making enquiries and taking inspection of the relevant documents that the ASSIGNOR has the right and authority to assign the said Patent and the said Patent is still valid and continues to be registered.

3. The ASSIGNEE has satisfied itself that the Patent is free from all encumbrances and claims of any kind.

4. The ASSIGNEE shall be entitled to as the holder and owner of the said Patent to use the said Patent in any manner permissible under law peaceably without any interruption or objections from or on behalf of the ASSIGNOR.

5. The ASSIGNOR agrees to execute any further documents or Deeds as may be required for further and more perfectly assigning the ownership and use of the said Patent by the ASSIGNEE.

6. The ASSIGNEE hereby declares and agrees that by execution of these presents the ASSIGNOR will have no liability in respect of any claims proceedings, costs and expenses and that the ASSIGNEE undertakes to keep the ASSIGNOR fully indemnified against and harmless from all such actions, claims, proceedings, costs and expenses in relation to the said Patent, assigned herein or manufacture and sale of the said product or use of the Patent or in relation to the same.

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

Signed and delivered by the said Mr. AB, the ASSIGNOR in the presence of:

- 1. ....
2. ....

Signature

Signed, sealed and delivered by Mr. .... pursuant to a Board Resolution dated ..... of CD Co. Ltd. the ASSIGNEE in the presence of:

- 1. ....
2. ....

Signature

### Licence to Use a Patent

THIS AGREEMENT IS MADE on this 20th day of January 2000 BETWEEN Mr. AB residing at ..... (hereinafter referred to as the LICENSOR which term shall include his successors and assigns) of the one part and CD Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at ..... (hereinafter referred to as the LICENSEE which term shall include its successors and permitted assigns) of the other part.

WHEREAS the LICENSOR has invented a specialised process of manufacturing Pocket Air-conditioners and on his application sanction has been given for Patent to be registered as 'PAC' under the Patents Act 1970.

AND WHEREAS the LICENSOR has been granted the said Patent for the process of manufacture of the said article and sale thereof under the Brand name 'PAC'.

AND WHEREAS the LICENSEE has approached the LICENSOR for exploitation and marketing of the said Patent under a Licence from the LICENSOR.

AND WHEREAS the LICENSOR has agreed to permit the LICENSEE to use the said Patent.

NOW THIS AGREEMENT WITNESSETH and the parties hereby agree as follows:

1. In consideration of the LICENSEE agreeing to pay a licence fee of Rs. 2 lakhs per year the LICENSOR hereby grants the LICENSEE permission or a licence to use the specialised manufacturing process or manufacturing the Pocket Air-conditioners to market and sell such air-conditioners under the Patent name 'PAC'.

2. The licence hereby granted will be valid for 10 years after which the Licence would be renewed or not would be decided by mutual agreement.

3. In addition to the said licence fee the LICENSEE shall pay to the LICENSOR a Royalty of Rs. 100 for each PAC sold. The LICENSEE shall maintain and furnish regular accounts of the manufacture and sale of the said Patented article. Such accounts would be open to inspection through representative of the LICENSOR.

4. The LICENSEE shall not assign the licence or allow anybody else to use the said Patent.

5. The LICENSEE shall take immediate action for any infringement of the said Patent making the LICENSOR a party to the such proceedings.

6. The LICENSEE shall keep the LICENSOR fully indemnified against and harmless from all proceedings, claims, costs and expenses in relation to the manufacture and sale or use of the said Patented article or in relation thereto.

7. The LICENSEE has made enquiries and inspected the relevant documents and has satisfied itself about the right, title or interest of the LICENSOR in the said Patent.

8. The LICENSOR does not give any warranty or undertaking about its right, title or interest in the said Patent or about any litigation in relation thereto.

9. The LICENSEE shall submit accounts and make payment of the Royalties, the first of such statement of accounts and payment of Royalty would be by end of April 2000 and thereafter by the end of each third month.

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

Signed and delivered by the said Mr. AB, the LICENSOR in the presence of:

- 1. ....
- 2. ....

Signature

Signed, sealed and delivered by Mr. XY pursuant to a Board Resolution dated ..... of CD Co. Ltd. the LICENSEE in the presence of:

- 1. ....
- 2. ....

Signature

Assignment of Design

THIS DEED OF ASSIGNMENT is made at ..... this 30th day of September 2000 BETWEEN Mr. AB residing at ..... (hereinafter referred to as the ASSIGNOR) of the one part and CD Company Pvt. Ltd., a company registered under the Companies Act 1956 and having its Registered Office at ..... (hereinafter referred to as the ASSIGNEE) of the other part.

WHEREAS the ASSIGNOR has invented and made a new design of a Computer and the same has been registered under the Designs Act 1911 being No. 1140 in the name of the ASSIGNOR as the Proprietor thereof and the particulars whereof with a photocopy of the Design are given in the Schedule hereunder.

AND WHEREAS the ASSIGNEE has approached the ASSIGNOR for the use of the said Design for manufacturing computers and has requested the ASSIGNOR to assign the said Design to the ASSIGNEE to enable it to manufacture the Computers of the said Design and the ASSIGNOR has agreed to assign the said Design to the ASSIGNEE.

NOW THESE PRESENTS WITNESSETH and the parties hereby agrees as follows:

1. In consideration of the ASSIGNEE making payment of Rs. 5 lakhs to the ASSIGNOR on the execution of these presents the receipt whereof the ASSIGNOR hereby admits the ASSIGNOR doth hereby assign unto the ASSIGNEE all the Assignor's right, title and interest in the said Registered Design to hold the same unto and to the use of ASSIGNEE absolutely for the validity period of the said design including extensions thereof.

2. The ASSIGNOR hereby covenants with the ASSIGNEE that the ASSIGNOR shall whenever requested by the ASSIGNEE execute all documents and do all acts and things as may be required by the ASSIGNEE.

3. The ASSIGNOR hereby declares that he is the sole proprietor of the said Design and he has the absolute right, title and interest therein to assign the same in favour of the ASSIGNEE.

4. The ASSIGNOR hereby declares that he has not encumbered the said Design in any manner and has not given any Licence to anybody to use the same.

5. The ASSIGNOR hereby agrees and undertakes to execute all and further documents that may be required to vest in the ASSIGNEE more completely the right, title and interest of the ASSIGNOR in the said Design and to transfer the name of the ASSIGNEE in the register maintained by the Controller under the Designs Act 1911 and also register the said Design in any country where such rights subsist.

6. The ASSIGNOR agrees and undertakes to render all assistance to the ASSIGNEE to prevent infringement of the Design by anybody.

7. The ASSIGNEE undertakes to keep the ASSIGNOR fully indemnified against and harmless from all claims, proceedings, costs, charges and expenses in relation to the use of the Design, the execution of any documents or any proceedings before any Court of Law or authority or Arbitrator or Tribunal.

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

Signed and delivered by Mr. AB  
in the presence of:

1. ....
2. ....

Signature



Signed, sealed and delivered by Mr. XY pursuant to a Board Resolution dated 28th September 2000 of CD Company Pvt. Ltd. in the presence of:

- 1. ....
- 2. ....

Signature

**Licence to use Trade Mark**

THIS DEED OF LICENCE IS MADE on this 11th day of November 2000 BETWEEN RP Co. Ltd., a company registered under the appropriate laws of the USA and carrying on business at San Francisco, USA, hereinafter called the LICENSOR (which term shall unless excluded by or repugnant to the context include its successors and assigns) of the one part and AB Co. Ltd. a company registered under the Companies Act 1956 and carrying on business at ..... hereinafter referred to as the LICENSEE (which term shall unless excluded by or repugnant to the context include its permitted nominees) of the other part.

WHEREAS the LICENSOR is the manufacturer of and dealer in Computers for office purposes and hold the registered Trade Mark COMOF being Trade Mark No. 5 in Class No. I in respect of Computers for office purposes.

AND WHEREAS the LICENSOR intends to expand its business and sell its products under its Trade Mark in India and Eastern Asia.

AND WHEREAS the LICENSEE in India has a manufacturing Unit to manufacture Computers.

AND WHEREAS the LICENSEE has approached the LICENSOR to grant licence to use the Licensor's Trade Mark COMOF for sale of the products manufactured by the LICENSEE.

AND WHEREAS the LICENSOR has agreed to allow the LICENSEE to use its said Trade Mark COMOF to sell the Licensee's products on certain terms and conditions.

NOW THEREFORE THESE PRESENTS witnesseth and the parties hereby agree as follows:

1. The LICENSOR hereby doth grant to the LICENSEE non-exclusive right to use the Licensor's Trade Mark COMOF in India and Eastern Asia for sale of its computers, components and parts under the Trade Name COMOF.

2. The use of the Trade Mark by the LICENSEE shall be confined only to the items that might be manufactured by the LICENSEE at its own factory.

3. The LICENSEE shall pay half-yearly to the LICENSOR licence fee at the rate of 10% on the turnover of business of the LICENSEE and such payment to be made by 30th June and 31st December every year.

4. The LICENSEE shall comply with the requirements and provisions of all laws rules and regulations in relation to manufacture and sale of computers and its components under the said Trade Mark of the LICENSOR.

5. The LICENSEE shall manufacture and sell computers under the said Trade Mark COMOF in accordance with the specifications, make-up, brand and packing that the LICENSOR may from time to time intimate to the LICENSEE.

6. The LICENSOR shall have access to the manufacturing unit of the Licensee and to inspect the Licensee's books of accounts and other records at all reasonable times on giving prior notice.

7. The LICENSEE agrees, declares and covenants not to use the said Trade Mark or advertise or publish in newspapers and journals or in labels or in any other documents or packages or do anything having the effect of diluting the distinctiveness of the trade mark of the LICENSOR and the LICENSEE shall give indications either visually or phonetically to the purchasing public that the LICENSEE is using the Trade Mark COMOF as the LICENSEE of the LICENSOR.

8. The LICENSEE undertakes to compensate the LICENSOR and keep the LICENSOR harmless from and indemnified against all claims, proceedings, losses, costs and expenses for any wilful or negligent conduct of the LICENSEE in relation to the use of the Trade Mark of the LICENSOR.

9. The LICENSEE shall not acquire any right of registration of the Trade Mark by virtue of the LICENSEE manufacturing and selling computers as user of the Trade Mark COMOF for any number of years or after termination of the licence or otherwise.

10. The LICENSEE shall inform the LICENSOR any infringement of the Licensor's Trade Mark COMOF with particulars of the infringement or passing off and the names and addresses of the offenders.

11. The LICENSOR shall take and/or permit the LICENSEE to take all possible legal steps for the protection and preservation of the Trade Mark and prevention of its infringement or passing off by any person.

12. This agreement is terminable by giving 3 months notice from either side.

13. In any legal proceedings or in any action against the infringement or passing off in relation to the Trade Mark of the goods covered by the Licence the LICENSEE will take appropriate steps to protect the interests of the LICENSOR and allow the LICENSOR to take any legal action or steps and to join the LICENSEE as a party therein.

The Schedule

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

Signed, sealed and delivered by Mr. .... the Constituted Attorney of RP Co. Ltd. in the presence of:

- 1. .... Signature
2. ....

Signed, sealed and delivered by Mr. .... pursuant to a Board Resolution dated ..... of AB Co. Ltd. in the presence of:

- 1. .... Signature
2. ....

Agreement of Registered User of Trade Mark

THIS AGREEMENT IS MADE on this 5th day of October 2000 BETWEEN RP Co. Ltd., a company registered under the appropriate laws of the U.S.A. and carrying on business at San Francisco, U.S.A. hereinafter called the REGISTERED PROPRIETOR (which term shall include unless excluded by or repugnant to the context its successors and assigns) of the one part and AB Co. Ltd., a company registered under the Companies Act 1956 and carrying on business at ..... hereinafter referred to as the USER (which term shall include unless excluded by or repugnant to the context its permitted nominees) of the other part.

WHEREAS the REGISTERED PROPRIETOR is the manufacturer of and dealer in Computers for office purposes and holds the registered Trade Mark COMOF No. 5 in Class No. I in respect of Computers for office purposes.

AND WHEREAS the REGISTERED PROPRIETOR intends to expand its business and sell its products or similar products under its Trade Name in India and Eastern Asia.

AND WHEREAS the USER in India has a manufacturing unit for manufacture Computers.

AND WHEREAS the USER has approached the REGISTERED PROPRIETOR to sell its products using the registered proprietor's said Trade Mark.

AND WHEREAS the REGISTERED PROPRIETOR has agreed to allow the USER to sell its products under the Trade Mark as the REGISTERED PROPRIETOR on certain terms and conditions:

NOW THEREFORE THESE PRESENTS witnesseth and the parties hereby agree as follows:

1. The REGISTERED PROPRIETOR hereby doth grant to the USER the non-exclusive right to use the said Registered Proprietor's Trade Mark COMOF in respect of the USER's computers for office purposes.

2. The USER shall pay to the REGISTERED PROPRIETOR a Royalty at 10% of the sale price of each computer and parts and components thereof.

3. The said royalty will be paid every six months on the basis of total sales effected irrespective of the collection of bills or receipt of payment for the said sale of computers by the USER.

4. In default of payment of any two half-yearly payments the REGISTERED PROPRIETOR would be entitled to terminate this agreement.

5. The USER shall manufacture and sell the computers in accordance with the specifications, make-up, brand and packing requirement of the REGISTERED PROPRIETOR.

6. The REGISTERED PROPRIETOR shall have access to the manufacturing unit of the USER and to inspect the USER's books of accounts and records at all reasonable times on giving prior notice.

7. The USER agrees, declares and covenants not to use the said mark or advertise or publish in journals, labels or on any other documents or on packings anything having the effect of diluting the distinctiveness of the Trade Mark of the REGISTERED PROPRIETOR and to give indications either visually or phonetically to the purchasing public that the USER is using the Mark on the licence of the REGISTERED PROPRIETOR.

8. The USER will make an application to the Registrar of Trade Marks for recording the present agreement and the fact that the USER has been permitted to use the said Trade Mark of the REGISTERED PROPRIETOR in India.

9. The USER shall inform the REGISTERED PROPRIETOR about any infringement of the said Trade Mark and take appropriate legal proceedings to protect the interest of the REGISTERED PROPRIETOR and all costs in relation thereto shall be borne by the USER.

10. The USER shall use the said Trade Mark so long as it manufactures computers itself in accordance with the terms and specifications of the REGISTERED PROPRIETOR.

11. This agreement is determinable by giving 3 months notice by the REGISTERED PROPRIETOR or by the USER by showing any valid grounds therefor.

12. The USER hereby undertakes to make necessary application and comply with the rules and regulations in relation to the User Agreement as also in connection with the manufacture and sale of computers for office purposes under the said Trade Mark.

*The Schedule*

(Particulars of goods covered by Trade Mark)

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

Signed, sealed and delivered by  
Mr. .... at Calcutta  
pursuant to Board Resolution  
dated ..... of RP Co. Ltd. in  
the presence of:

- 1. ....
- 2. ....

Signature

Signed, sealed and delivered by  
Mr. .... at Calcutta  
pursuant to Board Resolution  
dated ..... of AB Co. Ltd. in  
the presence of:

- 1. ....
- 2. ....

Signature

**Affidavit of Constituted Attorney of Registered Proprietor**

In the Matter of The Trade and  
Merchandise Marks Act 1958

And

In the Matter of an application to register  
AB Co. Ltd. as the Registered User of the  
Registered Trade Mark No. 5 in Class 1  
now standing in the name of RP Co. Ltd.

*Affidavit*

I, ....., aged..... years, son of..... residing at..... by  
occupation service do hereby solemnly affirm and say as follows:

1. I am a citizen of India. I am a Director of RP Co. Ltd. having its registered office in San Francisco, U.S.A. hereinafter referred to as the REGISTERED PROPRIETOR of Trade Mark COMOF and I have been serving with the REGISTERED PROPRIETOR for the last several years.

2. The said Trade Mark COMOF has been registered having Trade Mark No. 5 Class 1. The said Trade Mark is registered in India since the last 5 years.

3. AB Co. Ltd. is registered under the Companies Act 1956 in India and it has been manufacturing computers for office purpose. For mutual advantage it has been agreed between the parties that AB Co. Ltd. will manufacture computers in accordance with specifications of the REGISTERED PROPRIETOR and sell the same on certain terms and conditions.

4. An agreement has been entered into between the REGISTERED PROPRIETOR and AB Co. Ltd. on ..... to use the Registered Trade Mark COMOF in respect of all computers to be manufactured and sold by AB Co. Ltd. By such agreement, AB Co. Ltd. has been given a non-exclusive right to use the Trade Mark COMOF without any limitation of period subject to termination of the agreement on prior 3 months' notice from either side.

5. The REGISTERED PROPRIETOR is carrying on business as the manufacturer of and dealer in Computers for office purpose for the last ten years and for expansion of business AB Co. Ltd. has been formed as a subsidiary of the REGISTERED PROPRIETOR.

6. The REGISTERED PROPRIETOR has not entered into any agreement or allowed the use of the said Registered Trade Mark to any person prior to the present agreement. The REGISTERED PROPRIETOR acquired the ownership or proprietorship of the said Trade Mark COMOF by use and registration and not by any other means.

7. The REGISTERED PROPRIETOR will exercise control over the use of Trade Mark by AB Co. Ltd., and keep a check as to the compliance by the latter of the terms and conditions of the said user agreement. The annual expenses likely to be incurred by the REGISTERED PROPRIETOR for such supervision and control cannot be reasonably estimated.

8. The permitted use of the said Trade Mark by AB Co. Ltd. is intended for sale of Computers in India and for export to other countries.

9. I know and I have made myself acquainted with the business activities of the REGISTERED PROPRIETOR and also of AB Co. Ltd. I have read and understood the contents of the User Agreement between the Registered User and AB Co. Ltd. The statements contained in the said agreement are true and correct and the same are incorporated herein as a part of this affidavit.

10. The statements contained in paragraphs 1 to 9 are partly on personal knowledge and partly based on information derived from records maintained by the REGISTERED PROPRIETOR which I believe to be true.

Signature

Solemnly affirmed by the said  
Mr. ...., pursuant to the  
Power of Attorney dated .....  
executed by RP Co. Ltd., at  
Calcutta on this ..... day of  
October 1999.

Before me

Notary

### Application for Registration of User of Trade Mark

To  
The Registrar of Trade Marks  
15/1 Chowringhee Road  
Calcutta 700 071

Date .....

Dear Sir

Re: Trade and Merchandise Act 1958 (S. 49, R. 82)  
Application for Registration of Registered User.

An application is hereby made by RP Co. Ltd., an American Company, the Registered Proprietor of Trade Mark COMOF Trade Mark No. 5 Class I in respect of Computers for office use and by AB Co. Ltd.

The AB Co. Ltd. the Indian company may be registered as the Registered User of the above-named Trade Mark in respect of computers for office use subject to the following conditions but without a time-limit.

- (a) The Registered User will manufacture computers in its factory in accordance with the specifications to be supplied by the REGISTERED PROPRIETOR;
- (b) The REGISTERED PROPRIETOR will have the right to inspect the factory premises, office premises, books of accounts and other records of AB Co. Ltd.;
- (c) The technical knowhow, designs, data and other particulars that will be furnished by the Registered Proprietor shall be subject to periodical review;

- (d) The Registered User agreement is without any limitation of period but subject to the terms and conditions contained in the agreement.
- (e) Copies of the Registered User Agreement and affidavit of the Constituted Attorney of the Registered Proprietor are annexed hereto.

Yours faithfully

Signature of the authorised  
Officer of Registered User  
AB Co. Ltd. at .....

Signature of the Power of Attor-  
ney Holder of the Registered  
Proprietor RP Co. Ltd. residing  
at .....

ENCLO: As above

### Assignment of Trade Mark

THIS DEED OF ASSIGNMENT IS MADE on this ..... day of ..... 1999 BETWEEN RP Co. Ltd., a company registered under the appropriate laws of the U.S.A. and carrying on business at San Francisco, U.S.A. hereinafter called the ASSIGNOR (which term shall include unless excluded by or repugnant to the context its successors) of the one part and AB Co. Ltd. a company registered under the Companies Act 1956 hereinafter referred to as the ASSIGNEE (which term shall include unless excluded by or repugnant to the context its successors and assigns) of the other part.

WHEREAS the ASSIGNOR is manufacturer of and dealer in Computers for office purposes and holds the Registered Trade Mark COMOF, Trade Mark No. 5 in Class I in respect of the Computers for office purposes.

AND WHEREAS the ASSIGNOR intends to assign its Trade Mark COMOF in respect of the computer products.

And WHEREAS the ASSIGNEE has agreed to take an assignment of the said Trade Mark COMOF on certain terms and conditions to which the Assignor has agreed.

NOW THEREFORE THESE PRESENTS witnesseth and the parties hereby agree as follows:

1. The ASSIGNOR hereby doth assign its Trade Mark COMOF to the ASSIGNEE together with the goodwill of business in the goods for which the said Trade Mark is registered.
2. The ASSIGNEE to hold the said Trade Mark absolutely.
3. In consideration of such assignment the ASSIGNEE shall pay to the ASSIGNOR a sum of Rs. .... of which a sum of Rs. .... has already been



paid by the ASSIGNEE receipt whereof is herein acknowledged by the ASSIGNOR. The balance sum of Rs. .... shall be paid to the ASSIGNOR by six half-yearly instalments payable by the 30th June and 31st December every year, in equal proportion.

4. The assignee hereby declares and undertakes to keep the Assignor fully indemnified against and harmless from any claims, proceedings, losses, damages and expenses that may be incurred by ASSIGNOR in relation to the said assigned Trade Mark COMOF.

5. The ASSIGNEE declares and undertakes that it shall take all necessary steps to comply with all provisions of law, rules and regulations, in relation to the said Trade Mark COMOF.

*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  
Mr. .... the Constituted  
Attorney of the RP Co. Ltd.  
in presence of:

Signature

Signed, sealed and delivered by  
Mr. .... pursuant to a  
Board Resolution dated..... of  
AB Co. Ltd. in the presence of:

Signature

**Notice regarding Infringement  
and/or Passing off the Trade Mark**

Date .....

To  
XY Co. Ltd.  
3 White Road  
Calcutta

Dear Sirs

Our Client: RP Co. Ltd., USA

Re: Infringement of Trade Mark COMOF.

Under instructions from our above client we address you as follows:

Our client carries on business as manufacturer of and dealer in Computers for office purposes under the Trade Mark COMOF No. 5 in Class I for Computers and its components.

The said Trade Mark COMOF has been advertised in the Newspapers and particularly in the Trade Marks Journal Issue No. 5 dated 5th July 1991.

Our client has been using the said Trade Mark COMOF since 1991 which has acquired a distinctive feature in respect of the goods of our client by such continued and extensive use of the said Trade Mark and advertisements thereof. The high standard of the performance of the Computers COMOF has come to be exclusively associated in the minds of the public with our client's goods. Our client is an established manufacturer of and dealer in computers for office purposes.

It has come to our client's knowledge that you have been manufacturing and selling computers for office use under a Mark COMFO. The get-up, packing and mark of your computers are deceptively similar to that of the our client's computers, both in look and phonetically.

You were aware of our client's said COMOF computers for office purposes at the time of your initial business enquiries, market research and setting up of your factory and marketing the products. In spite of such knowledge of our client's products and Trade Mark the manufacturing and marketing of your computers with the Mark COMFO have been with the *mala fide* intention to trade over our client's goodwill and reputation which our client has built up by spending huge amounts apart from expenditure for the research and development of our client's computers.

Your product under the Mark COMFO in the market and our client's Trade Mark COMOF have given rise to confusion and deception in the public mind and specially the intended user of the computers.

By your wrongful use of the Mark COMFO for marketing the computers for office use knowing fully well our client's established Trade Mark COMOF for computers for office use, you have made yourself liable to legal proceedings both Civil and Criminal under the Trade and Merchandise Marks Act 1958.

In the premises, we call upon you to cease and desist forthwith from using the Mark COMFO and agree in writing to destroy all your dies, blocks, labels and cartons and printed or packing materials and give an undertaking to our client's satisfaction.

If we do not hear from you within a period of two weeks from the date of receipt of this notice we have instructions to take appropriate legal proceedings against you without further notice and in that event you will be held solely responsible for all costs and consequences thereof.

Yours faithfully  
Advocate  
for RP Co. Ltd.

## Trade Mark – Passing Off Suit

Suit No. .... of .....  
In the High Court at Calcutta  
Ordinary Original Civil Jurisdiction

XY Company Ltd., a company registered  
under the Companies Act 1956 having its  
registered office at ..... Calcutta  
within the said jurisdiction

..... Plaintiff

*versus*

MB Company Limited, a company  
registered under the Companies Act 1956  
and carrying on business at .....  
Mumbai outside the said jurisdiction

..... Defendant

The plaintiff states:

1. The plaintiff carries on business as the manufacturer of and dealer in Electronic goods in Calcutta. The plaintiff has agents in various places in India for sale of its products. The plaintiff's products have acquired good reputation and its products have distinctive features on the shape, size, layout marking as also the packaging.
2. The plaintiff uses its Trade Mark XY on all its products. The sale of the plaintiff's products are quite substantial both in India and abroad.
3. The plaintiff has advertised its products under its said Mark extensively since the last six years and spent a minimum sum of Rs. 6 lakhs on account thereof.
4. By reason of such extensive advertisement and sale of the products, the public associated the said mark XY to the plaintiff and with the plaintiff's products. As such the plaintiff enjoys good reputation abroad and throughout India including Calcutta within the jurisdiction of this Hon'ble Court.
5. The goods of the plaintiff are manufactured in Calcutta and sold in domestic market and exported abroad. Particulars of the sales for the last 5 years are given in a Schedule annexed hereto marked 'A'. Copies of some newspaper cuttings of advertisements are annexed hereto collectively marked 'B'. Particulars of advertisement costs yearwise are given in a Schedule annexed hereto marked 'C'.

6. The plaintiff complied with all the necessary formalities and provisions of law for the registration of its products under the Trade Mark XY. The plaintiff's Trade Mark XY was registered with the Registrar of Trade Marks, Chowringhee Road, Calcutta being Trade Mark No. 1 in Class I in respect of the electronic goods and computers both hardware and software. The Office of the Registrar of Trade Marks, the Register concerned and the Record Containing registration of the plaintiff's said products are all within the jurisdiction of this Hon'ble Court. Certified copies of the application as also of the Certificate of Registration are annexed hereto collectively marked 'D'.

7. The said mark XY became very popular among the purchasers of the plaintiff's products and the Mark XY became very much associated with the plaintiff's products.

8. On or about 10th September 1999 it was brought to the plaintiff's knowledge by the Trade Marks Registry, Calcutta that the respondent has applied for registration of the alleged Trade Mark XZ for similar goods as that of the plaintiff. A copy of the Letter of Registrar of Trade Marks, Calcutta is annexed hereto marked 'E' informing the plaintiff of the said application of the defendant.

9. The defendant has been wrongfully selling the electronic goods and computers software and hardware through its sale outlets in Calcutta with the said Trade Mark XZ within the jurisdiction of this Hon'ble Court. Copies of certain cash memos showing the dealer's name, address, articles and the Trade Mark used thereon are annexed hereto collectively marked 'F'.

10. The plaintiff states that the sale of the said products by the defendant under the Trade Mark XZ has amounted to passing off of the plaintiff's goods as the goods of similar description under a deceptively similar Mark. The defendant has therefore infringed the plaintiff's said Trade Mark inasmuch as the articles marked XZ is deceptively similar to that of the plaintiff's Trade Mark XY and the goods are similar and of the same description.

11. The defendant's Trade Mark has been so much similar to the plaintiff's Trade Mark that the defendant has been passing off its goods as those of the plaintiff's goods and/or the defendant is enabling the others to do so and thus the defendant is deriving the ultimate benefit out of the reputation and goodwill of the plaintiff which the plaintiff was enjoying during the last several years. Such goodwill and reputation were created at a huge cost of the plaintiff.

12. The plaintiff states that the conduct of the defendant in respect of sale and advertisement of its products has been fraudulent and deceptive in nature inasmuch as the same are calculated to deceive the purchasers of the plaintiff's goods into believing that the products of the defendant are very much similar to and very much connected with the plaintiff. Thus the

public have been made to wonder about the source or origin of the products which are very much the same and/or of similar description.

13. The defendant is by reason of such sales and advertisements causing great loss and injury to the public and to the plaintiff. The plaintiff has suffered and is still suffering and will continue to suffer substantial loss and injury if the defendant continues with its wrongful acts. Until full discovery is made about the sales of the products of the defendant the plaintiff is unable to quantify the total amount of financial loss suffered by it and is likely to be suffered by the plaintiff due to the wrongful acts of the defendant.

14. The financial loss or injury caused to the plaintiff by the wrongful acts and conduct of the defendant cannot be ascertained and as such the compensation in money cannot be adequate and sufficient relief for the damages and loss suffered and/or likely to be suffered by the plaintiff.

15. The plaintiff claims delivery up of the infringing dies, blocks, labels etc. for cancellation and destruction. The plaintiff states that the defendant is not entitled to sell its products or advertise the same in the market under the Trade Mark XZ and as such the defendant should be restrained from selling its products under the Mark XZ or giving any publicity in respect thereof.

16. The plaintiff's cause of action for the suit is arising day-to-day inasmuch as the defendant is passing off its products as the products of plaintiff, *inter alia*, in Mumbai and Chennai outside the said jurisdiction and in Calcutta within the jurisdiction of this Hon'ble Court day to day and every day till date and intends to continue to do so.

17. The plaintiff's substantial cause of action arose in Calcutta where the defendant sold its products wrongly under the Trade Mark XZ similar to the mark of plaintiff deceiving the general public into believing that they have been purchasing the goods of the plaintiff. The office of the Trade Marks Registry is situated at Chowringhee Road, Calcutta, within the jurisdiction of this Hon'ble Court where the plaintiff's said Trade Mark XY is registered. As the said passing off took place both outside and within the said jurisdiction the plaintiff prays for leave under cl. 12 of the Letters Patent to institute this suit in this Hon'ble Court inasmuch as part of the cause of action arose within the jurisdiction of the Hon'ble Court and part of the cause of action arose in Chennai where the defendant is manufacturing the goods and packing the same with the deceptive Mark XZ and selling the same with the object of passing off the same as goods of the plaintiff outside the jurisdiction of this Hon'ble Court.

18. The plaintiff has other causes of action and also other claims for the continuing infringement of the plaintiff's Trade Mark and passing off the products of the defendant as the product of the plaintiff and as such the plaintiff has other claims which cannot be ascertained now and prays for

leave under Or. 2, r. 2 of the Code of Civil Procedure 1908 to take further and appropriate legal proceedings in such Forum as the plaintiff may be advised.

19. For the purposes of jurisdiction and court fees the suit is valued at Rs..... on which court fees in stamps have been paid and as such this Hon'ble Court has the jurisdiction to entertain, try and determine this suit.

The plaintiff therefore prays for leave under Clause 12 of the Letters Patent under Or. 2, r. 2 of the Code of Civil Procedure 1908 and claims:

- (a) Permanent Injunction restraining the defendant, its agents, servants and representatives from wrongfully selling the products or offering for sale or otherwise dealing in any goods similar to the goods of the plaintiff under the Trade Mark XZ or any other Mark deceptively similar to plaintiff's Trade Mark XY;
- (b) A Decree for accounts of the profits earned by the defendant by wrongful use of the mark XZ similar to the mark of the plaintiff's Trade Mark XY and a decree for such amount in favour of the plaintiff against the defendant as may be found due on taking the accounts;
- (c) An enquiry into the damages suffered by the plaintiff due to the wrongful acts of the defendant and a decree against the defendant for the sum found due on such enquiry;
- (d) Decree for delivery up of the infringing dies, blocks, labels, etc. including the packing and advertising materials and destruction thereof;
- (e) Receiver;
- (f) Attachment;
- (g) Injunction;
- (h) Costs;
- (i) Further and other reliefs as the plaintiff is entitled to in law and in equity.

Name and address of the  
plaintiff's Advocate

Signature of the plaintiff

*Verification*

'I, ..... son of ..... by occupation service residing at ..... do hereby solemnly affirm and say as follows:

1. I am a principal officer and the Constituted Attorney of the plaintiff and as such I am competent to sign this plaint and all petitions, Vakalatnamas and affirm affidavits on behalf of the plaintiff.
2. I know and I have made myself acquainted with the facts and circumstances of this case and I am able to depose thereto.
3. The statements contained in the paragraphs 1 to 16 of the foregoing plaint including the cause title thereof are true to my knowledge based on records maintained by the plaintiff and believed by me to be true and those mentioned in paragraphs 17 to 19 are my humble submissions before this Hon'ble Court.

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

Sd/.

Before me  
Commissioner

**Application for Rectification of Trade Mark Registry**

Matter No. .... of 1999

In the High Court at Calcutta  
Ordinary Original Civil Jurisdiction

In the Matter of Trade and Merchandise  
Marks Act 1958

And

In the Matter of an Application under  
Sections 56 and 57 of the said Act for  
rectification of Register of Trade Marks.

And

In the Matter of Registered Trade Mark  
No. 567 in Class 1 of AB Co. Ltd.

And

In the Matter of:  
XY Co. Ltd. a company registered under  
the Companies Act 1956 and having its

registered office at 5 White Road,  
Calcutta

..... *Petitioner*

*versus*

1. AB Co. Ltd., a company registered under  
the Companies Act 1956 having its  
registered office at 3 A.K. Avenue, Mumbai

2. RC Co. Ltd., a company registered  
under the Companies Act 1956 having its  
registered office at 4 B.K. Avenue,  
Calcutta

3. Registrar of Trade Marks having his  
office at 15/1 Chowringhee Square,  
Calcutta

..... *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

SHWETH:

1. Your petitioner is an aggrieved person by reasons of entries made in the Register maintained by respondent No. 3 without sufficient cause as also by an entry wrongfully remaining in the Register.

2. Your petitioner carries on business as a manufacturer of, dealer in and exporter of Electronic goods and Computer articles both hardware and software.

3. The first respondent is the registered proprietor of Trade Mark No. 10 in Class I in respect of Computer and Electronic articles.

4. The second respondent purports to be the licensee and permitted user of the Registered Trade Mark UTILITY (hereinafter referred to as the MARK) which is registered in the name of the first respondent.

5. The third respondent is the Registrar of Trade Marks having his address as mentioned above within the jurisdiction of this Hon'ble Court.

6. Your petitioner in the year 1991 adopted the Trade Mark UNITY hereinafter referred to as the petitioner's mark and the said adoption of the



said mark was without any knowledge of the first respondent's said mark and has since been selling its products with the said mark UNITY.

7. Your petitioner's said mark has been used continuously and exclusively in India and outside India since 1991 and has been widely advertised in the newspapers, journals and other publicity media and thereby it has acquired the distinction of being the goods manufactured by your petitioner. Particulars of the newspapers, journals and other media in which the said advertisements appeared and the corresponding expenses incurred during the last several years to popularise the products of your petitioner under the said mark are given in a schedule annexed hereto marked 'A'. A statement of sales and the turnover of your petitioner's goods under the said mark are annexed hereto marked 'B'.

8. Your petitioner made an application for registration of the said mark in respect of the electronic goods described therein to the Trade Marks Registry at Calcutta, the respondent No. 3. The said application was made on 5th March 1996. The application was classified in Class I and was numbered as 5. The application is pending registration at the Trade Marks Registry, Calcutta. A copy of the said application with connected papers are annexed hereto collectively marked as 'C'.

9. Your petitioner was surprised to receive a cease and desist notice dated 2nd October 1997 from the Trade Mark lawyer of the first respondent calling upon your petitioner to discontinue use of the Trade Mark UNITY and to give an undertaking not to use the mark or any deceptively similar mark thereto in future. Your petitioner through its Advocate's letter dated 20th October 1997 informed the first respondent as also the Trade Mark Lawyer of the first respondent that the petitioner has been using the trade mark since last six years and that there has been a substantial expenditure in making the petitioner's mark known to the general public by advertisement and publicity. It was also stated that there was no confusion in mind of the public during the said period during which your petitioner used its mark in the open market. It was further stated that the petitioner was using the said mark honestly and *bona fide* and that there was no *mala fide* intention for utilising or trading on the goodwill or reputation, if any, of the respondent Nos. 1 and 2. Your petitioner also specifically denied the other allegations contained in the said notice.

10. Without replying to the said letter of your petitioner, respondent Nos. 1 and 2 filed a suit in the Madras High Court alleging infringement of first respondent's said purported Trade Mark. The suit has been numbered as 259 of 1997 and the suit is still pending before the said Hon'ble High Court. A copy of the plaint filed in the Hon'ble Madras High Court is annexed hereto marked 'D'.

11. Your petitioner denies each and every allegation contained in the plaint filed in the said suit at Madras. Your petitioner states that the goods sold by the respondents Nos. 1 and 2 under the first respondent's said mark were different in look and description from those of the petitioner's goods. Further your petitioner honestly adopted and has been openly using the said mark UNITY for the last six years and thereby your petitioner has acquired the right of concurrent registration of the mark UNITY under s. 12(3) of the Trade and Merchandise Marks Act 1958.

12. The first respondent's registration of the mark in the records of the Registry is in respect of a variety of goods. Many of such goods have not been marketed or sold or used in the Indian market for the last six years. The first respondent's said mark is liable to be rectified by expunging or deleting from the specification of the items covered by your petitioner's said mark UNITY in accordance with the provisions of s. 16 of the said Act.

13. Your petitioner as stated above is a person aggrieved within the meaning of s. 16 of the Trade and Merchandise Marks Act 1958 inasmuch as your petitioner's said mark is pending registration at the Trade Marks Registry. The first respondent has caused to be issued cease and desist notice and also filed in the Hon'ble High Court at Madras the said suit wrongly alleging infringement of the first respondent's said mark UTILITY.

14. Your petitioner states that the first respondent's said mark was registered without any *bona fide* intention to use the same in respect of the first respondent's goods for which the mark was registered. As a matter of fact, there was no *bona fide* use of the said mark by the first respondent in selling the goods upto a date of one month prior to the making of the present application.

15. Prior to the date of this application for a continuous period of six years there was no *bona fide* use of the first respondent's mark in relation to the goods sold by your petitioner under the mark UNITY.

16. The second respondent the alleged user of the said mark of the first respondent has also not used the said mark for any of the goods sold by the petitioner under the mark UNITY. The second respondent is a Licensee and not registered proprietor of the said mark of the first respondent. The use of the mark UTILITY as alleged by second respondent cannot be the use of respondent No. 1 within the meaning of s. 48(2) of the said Act. During the last six years after registration of the mark of the first respondent the said mark has not been used for any goods manufactured by the first respondent.

17. In view of the aforesaid your petitioner states that the first respondent obtained registration of the said mark UTILITY without any intention to use it, either by itself or through respondent No. 2. Your petitioner states that the first respondent's said mark is, therefore, liable to be and be removed from the Register under s. 18 of the said Act.

18. Your petitioner states that by reasons of the aforesaid the registration of the first respondent's said mark and the entry made in the Register by respondent No. 3 have been without sufficient cause and the same are unlawfully remaining on the Register. By reasons thereof the first respondent's name and the said mark should be removed from the Register and the Register should be suitably rectified.

19. The Trade Mark Registry of Calcutta is situated at the address given in the Cause Title where all the records in relation to the first respondent's Trade Marks are situated and are being maintained and as such this Hon'ble Court has the jurisdiction to entertain, try and determine this petition.

20. Your petitioner is a person aggrieved by the entry made in the Register of Trade Marks without sufficient cause as also by such entry wrongfully remaining in the Register. Your petitioner states that the Register be rectified by cancelling the first respondent's said mark or deleting from the said mark of first respondent the goods dealt with by your petitioner.

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

22. This petition is made *bona fide* and in the interest of justice.

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

- (a) Direction on respondent No. 3 to rectify the Register of Trade Marks by expunging or cancelling the first respondent's registered trade mark UTILITY being No. 10 in Class I from the Register;
- (b) Alternatively, directions on respondent No. 3 to amend and/or remove by deletion from the Register of the goods covered by your petitioner's mark and goods of similar and same description from the specification of the goods included in the entry in respect of the first respondent's Trade Mark No. 10 in Class I;
- (c) Alternatively direction on respondent No. 3 to correct by deletion or striking out the goods covered by the petitioner's mark UNITY and the goods of similar description from the entry in respect of the first respondent's Trade Mark No. 10 in Class I;
- (d) Costs of this application be paid by respondents Nos. 1 and 2 to the petitioner;
- (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.

Name and address of the Advocate

Signature of Petitioner

*Verification*

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

I am the Constituted Attorney and a principal officer of the petitioner above-named. I know and I have made myself fully acquainted with the facts and circumstances of the case and am able to depose thereto. I have due authority and competence to sign and verify this petition. I do declare and say that the statements made in paragraphs 1 to 19 of the foregoing petition are true to my knowledge based on information derived from records maintained by the petitioner which I believe to be true and those mentioned in paragraphs 20 and 22 hereinabove are my humble submissions to this Hon'ble Court.

I sign this Verification at Court House in Calcutta on this 7th day of November 1999.

Signed

Before me  
Commissioner

Identified by.....  
Clerk of Advocate

**Complaint for Infringement of Trade Mark**

In the Court of Chief Presidency Magistrate  
....., Calcutta

In the Matter of:

A complaint in relation to offence under Sections 2(1)(f), 77, 78 and 79 of the Trade & Merchandise Marks Act 1958 read with section 420 of the Indian Penal Code

And

In the Matter of:

RP Co. Ltd. a company registered under the laws of U.S.A. and carrying on business at San Francisco and a Branch Office at ..... through its Constituted Attorney Mr. XY son of Mr. Z.

..... Complainant

versus

Infringing Co. Ltd. a company registered under the Companies Act 1956 and having its Registered Office at 3 White Road, Calcutta, P.S. Hare Street

..... Accused opposite party

The humble petition of the Complainant above-mentioned most respectfully

SHEWETH:

1. RP Co. Ltd. is a manufacturer of and dealer in Computers for office purposes having its registered office in San Francisco, U.S.A. and a Branch at No. 1 White Road, Calcutta, Police Station Hare Street.
2. The complainant is the Registered Proprietor of the Trade Mark COMOF in respect of the computer for office purposes and its components being Registered Trade Mark No. 5 in Class 1 in respect of Computers for office purposes and its components. A certified copy of the registration of the said Trade Mark which is subsisting is annexed hereto marked 'A'.
3. The complainant made application for registration of the said Trade Mark at the Trade Mark Registry, 15/1 Jawaharlal Nehru Road, Calcutta within the jurisdiction of this Learned Court. The said application was advertised in Trade Marks Journal No. 6 dated ..... at page 10. A xerox copy of the said advertisement as appearing in the said Journal in relation to the said Trade Mark is annexed hereto marked 'B'.
4. The said Trade Mark is valid and subsisting and will remain to be so for another three years.
5. The complainant is the Registered Proprietor of the said Trade Mark and has been using the same in India and abroad since last several years.
6. The complainant has spent huge sums of money for advertisement in respect of the said Trade Mark. Particulars of expenses are given in a Schedule annexed hereto marked 'C'.
7. The sale of the computers under the said Trade Mark both in Indian market and in foreign markets for the last 10 years are given in a schedule annexed hereto marked 'D'.
8. The complainant has been spending huge sums of moneys in carrying out the sales promotion and publicity of its products under the said Trade Mark and built up high reputation about the goods, goodwill and utility of its products and the name has been associated in the minds of the purchasing public with the name of the complainant and no one else and

the said Trade Mark and no other Trade Mark. Such reputation and goodwill are still enjoyed by the complainant in Calcutta and elsewhere in India and abroad.

9. The complainant has recently come to know that the accused opposite party is using an identical Trade Mark in respect of computers for office use with similar description to those of the complainant and selling the same in the market in Calcutta. The accused opposite party has also issued advertisements and leaflets and packing materials/cash memos which will show that the name of the complainant has been falsely used by the accused opposite party. Copies of certain cash memos, advertisement materials and cartons and labels are annexed hereto collectively marked 'E'.

10. The accused opposite party made deceptive sales of and deceptive advertisements in Calcutta within the police station Hare Street and within the jurisdiction of this Learned Court. The office of the accused opposite party is also situated within the Police Station Hare Street, Calcutta and the advertisements of the complainant's Trade Mark also appeared in the newspapers appearing in places within the Police Station Hare Street, Calcutta within the jurisdiction of this Learned Court.

11. The complainant is the Registered Proprietor of the said Trade Mark and is using the same and the said Trade Mark has acquired high reputation as will be evident from the documents annexed hereto as also the fact of deceptive use of the identical mark in respect of the computers for office purposes and/or of similar description by the accused opposite party and "false trade description" within the meaning of s. 2(1)(f) of Trade and Merchandise Marks Act 1958. The accused opposite party has falsified the said Trade Mark of the complainant inasmuch as the accused has used the Trade Mark without the assent of the complainant, the Registered Proprietor of the Trade Mark, and has made and used that Trade Mark as deceptively similar Mark. The accused opposite party has thus committed offence under s. 57(1) of the Trade and Merchandise Marks Act 1958.

12. The accused opposite party has falsely applied the complainant's Trade Mark to the accused's own goods on packages and cartons containing those goods, namely, computers for office purposes without the assent of the complainant being the Registered Proprietor of the said Trade Mark COMOF. The accused opposite party has thus committed offence under s. 77(2) of the Trade and Merchandise Marks Act 1958.

13. The accused opposite party has packed, wrapped and put in cartons sub-standard products for sale to the unwary purchaser falsifying the complainant's said Trade Mark COMOF thereon and thus the accused has also committed an offence under s. 420 of the Indian Penal Code.

14. The accused opposite party has committed offences under the said Trade and Merchandise Marks Act 1958 under ss. 78 and 79 thereof and also under the Indian Penal Code and is thus liable to be punished accordingly.

15. The complainant submits that cognizance should be taken of the offences committed by the accused opposite party and processes issued and the accused be tried and punished in accordance with the provisions of law.

16. The said offences have been committed, *inter alia*, at places within the Police Station Hare Street, Calcutta and the accused also carried on business and/or is situated at a place within the Police Station Hare Street, Calcutta within the jurisdiction of this Learned Court.

Your petitioner therefore prays Your Honour to issue process against the accused opposite party for offence committed under ss. 77, 78 and 79 of the Trade and Merchandise Marks Act 1958 and under s. 420 of the Indian Penal Code and to try and punish him in accordance with law.

#### Verification

I, ..... son of ..... by occupation service working for gain at 1 White Road, Calcutta do hereby solemnly affirm and say as follows:

1. I am the Constituted Attorney and a principal officer of the RP Co. Ltd. at its Calcutta Office. 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 duly authorised and competent to make the present complaint and also sign the verification. I do make verify the complaint for and on behalf of RP Co. Ltd.
2. The statements in paragraphs Nos. 1 to 14 above are true to my knowledge based on information derived from record maintained by RP Co. Ltd. at its Calcutta Office and believed by me to be true and those in paragraph Nos. 15 and 16 hereof are my humble submissions to this Learned Court.

Solemnly affirmed by the said  
Mr. .... at Court House  
at Bankshall Street, Calcutta on  
this 15th day of November 1999.

Before me  
Magistrate

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## Power-of-Attorney

**Power-of-Attorney.** A power-of-attorney is a deed poll. It requires authentication as provided under s. 85 of the Indian Evidence Act 1872 which reads as follows:

“The court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any court, Judge, Magistrate, (Indian) Consul or Vice-Consul or representative of the Central Government, was so executed and authenticated.”

So, ordinarily it does not require registration except where it creates any interest in any immovable property, e.g. charge in favour of the donee<sup>1</sup> or authority of donee to recover rent of any property for his benefit or when it gives the creditor the right to sell any property and appropriate and proceeds towards satisfaction of the debt due to the constituted attorney.

It will not be out of place to mention here that a power-of-attorney authenticated in the manner prescribed under s. 85 of the Indian Evidence Act serves many purposes; nevertheless for the purpose of presenting any document of registration only a power-of-attorney is to be executed—sometimes before and authenticated by a Registrar, e.g. if the executant lives at the time of execution at a place where the Indian Registration Act, 1908, is in force, otherwise, e.g. Kashmir and Jammu where the said Act is not in force before Magistrate and in case of foreign document, i.e. execution outside India before the Notary Public, any court, judge, magistrate and others.<sup>2</sup>

1 *Indre Bibi v Jain Sardar Aheri* 35 Cal 845 (848).

2 Section 33 of the Indian Registration Act 1908.



**Revocation of power-of-attorney.** A power-of-attorney authenticated before a Registrar may be revoked by an application on a paper without any court fee.<sup>3</sup> If registered then by a deed of cancellation.

A power-of-attorney is in general revocable in its nature but in cases where the same as part of a security for any debt, it is irrevocable notwithstanding the death of the debtor until the debt is repaid.<sup>4</sup> The bankruptcy of the principal operates as revocation of the authority of the agent except however things done without notice.<sup>5</sup>

(a) *Power-of-attorney—agent and principal.* The authority of an agent is discussed under Chapter X of the Indian Contract Act. A power-of-attorney is an instrument empowering a specified person or persons to act for, and in the name of, the person executing it. It is always kept by the attorney. If made generally for certain acts it is called General.

An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom an act is done, or who is so represented, is called the principal.<sup>6</sup> The essential list about agent's position is his authority to make the principal answerable to third parties. A person does not become an agent by advising another in relation to the latter's business.<sup>7</sup> It includes all the necessary and usual means of executing it or normally done in conducting the business.

(b) *Who can give power-of-attorney—who can be agent.* Any person competent to contract can appoint an agent. At common law there is some difference between the Government and individuals in so far as delegation of authority is concerned. The Government is liable only to the extent of its power actually delegated, whereas individuals are liable to the extent they have apparently given.<sup>8</sup> Although, generally speaking, it can be executed by a person capable of entering into a contract, but under s. 5 of the Power of Attorney Act 1882, a married woman, whether major or minor, can execute the same.

As between the principal and third persons, any person can become an agent; but no person who is not of the age of majority and of sound mind can become an agent so as to be responsible to his principal according to the provisions of the Indian Contract Act.

3 Clause 148 of the Bengal Registration Manual 1928. Also see *Kala Chand v Gopal* (1869)12 WR 163.

4 Section 127 of the Law of Property Act 1925.

5 Re, *Snowball* LR 7 Ch 534.

6 Section 182 of the Indian Contract Act 1872.

7 *Mohesh v Radha Kishore* 12 CWN 28.

8 *Secretary of State v Kasture Raddi* 26 Mad 268.

No consideration is necessary to create an agency.<sup>9</sup>

(c) *Extent of agent's authority.* (Express or implied s. 186 of the Indian Contract Act 1872). Ratification of agent's acts. An agent can, if authorized, do every lawful thing which is necessary in order to do such act. An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business.<sup>10</sup>

Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.<sup>11</sup> In order to constitute a binding adoption of acts *a priori* unauthorised the conditions to be filled are: (a) It must be done for and in the name of the supposed principal; and (b) full knowledge of what the acts were or unqualified adoption.<sup>12</sup>

A power of attorney would remain operative when the principal is in a position to make an authorisation and continues to exercise his or her authority so that the agent binds the principal. He cannot go beyond the principal. When the principal becomes old, feeble, weak and mentally infirm and not in a position to think independently the power of attorney, though executed with a conscious and alert mind, becomes worthless. If an agent knowing that the principal is mentally unsound, weak and suffers from mental incapacity having no legal capacity to authorise, still continues to act it would be acting on a power of attorney of a dead man. The agent's action in such a situation would be fraught with fraud, misappropriation and cheating and criminal breach of trust. The principal in that mental state and health neither can take accounts from the agent nor the agent can render accounts to him. The court will declare such a power of attorney as null and void and cancel it and intimate the Sub-Registrar concerned accordingly, if the power-of-attorney has been registered.<sup>13</sup>

(d) *Agent's duty.* An agent shall always act honestly and *bona fide* in the best interest of his principal. He is bound to conduct the business of his principal according to the instructions given by the principal, or, in the absence thereof, according to the usages and customs of the trade. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal and, if any profit accrues, he must account for it. An agent is subject to the well-established rule that he cannot appropriate any illegitimate profits.<sup>14</sup>

9 Section 185 of the Indian Contract Act 1872.

10 Section 188 of the Indian Contract Act 1872.

11 Section 196 of the Indian Contract Act 1872.

12 *Surendra v Kedar* AIR 1936 Cal 87.

13 *Mahendra v Padam Kumari* AIR 1993 All 143.

14 *Parkar v McKenna* 10 Ch App 96.

An agent is bound to keep and maintain proper accounts and submit the same to his principal on demand.<sup>15</sup>

(e) *Agent's right of retainer and lien.* Agent to be indemnified. An agent can retain, out of any sum received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers, and other property, whether movable or immovable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.<sup>16</sup> The lien is not affected by the bankruptcy of the principal or action barred by limitation.<sup>17</sup>

An Advocate is not entitled to act in a professional capacity as well as a constituted attorney of a party in the same matter or cause. An Advocate cannot combine the two roles. If a firm of Advocates is appointed as Advocates by a suitor, none of the partners of the Advocates' firm can act as a recognised agent in pursuance of a power of attorney concerning the same cause.<sup>18</sup>

The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

(f) *Enforcement of agent's contracts.* Effect of notice given to agent. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.<sup>19</sup>

Any notice given to, or information obtained by the agent, provided it be given or obtained in due course of the business transacted by him for the principal, has, as between the principal and third parties, the same legal consequences as if it had been given to or obtained by the principal.<sup>20</sup> The

15 Section 213 of the Indian Contract Act 1872.

16 Section 217 of the Indian Contract Act 1872. Special privileges of a solicitor— He can ask the court to call upon the opposite party to pay him his costs when he has got judgment for his client and the court will not allow parties to deprive him of the benefit by compromise without his knowledge. Ex parte, *Marison* LR 4 QB 153. Also see *Cullanji v Raghawji* (1906)30 Bom 27.

17 Ex parte *Beall* 24 Ch D 408.

18 *Oil and Natural Gas v Offshore Enterprises* AIR 1993 Bom 217.

19 Section 226 of the Indian Contract Act 1872.

20 Section 229 of the Indian Contract Act 1872.

underlying principle is that the agent is identified with the principal and, as such, the principal is bound by the notice unless the agent withholds the notice acting in fraud or conspiracy with a third party.<sup>1</sup>

(g) *Misrepresentation or frauds by agents.* Misrepresentations made, or frauds committed, by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed, by agents, in matters which do not fall within their authority, do not affect their principals.<sup>2</sup>

(h) *Termination of agency and its effect.* An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agent; or by the business of the agency being complete; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the law of insolvency. Reasonable notice must always be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.<sup>3</sup> In the case of a company, the power-of-attorney executed by the directors ceases to be operative as soon as an order for winding-up is made as the directors cease to function.<sup>4</sup>

The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.<sup>5</sup> Registration of a document by an agent even after revocation of his authority is not invalid unless such revocation is, in fact, known either to the grantee of the document or to the Registrar.<sup>6</sup>

(i) *Construction of a power-of-attorney.* Powers-of-attorney are strictly construed.<sup>7</sup> Persons dealing with others acting under powers should enquire into the authenticity of the documents.

Where an act done under a power-of-attorney is challenged as being in excess of the authority conferred by the power, it is necessary to show that on a fair construction of the whole instrument the authority in question is to be found within the four corners of the instrument either in express terms

- 1 *Kettle Wall v Watson* 21 Ch D 706; *Hormasji v Mankuvarbai* 12 Bom 262 (HC); *Cave v Cave* 15 Ch D 630.
- 2 Section 238 of the Indian Contract Act 1872. *Lloyds v Grace Smith & Co.* (1912) AC 716 reversing (1911) 2 KB 489.
- 3 Section 3 of Power of Attorney Act 1882.
- 4 *Fowler v Broade P.N. Light & Co.* (1893) 1 Ch 724.
- 5 Section 208 of the Indian Contract Act 1872.
- 6 *Maung Lu v U.P.O. Hlaing* AIR 1934 Rang 104.
- 7 *Palmer's Company Law* 24th Ed., para 20-19, p. 238.

or by necessary implication. The general words used in subsequent clauses of a power-of-attorney must be read with the special power given in earlier clauses and cannot be construed so as to enlarge the restricted power therein mentioned. A power "to pay" is not the same thing as "promise to pay". A power "to endorse and accept" to an employee of a bank does not include power to bank bills on its behalf.<sup>8</sup>

A power-of-attorney to negotiate, make sale, dispose of, assign and transfer Government promissory notes does not include power to pledge.<sup>9</sup> The operative part of a deed is controlled by recitals; the general words following to do particular acts are limited to the purposes for which the authority is given. The special powers are enlarged by general words only when necessary for the particular purpose. A power-of-attorney is construed to include all medium powers for its effective execution.<sup>10</sup> A power-of-attorney should be strictly construed. A power-of-attorney for execution of deed authorizes the execution of an agreement for it in the absence of fraud or dishonesty on the part of the agent.<sup>11</sup>

(j) *Power-of-attorney by a company.* In England, under s. 31 of the Companies Act 1929,<sup>12</sup> a company may by writing under the common seal empower either generally or in respect of any specified matter as its attorney to execute deeds on its behalf. Section 46 of the Indian Companies Act 1956, provides for execution of documents by the company under its common seal. In any event a power-of-attorney must be executed in conformity with the Articles of Association. See also Regulation 84 of Table A to Companies Act 1956.

(k) *Power-of-attorney executed in a foreign country.* The Notary Public is an institution of very ancient origin. It is of great utility and the Notary Public is an officer recognised by the whole commercial world and a certificate by him, competent to administer an oath to persons making declaration or affidavits, is sufficient evidence of the execution of the instrument to which it refers.<sup>13</sup> When a seal of the Notary is put on the document, s. 57 of the Evidence Act comes into play and a presumption can be raised regarding the seal of the said Notary, meaning thereby that the said document is presumed to have been attested by a competent Notary of that country. If

8 *Bank of Bengal v Ramanathan Chetty* AIR 1915 PC 121. See also AIR 1933 PC 78. (*Oapramar v Thomas Cook & Sons, Banker Ltd.*).

9 *Jonmenjoy Coondoo v George Alder Watson* 11 IA 94.

10 *Ananta v Rathnasabapathy* (1968)2 MLJ 574.

11 *Kumar Narendra Nath Mitra v Sm. Bimla Sundari* 42 CWN 718; *Thakur Prasad v Syed Yahya Hossain* (1911)16 CLJ 119 distinguished.

12 19 & 20 Geo. S.C. 23.

13 *In re, K.K. Ray (P) Ltd.* AIR 1967 Cal 636.

the first power of attorney is not duly authenticated a second power ratifying the earlier is valid.<sup>14</sup> An act of the agent, although shown to be unauthorised when the act was committed, yet the principal can subsequently execute a document ratifying the said act.<sup>15</sup>

## FORMS

### Proxy

I, AB of, etc., being a member of (or, subscriber to), etc., hereby appoint CD of, and failing him EF of etc., as my proxy to vote for me and on my behalf at the annual general, ordinary or extraordinary, etc., of the, etc., to be held on the ..... day of ....., and at any adjournment thereof.

Signed, etc.,

AB  
(Voter)

WITNESS:

NOTES ON PROXY. *Vide s. 176 of the Companies Act 1956.* Form is prescribed in Schedule IX. A proxy does not require any attestation unless so prescribed under Articles of Association.<sup>16</sup> When the Company concerned furnishes a prescribed form the same should be incorporating the necessary particulars.

### Power-of-Attorney to Present Document for Registration

BY THIS POWER-OF-ATTORNEY I, AB of etc., do hereby appoint CD of, etc., my attorney, for me and on my behalf to appear for and represent me before the Sub-Registrar of, ..... all times as may be necessary and to present before him for registration the ..... deed dated the ..... day of ..... made between, etc., to admit my signature and execution of the said deed (*if necessary to admit the receipt of consideration*) to do any act, deed or thing as may be necessary to complete the registration of the said deed in the manner required by law and when it has been returned to him after being duly registered, to give proper receipt and discharge for the same.

14 *Rajesh Wadha v Sushma Govil* AIR 1989 Del 144.

15 *Jugraj Singh v Jaswant Singh* AIR 1971 SC 761.

16 *Harben v Philips* (1883)23 Ch D 14 at pp. 22 and 31.

And I, the said AB, do hereby agree and declare that all acts, deeds and things done, executed or performed by the said CD shall be valid and binding on me to all intents and purposes as if done by me personally which I undertake to ratify and confirm whenever required.

Signed, scaled and delivered

WITNESS:

AB

### Power-of-Attorney to Sell a Particular Property

BY THIS POWER-OF-ATTORNEY I, AB of, etc., hereby appoint CD of, etc., my attorney, in my name and on my behalf to do *inter alia* the following acts, deeds and things, *viz.*

1. To negotiate on terms for and to agree to and enter into and conclude any agreement of sale and sell my house No. .... (or, etc.) situate at, etc., fully mentioned and described in the schedule hereto to any purchaser or purchasers at such price which my said attorney, in his absolute discretion, thinks proper and/or to cancel and/or repudiate the same.

2. To receive from the intending purchaser or purchasers any earnest money and/or advance or advances and also the balance of purchase money, and to give good, valid receipt and discharge for the same which will protect the purchaser or purchasers without seeing the application of the money.

3. Upon such receipt as aforesaid in my name and as my act and deed, to sign, execute and deliver any conveyance or conveyances of the said property in favour of the said purchaser or his nominee or assignee.

4. To sign and execute all other deeds, instruments and assurances which he shall consider necessary and to enter into and/or agree to such covenants and conditions as may be required for fully and effectually conveying the said property as I could do myself, if personally present.

5. To present any such conveyance or conveyances for registration, to admit execution and receipt of consideration before the Sub-Registrar or Registrar having authority for and to have the said conveyance registered and to do all acts, deeds and things which my said attorney shall consider necessary for conveying the said property to the said purchaser or purchasers as fully and effectually in all respects as I could do the same myself.

And I hereby agree to ratify and confirm all and whatever other act or acts my said attorney shall lawfully do, execute or perform or cause to be done, executed or performed in connection with the sale of the said property under and by virtue of this deed notwithstanding no express power in that behalf is hereunder provided.

*Schedule of the property to be sold*

IN WITNESS WHEREOF, I, the said AB, have hereto signed (or, put my signature, or set my hand and seal at ....., this ..... day of .....

Signed, sealed and delivered

AB

**Power-of-Attorney to Recover Debts**

BY THIS POWER-OF-ATTORNEY I, AB of, etc., do hereby constitute and appoint CD of, etc., my attorney for me, in my name and on my behalf to do *inter alia* all or any of the acts, deeds and things, viz.

- (i) To ask or demand and receive from the person or persons named in the Schedule below the respective amounts mentioned against their respective names and all or any other debt or debts or claim or claims now or hereafter due.
- (ii) To collect, receive and realise all such amount or amounts due and payable by them now or hereafter fully or partially, in lump sum or by instalments (which he is empowered to grant) or otherwise and to give and execute all necessary receipts and discharges for the same with power to accept security and grant time for payment.
- (iii) To institute suits or other legal proceedings authorized by law for recovery of all or any of such debts or claims and to sign any plaint, petition or other pleadings, vakalatnama, warrant of attorney, to execute any decree or order.
- (iv) To compromise any such debt or claim, withdraw any suit or other proceedings, to refer to arbitration any dispute or difference and to prosecute or defend any bankruptcy or insolvency proceedings.
- (v) Generally to do all such acts, deeds and things as he shall think fit and proper as fully and effectually as I could do myself notwithstanding no express power or authority in that behalf is hereunder provided.

And I, the said AB, do hereby agree to ratify and confirm all and whatever my said attorney shall do, execute or perform or cause to be done, executed or performed in exercise of the power or authority hereunder conferred upon or otherwise expressed or intended.

*The Schedule above referred to*

Name and address of the debtor	Amount due	Remarks



IN WITNESS WHEREOF I, the said AB, has hereunto set and subscribed my hand and seal this ..... day of .....

Signed, sealed and delivered

AB  
Accepted CD

### Power-of-Attorney by a Firm

KNOW ALL MEN BY THESE presents that we ..... all carrying on business at present in co-partnership under the name and style of ..... (a firm duly registered under the Indian Partnership Act being No. ....) as Exporters in ..... do hereby nominate, constitute and appoint Sri ....., son of ..... by caste ..... by occupation ..... at present residing at ..... as the Constituted Attorney for and on behalf of our said firm as the same is now or hereafter constituted from time to time to do *inter alia* the following acts, deeds and things:

1. To appear for and represent our above firm to all intents and purposes in or outside India in connection with its said business and all affairs ancillary or incidental thereto and to sign jointly and/or severally all contracts and orders and other documents, letters, receipts, papers and writings whatsoever and to conclude all bargains and deals, to accept all estimates, tenders, quotations, etc., to settle all disputes and differences in connection with its said trade or business and affairs ancillary or incidental thereto.

2. To ask for, demand, recover, receive and collect all moneys due and payable to the said firm in connection with its said business from any person or persons, company or association, including any statutory body or authority, Government or semi-Government concern or concerns including insurance, claims, compensation and damages against Railways, Airways, Roadways etc. etc. and to give good valid receipts and discharges therefor.

3. To appear for and represent the firm before all Municipal bodies, Corporation, Improvement Trust, Railways, Airways, Roadways, Travel Agents, Chamber of Commerce and Industry, Controller of Patents, in all Collectorate, Treasury, Revenue offices, Settlement offices, before any Magistrate and in all courts having civil, criminal, original or appellate, revisional or special jurisdiction, including jurisdiction of any High Court, under Art. 226 of the Constitution of India, before any tribunal of arbitration or other tribunal or judicial authority, Wealth Tax, Sales Tax and other authorities and in all other Government or semi-Government offices and departments.

4. To acquire, sell or dispose of goods and stock-in-trade for cash or on credit for the purpose of carrying on business of the firm.

5. To apply for, obtain and renew all licences, permits, etc. as may be necessary or requisite for the purpose of carrying on or developing the trade or business.

6. To prepare, sign and submit all returns and statements, e.g., income-tax and sales tax returns, declarations and to verify the same by production of books and vouchers and other documentary evidence.

7. To appoint and dismiss or discharge any staff, agent, broker, menials, durwan and other menials and settle and pay their remuneration and fix up conditions of service.

8. To institute, defend and prosecute, enforce, or resist any suit or other actions and proceedings, appeals, in any court anywhere within or outside India including the International Court in its civil, criminal, revenue, revision or before any tribunal of arbitration or industrial court, income-tax and sales-tax authorities whether by and on behalf of the said firm or against it, to execute warrant of attorney, vakalatnama, and other authorities, to act and plead; to sign and verify complaints, written statements, petitions and other pleadings, including pleadings under Arts. 226 and 227 of the Constitution of India, and also to present any Memorandum of Appeal, tabular statement, accounts, inventories, to accept service of summons, notice and other legal processes; enforce judgment, execute any decree or order, to appoint and engage on behalf of the said firm pleaders, attorney, counsel and other legal agents as our said attorneys may think fit and proper and to adjust, settle all accounts, to refer to arbitration all disputes and differences, to compromise cases, to withdraw the same or to be non-suited and to receive delivery of documents or payments of any money or moneys from any court, office or opposite party either in execution of decree or order or otherwise as he shall think fit and proper and to do all acts, deeds and things that may be necessary or requisite in connection therewith.

9. To settle, compromise, or compound, any debt or claim whether in favour or against the firm.

To refer any dispute or differences arising out of the same to arbitration.

To appoint Arbitrator or Arbitrators, to file the statement of facts or counter-statement of facts, to proceed with or oppose arbitration proceedings and to apply for execution of award or to set aside the award.

10. To open any one or more banking account or accounts in the name and on behalf of the said firm in any or more bank or banks, to deposit and withdraw money and fully operate the same.

11. To accept bills and money order, cheques, bank drafts, payment orders or other securities for money drawn in favour of the said firm and to negotiate encash credit and collect the proceeds thereof through the said account or accounts.

12. To apply for and obtain overdraft or overdrafts on behalf of the firm from any such bank or banks against such security or securities of its said trade or business or estate as he shall think fit and proper subject to clause 16 hereunder.

13. To sell, purchase, pledge, raise money or convert into money or securities for money and transfer and/or exchange and/or otherwise deal in all shares, stocks and other securities, marketable or non-marketable, cheques, bills, drafts, hundis, and promissory notes and investments through authorised brokers or otherwise and to raise loan by pledge or hypothecation of the same.

14. To compound and accept in part in lieu of or satisfaction of the whole or compromise any debt or other claim and demand against any person, firm or company or any Government or semi-Government department or Government undertaking or Life Insurance Corporation of India, to grant any extension of time for payment or satisfaction thereof upon such terms and conditions with or without securities as the said attorney may think fit and proper.

15. And generally to do all acts, deeds and things as may be necessary on behalf of the said firm to all intents and purposes as the partners constituting the same for the time being could do in their own persons.

16. Provided always that the aforesaid power shall not extend to—

- (i) any investment or advance out of the funds and assets of the said business nor to draw, accept, negotiate, retire, pay, discount or satisfy any hundi, cheque or cheques, Promissory Note, Bill of Exchange or other negotiable instrument or instruments;
- (ii) winding up of the business or change of its place or places or abandonment or closure thereof without the express consent of the partners in writing obtained previously thereto; and/or
- (iii) any sale, lease, pledge, charge, mortgage or hypothecation of any of its properties, assets, credits, or goodwill which rights are all expressly reserved for the partners and are not hereunder conferred upon or delegated or otherwise intended.

Provided always that the said constituted attorney shall always keep and maintain true and faithful accounts of all dealings and transactions in relation to the said business and affairs ancillary and incidental thereto and furnish the same to the partners at all reasonable times as and when demanded and account for all receipts and vouchers for all expenses and disbursements made by him as are usual or customary in business of like nature and pay the surplus amount lying with him to the partners on demand. The said attorney shall also prepare quarterly statements of profit

and loss and the balance-sheet in respect of the said business and submit the same to the partners regularly.

17. And we, the undersigned partners, do hereby and at all times hereafter shall ratify and confirm all and whatsoever other act or acts our said attorney or attorneys shall lawfully and *bona fide* do or cause to be done by virtue of these presents.

This power-of-attorney shall remain valid notwithstanding any change in the constitution of the firm.

IN WITNESS WHEREOF we, the present partners of the said firm, have hereunto set and subscribed our respective hands and seals this ..... day of .....

Signed, sealed and delivered  
at ..... in the presence of:

#### Power-of-Attorney by Trustee

THIS POWER-OF-ATTORNEY is executed this ..... day of ..... by me, AB of, etc.

WHEREAS I am one of the present trustees under a deed of trust or settlement (or, etc.), dated the ..... day of ..... and made between, etc.; And whereas I am about to depart and intend to remain out of, etc., for a period exceeding (state approximate period) or more: Now this deed witnesses that I, the said AB, hereby nominate, constitute and appoint CD of, etc., to be my attorney, in my name and on my behalf to do, execute and perform and exercise during my temporary absence from etc., all or any of the trusts, powers, liberties, authorities and discretions vested in me as such trustee as aforesaid, and to carry out all my functions under the said trust or settlement to manage, control and administer all or any of the properties comprised thereunder, to sign and execute any deed or deeds, pay or receive any money or moneys either alone or jointly with any other person or persons: And I hereby agree and undertake to ratify and confirm all and whatsoever my said attorney shall lawfully do, execute or perform or cause to be done during my absence under and by virtue of the power, authority and liberty hereunder conferred upon him. Provided, however, that this power-of attorney shall not be construed as any delegation of my office as trustee under the deed of trust hereinbefore recited.

IN WITNESS, etc.

Signed, sealed and delivered

AB

### Power-of-Attorney to obtain Letters of Administration on behalf of Person Resident Abroad

BY THIS POWER-OF-ATTORNEY I, AB the undersigned, son of etc., state as follows:

Whereas (name of the deceased) died on ..... day of ..... leaving him surviving me as one of (state the relationship as one of the persons interested in his estate). And whereas I am at present residing at .....

Now by this power-of-attorney I do hereby irrevocably nominate, appoint and constitute CD, son of etc., as my true and lawful attorney to do *inter alia* the following acts, deeds and things:

1. To apply for and obtain letters of administration in respect of the estate of the said (deceased) from the court of competent jurisdiction for my use and benefit until when I shall apply for and obtain the same.

2. To file the account and inventory in respect of the said estate.

3. To appoint and engage any solicitor, counsel, advocate or other lawyer or lawyers, to sign and verify any petition for the grant, to affirm any affidavit or affidavits, enter or lodge any caveat or to apply for its discharge.

4. To do all other acts, deeds and things as may be necessary or requisite in connection with the grant as aforesaid.

And I, the said AB, do hereby agree and undertake to ratify and confirm all and whatsoever my said attorney shall lawfully do, execute, perform or cause to be done, executed or performed by virtue of the power or authority hereunder conferred upon.

IN WITNESS WHEREOF I the AB have executed this power-of-attorney on this ..... day of .....

Signed, sealed and delivered

AB

### Power-of-Attorney to Agent for any particular Court Case

BY THIS POWER-OF-ATTORNEY I, AB of, etc., plaintiff (or, etc.), in suit (or Case) No. .... of 2000, in the court of, etc., do hereby nominate, constitute and appoint CD of, etc., as my attorney, for me, in my name and on my behalf:

1. To represent me before the said court to all intents and purposes in connection with the said suit (or Case No. .... of .....

2. To appear for and prosecute and defend all actions and proceedings, to sign and verify all complaints, written statements and other pleadings, applications, petitions or documents to the court, to deposit, withdraw and receive documents and any money or moneys from the court or from the

opposite party, either in execution of the decree or otherwise and, on receipt of payment thereof, to sign and deliver for me proper receipts and discharges for the same.

3. To engage and appoint any solicitor, advocate or advocates or counsel to act and plead and otherwise conduct the said case whenever my said attorney thinks proper to do so.

4. To do all other lawful acts and things in connection with the case as effectually as I could do the same if I were personally present: And all and whatever my said attorney shall lawfully do, I do hereby agree to ratify and confirm.

IN WITNESS, etc.

Signed, sealed and delivered

AB

**Power-of-Attorney to Advocate for Court Case**

In the Court of, etc.

Suit (or Case) No. .... of 2000

Plaintiff (or Applicant, or Complainant)—

AB, son of ....., of, etc.

*versus*

Defendant (or Non-applicant, or Accused),—

CD, son of ....., of, etc.

Claim for (or, in the matter of), etc.

BY THIS POWER-OF-ATTORNEY, I, CD, defendant (or, etc.), in the above suit (or case), do hereby nominate, constitute and appoint EF, advocate etc., my attorney, for me, in my name and on my behalf to appear, act and plead in the said case, to make or present written statements, applications or petitions to the court, to withdraw and receive documents and any money from the court or from the opposite party either in execution of the decree or otherwise, and on receipt thereof, to sign and deliver for me proper receipts and discharges for the same, and to do all other lawful acts, deeds and things in connection with the case as effectually as I could do the same, if I were personally present; to engage and appoint any other advocate or advocates whenever my said advocate thinks proper to do so.

Provided, however, that, if any part of the advocate's fee remains unpaid before the first hearing of the case (or, etc.), or if any hearing of the case be fixed beyond the limits of this town, then and in such an event my said

advocate shall not be bound to appear before the court; PROVIDED ALSO that if the case be dismissed by default, or if it be proceeded *ex parte*, the said advocate shall not be held responsible for the same except in case of gross negligence, wilful default. And all whatever my said advocate shall lawfully do, I do hereby agree to and shall in future ratify and confirm.

Signed, sealed and delivered

CD

Accepted, subject to the aforesaid conditions.

EF, Advocate

### General Power-of-Attorney to a Manager of Estate

KNOW ALL MEN BY this power-of-attorney I, AB of, etc., do hereby nominate, constitute and appoint CD of, etc. my true and lawful attorney, for me, in my name and on my behalf, to do and execute and perform or cause to be done, executed and performed all or any of the following acts, deeds and things:

1. To work, manage, control and supervise the management of all and administer properties now or hereafter belonging to me and to develop the same.

2. To cultivate all agricultural lands belonging to my estate, open and work quarries, mines and minerals and to enter into contract, covenant and arrangement of any kind whatsoever in relation thereto and to modify, revoke and cancel the same as he shall think fit and proper without making me liable for any loss on that account.

3. To let out and/or otherwise settle all and any land or building or any part or parts thereof belonging to my estate on rent, selami, premium, on monthly tenancy basis or lease and to realise all rents, issues and profits thereof and to accept, surrender of leases and tenancies and to evict all trespassers and other unauthorised occupiers.

4. To sign and give notice or notices to any tenant or tenants and other occupiers of the lands and buildings belonging to my estate, to quit and vacate or to repair any damage or to abate any nuisance or to remedy a breach of covenant or contract or for any other purpose or purposes whatsoever and to avail of and enforce all remedies open to me in respect thereof and to enter into any such property or properties with a view to inspecting the same or exercising any right vested in me.

5. To make, sign and verify all applications or objections to appropriate authorities for all and any licence, permission or consent, etc., required by law in connection with the management and development of my property or properties.

6. To accept and withdraw on my behalf any compensation payable to me for acquisition or compulsory purchase, requisition or hiring of any land or building belonging to my estate by the Government or any competent body or authority.

7. To appoint staff and workers and to settle their remuneration and other terms of office and to dismiss or suspend them.

8. To effect mutation or separation of holding in the Revenue and/or Municipal Records and sign all applications or objections.

9. To appear for and represent me before the Board of Revenue, Collector of any district, Sub-Divisional Officer, any Magistrate, Judge, Munsif and in all Government offices, Calcutta Corporation, Improvement Trust, Commissioners of any division in all matters and things relating to my estate or its affairs.

10. To appear for and represent me in all the courts, civil, criminal or revenue, including Labour Tribunals, original, revisional or appellate, in any Registration offices, and to sign, execute, verify and file plaints, written statements and petitions, and also to present appeals in any court, and to accept services of all summonses, notices and other processes of law.

11. To appoint, engage on my behalf pleaders, advocates or solicitors whenever my said attorney shall think proper to do so and to discharge and/or terminate his or their appointment.

12. To compromise, compound or withdraw cases, or be non-suited to refer to arbitration all disputes and differences.

13. To sign, verify and file applications for execution of decrees or orders of any court, and to purchase property at court auction sales in execution of decrees up to the amount of the decree.

14. To withdraw and receive documents or money from any court, office or opposite party, either in execution of decrees or otherwise, and to do all the acts that may be necessary in connection with any of such cases.

15. To invest with my approval all surplus moneys in his hands and to charge and/or vary such investment.

16. To receive and recover any debt due and owing to me by any person, company or association, and on receipt or payment of any money whatever due and payable to me, to give proper receipt and discharges for the same, and on non-payment thereof, to file suits or any other proceeding for recovering and compelling payment thereof.

Provided always that the powers hereby conferred shall not extend to—

(a) winding-up or closing or sale of any business;



- (b) sale or mortgage of any property or granting of a lease for a term of over ..... years, or reserving a yearly rent exceeding Rs. ....;
- (c) granting of a lease of house property for a term of over ..... years, or reserving a yearly rent exceeding Rs. ....;
- (d) any investment or advance out of the funds and assets of the estate or to draw, accept, negotiate, retire, pay, discount any hundi, cheque or promissory note, bill of exchange or other negotiable instruments; and

Provided also that in every case my said attorneys shall always keep and maintain a true and correct account of all income and expenditure, which shall be rendered to me annually (or monthly), and shall pay me every month all balances of money in their hands.

And I do hereby agree to ratify and confirm whatever all acts, deeds and things lawfully and *bona fide* done by my attorney which shall be construed as acts, deeds and things done by me to all intents and purposes as if I was personally present.

IN WITNESS WHEREOF the parties herein have executed these presents on this ..... day of .....

Signed, sealed and delivered by  
AB and CD

AB  
CD

### General Power-of-Attorney from Person going to Reside Abroad

KNOW ALL MEN BY THESE presents I, AB, son of etc. state as follows: whereas I intend to go abroad and stay outside for long. And whereas in the circumstances aforesaid it is necessary and also expedient for me to appoint an agent to look after all my affairs during my absence. Now know ye by these presents I, the said AB, do hereby and hereunder nominate, appoint and constitute CD of, etc., my true and lawful attorney, for me, in my name and on my behalf, either solely or jointly with some other person or persons, to do and execute all or any of the following acts, deeds and things, that is to say:

1. To demand, sue for, enforce payment of, recover, receive and give proper receipts and discharges for, all moneys, debts, goods, effects, securities for money, stocks, shares, or other property, now belonging or hereafter to belong to me which receipts and discharges will exonerate any or all persons so paying without seeing the application thereof and on non-payment or non-realisation thereof to institute suits or other appropriate proceedings for receiving or compelling payment or delivery thereof.

2. To institute, commence, prosecute, carry on or defend or resist all suits and other actions and proceedings or be added as a party or be non-suited or withdraw the same concerning my property or any part thereof, or concerning anything in which I may be a party in any court in civil, criminal, revenue or Revisional jurisdiction, including special jurisdiction of the High Court under Art. 226 of the Constitution of India, etc., before Income-tax, Sales-tax and Wealth-tax Authorities and to sign and verify all plaints, written statements, accounts, inventories, to accept service of all summonses, notices and other judicial processes to execute any judgment, decree or order and to appoint and engage any solicitor, pleader, counsel or advocate and to sign and execute any vakalatnama, warrant of attorney or other authority to act and plead.

3. To accept the transfer of any stocks, funds, shares, annuities and other securities which shall or may at any time hereafter be transferred to me by sale, gift or otherwise.

4. To settle, adjust, compound, compromise or submit to arbitration all actions, suits, accounts, claims and disputes, between me and any other person or persons to compound or compromise the same.

5. To invest with my approval any of my moneys in such manner, at such rate of interest and upon such securities as my said attorney shall in his discretion think fit and from time to time to alter and vary the said investments or any of them into any other investments, and in the meantime and pending such investments as aforesaid, to deposit the said moneys or any part thereof with any banker or bankers to whom my said attorney shall think fit to entrust the same.

6. To vote at the meetings of any company, or otherwise to act as my attorney or proxy in respect of any stocks, shares or other investments now held or which may hereafter be acquired by me in such company.

7. To execute, carry into effect and perform all agreements and contracts entered into by me with any other person or persons, as my own act and deed and/or to cancel and/or repudiate the same without making me liable for any loss or damage by reason thereof.

8. To draw, endorse and sign any cheques, drafts, pay orders, dividend or interest, warrants or other investments payable to me, and to sign my name and execute on my behalf all contracts, transfers, assignments, deeds and instruments whatsoever.

9. To concur in doing any one or more of the acts, deeds and things hereinbefore mentioned in conjunction with any other person or persons without making me liable for any loss or damage on that account under any circumstances.

10. To enter into any agreement for sale, to sell, exchange, surrender, lease or otherwise dispose of any of my property or properties or portion or

portions thereof and to transfer, release any mortgage or charge or also to execute or enforce any powers of sale or other powers under any such mortgages or charges, or otherwise to realize or obtain the benefit thereof in such manner as my said attorney shall think proper.

To execute and register any document or documents in that behalf.

11. To raise loan and/or borrow from time to time such sums of money or moneys on my account and upon such terms as my said attorney may think fit for my benefit only upon the security of any of my properties, whether movable or immovable, and for such purpose, to execute such mortgages, charges, pledges or other securities upon such agreements, terms, conditions as he may think proper.

12. To pay for and discharge any debt or debts, or any part of them, contracted by me or my said attorney, as my said attorney shall from time to time think proper to pay and discharge.

13. To purchase or take on lease or otherwise acquire for me and/or for my use and benefit any property whatever as my said attorney shall think proper.

14. To appoint and engage, transfer, suspend and remove at pleasure any employee or agent, staff workers, for or from permanent, temporary or special service and to settle the terms and conditions and also retirement benefits as he, my said attorney, shall think fit and to determine their powers and duties.

15. To delegate all or any of the powers, authorities and liberties hereunder vested and to appoint any substitute or substitutes limited to any one or more purpose or purposes as he shall from time to time desire in that behalf.

16. And generally to do, execute and perform any other act or acts, deed or deeds, matter or thing whatsoever which in the opinion of my said attorney ought to be done, executed and performed in relation to my property or my concern, engagements and business, or affairs ancillary or incidental thereto as fully and effectually as I myself could do the same if I were personally present.

And I hereby agree and undertake to ratify and confirm all and whatsoever my said attorney, under the power in that behalf hereinbefore contained, shall lawfully do, execute or perform in exercise of the power, authorities and liberties hereby conferred upon, under and by virtue of this deed.

IN WITNESS WHEREOF the parties herein have executed these presents on this ..... day of .....

Signed, sealed and delivered by AB  
and CD

### Irrevocable Power-of-Attorney

THIS POWER-OF-ATTORNEY is made the ..... day of ..... by me, AB of, etc.

WHEREAS I have obtained this day from CD of, etc., the sum of Rs. .... as and by way of loan agreeing to repay the same with interest thereon at the rate of 18 per cent per annum: And whereas it has been agreed between me and the said CD that the said CD would be authorised by me to sell my house No. .... (or, etc.) situate at, etc., and out of the proceeds of such sale adjust, appropriate and pay himself and liquidate the debt due to him: Now this deed witnesses that for the consideration as aforesaid I hereby nominate, appoint and constitute CD my aforesaid attorney, in my name and on my behalf:

To enter into any agreement for sale, to sell, exchange, surrender, lease or otherwise dispose of any of my property or properties or portion thereof and to transfer realise and mortgage or charge or to execute or enforce any powers of sale or other power under any such mortgages or charges or otherwise to realise or obtain the benefits thereof in such manner as my said attorney shall think proper.

To adjust, appropriate and pay himself at the first instance out of the proceeds of such sale less all costs, charges and expenses the amount due to him and thereby to liquidate the debt payable by me to him and to pay the balance thereafter to me.

And I hereby agree to ratify and confirm all and whatsoever my said attorney shall lawfully do or cause to be done by virtue of this deed. This power-of-attorney is irrevocable provided however that the constituted attorney shall keep and maintain proper account of the sale and allow me inspection thereof as and when demanded.

#### *Description of the property*

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 presence of:

AB

Accepted by CD in the presence of:

CD

### Deed of Revocation of Power-of-Attorney

BE IT KNOWN TO ALL CONCERNED I, ..... son of, etc., by a power executed on the ..... day of ..... and registered in Book ..... Vol. .... Pages ..... to ..... being No. .... for the year ..... in the office of ..... appointed CD of, etc., my lawful attorney and agent for me, in my name

and on my behalf to do, execute and perform all acts, deeds and things, therein recited: And whereas for personal reasons and consideration it has become necessary and/or expedient to revoke the power: Now know ye all that by this deed I cancel the said power-of-attorney and absolutely and completely revoke also all powers or authority thereby and thereunder given to him, either expressly or impliedly, to all intents and purposes provided that nothing herein contained shall render invalid or ineffective any act, deed or thing lawfully and *bona fide* done or caused to be done by the said attorney under and by virtue of the power given to him before the revocation thereof by these presents.

IN WITNESS WHEREOF, I, AB, have executed these presents on this ..... day of ..... 2000.

Signed, sealed and delivered  
by AB

AB  
CD

WITNESS:

---

## Promoters' Loan Agreement

### Agreement for Loan by Promoters

THIS LOAN AGREEMENT IS MADE on this 10th day of May 1999 BETWEEN Mr. AB, by occupation business, residing at ..... (hereinafter referred to as the BORROWER which term or expression shall unless excluded by or repugnant to the context mean and include his heirs, executors, administrators, legal representatives and assigns) of the one part and ELH Home Finance Ltd., a company registered under the Companies Act 1956 and having its registered office and carrying on business at ..... (hereinafter referred to as the LENDER which expression shall unless excluded by or repugnant to the context include its successor and assigns) of the other part.

WHEREAS the BORROWER is seized and possessed of as the absolute owner of all that premises No..... of ..... comprised of a total land area of 5 (five) Cottahs more fully and particularly described in the schedule hereunder was purchased by the Borrower under Deed No. .... dated ..... registered with the Registrar of Assurances, Calcutta.

AND WHEREAS the BORROWER with a view to commercial exploitation of the said plot of land decided to develop the said property and got the appropriate Plan sanctioned by the Corporation of Calcutta which provided for construction of a four-storied building comprising 16 independent flats/units thereon and sale thereof to the intending buyers.

AND WHEREAS the BORROWER has already commenced the foundation work of the project out of his own resources and has completed construction upto the first floor level incurring expenses of about Rs. 18 lakhs.

AND WHEREAS the BORROWER is in urgent need of money to complete the project and has approached the LENDER for a loan of Rs. 40 lakhs with request to disburse the same in stages as detailed in schedule I hereto to meet his progressive financial requirements to complete the construction of the said

four-storied building by June 2000 and proposed repayment of loan together with accrued interest thereon at 20% per annum from, *inter alia* the sale proceeds of the flats/units by thirty equated monthly instalments of Rs. .... each commencing from the first day of the month following the receipt of last instalment of loan till the liquidation of the entire dues with interest, costs and other charges within a maximum period of three years from the receipt of the last instalment of the loan. In the event the BORROWER failing to pay according to the repayment schedule the interest element will correspondingly be enhanced and also the total repayable amount.

AND WHEREAS the LENDER has agreed to accept the proposal of the BORROWER in sanctioning the loan of Rs. 30 lakhs as confirmed in the LENDER'S letter of 30th April 1999 addressed to the BORROWER subject to the observance of the usual terms and conditions applicable to such loans such as creation of mortgage of the property including the structure thereon, both present and future, by way of first charge by deposit of Title Deeds, payment of the specified rate of interest, observance of repayment terms, payment of additional interest in case of default, provision for assignment and creation of other collateral securities.

AND WHEREAS the BORROWER has deposited with the LENDER a sum of Rs. 25,000 to meet the costs of documentation in connection with the said loan.

NOW THIS AGREEMENT WITNESSETH and it is hereby agreed by and between the parties hereto as follows:

1. In pursuance of this agreement and in consideration of the payment of Rs. 25,000 as mentioned above the LENDER doth hereby agree to sanction a loan of Rs. 30 lakhs to the BORROWER payable by instalment as detailed in the Schedule II hereunder and confirmed in the LENDER'S letter of ..... addressed to the BORROWER to enable the BORROWER to complete the project construction work of the four-storied residential building comprising 16 independent self-contained flats/units/apartments at the said premises of which the BORROWER is the owner.

2. The LENDER upon completion of formalities and execution of documents has this day paid the first instalment of Rs. 10 lakhs to the BORROWER against creation of mortgage by deposit of Title Deeds of the said premises the receipt of which the BORROWER has already acknowledged.

3. The first instalment as also all the balance instalments shall be secured by Promissory Note to be executed by the BORROWER for the respective amounts of the instalments and further the repayment of the entire loan shall be guaranteed by a person of substance.

4. The construction work has commenced by the BORROWER with first class materials. The construction has to be completed in all respects latest by June 2000.

5. The subsequent instalment of Rs. 20 lakhs will be released to the BORROWER in accordance with the terms and conditions detailed in Annexure hereto on receipt of Certificate of satisfactory progress of detailed construction work by the attending Architect and in the event of any extension of time granted for completion of construction work beyond June 2000 the instalment of loan will be correspondingly deferred.

6. The BORROWER shall get the building properly insured comprehensively both during the construction and thereafter jointly in the name of Lender against riot, flood, collapse, malicious damage, fire and earthquake risks making the LENDER beneficiary thereof and shall get the Insurance Cover renewed every year till the entire loan is repaid in full with applicable interest. In default of the BORROWER taking out the Policy the Lender may get such insurance to be taken out and/or renewed in the joint names as above at the cost of the BORROWER and the amounts so spent will be treated as loan to the BORROWER repayable with interest at 18% per annum.

7. The BORROWER shall pay all existing and future rates, taxes, charges, assessments, levies, impositions, cesses payable by the BORROWER of the property.

8. The BORROWER shall produce a Certificate from the Architect engaged for the construction on completion of the work of construction certifying that the construction was done in accordance with the sanctioned Plan and specifications and that the same was safe and suitable for residential purpose. The BORROWER shall produce Occupancy Certificate from the Corporation of Calcutta.

9. Immediately upon disbursement of the first instalment of the proposed loan the BORROWER shall create a mortgage of the entire property with construction and proposed construction by deposit of Title Deeds with the LENDER at his office as a security for payment of the loan granted and the proposed loan to be granted by the LENDER to the BORROWER.

10. Upon completion of the building in accordance with the sanctioned Plan, the BORROWER shall deliver vacant possession of the building over which the LENDER shall have a lien till such time the entire dues against the loan disbursed to the BORROWER together with interest thereon are repaid. If the principal amount of the loan and interest thereon or any part thereof shall remain unrealised then the LENDER shall have the right and liberty to sell the said flat on behalf of the BORROWER and appropriate the proceeds thereof in *pro tanto* satisfaction of the outstanding amount of the said loan.

11. The BORROWER shall execute an Irrevocable Power of Attorney for this purpose.

12. In the event of failure on the part of the BORROWER to complete the construction within the specified time for any reason whatsoever the BORROWER hereby agrees and declares that in that event the LENDER will have the right and liberty to take over the possession of the unfinished



construction work and complete the same at the cost and expense of the BORROWER and sale the flats and/ or the building in the name and on behalf of the BORROWER for which the BORROWER hereby authorises the LENDER to act on his behalf. The BORROWER will be liable to all costs of recovery that might be incurred by the LENDER including all costs in connection with any suit for realisation of the LENDER'S claims.

13. BORROWER undertakes not to create any further mortgage of the land and building or any part thereof to any other person, Financial Institutions or Bank for raising any loan. The BORROWER hereby declares and confirms that the original Title Deeds executed in favour of the BORROWER is in possession of the BORROWER. The BORROWER declares that he has not obtained any loan from any other Home Finance Company, Bank, Life Insurance Corporation of India or any other similar Institution in connection with the cost of construction of the aforesaid building.

14. The BORROWER will be at liberty to sell the flats/units/apartments at the said premises with prior consent and approval of the LENDER on terms and conditions agreed or upon liquidation of all dues payable to the LENDER in relation to the construction of the said building.

15. The LENDER shall put up a board at the construction site that the premises is mortgaged with the LENDER and such board shall not be removed by the BORROWER till the loan is fully liquidated.

*Schedule I*

All that pieces and parcel of land measuring 5 Cottahs be the same a little more or less together with four-storied building under construction with all fittings and fixtures comprised in 16 self-contained flats/units/ apartments and common areas, pathways, pump house being premises No. .... Khatian No. .... Mouza ..... butted and bounded

On the North by	..	R. S. Dag No. 5
On the South by	..	16 ft. wide common passage
On the East by	..	Part of Dag No. 5
On the West by	..	Part of Dag No. 5

*Schedule II*

(Sanctioning of loan and disbursement schedule with terms)

The loan is sanctioned for a sum of Rs. 30 lakhs to be secured by creation of first mortgage of the entire premises No. .... of ..... Khatian No. .... with semi-finished construction and construction that will be made on the said land. The loan will be repayable in thirty equated monthly instalment of Rs. .... Each equated monthly instalment comprises of principal and interest calculated on the basis of annual rate at 20% per annum and is rounded up to the next rupee. The rate of interest

is subject to revision to higher rate prevalent at the time of disbursement of the last instalment of loan without any further notice.

The loan amount will be disbursed in three instalments depending on the progress of work as under:

- |  |     |              |
|--|-----|--------------|
| (a) On completion of all formalities/execution of documents for the present loan     | ... | Rs. 10 lakhs |
| (b) On completion of casting of roof of third floor                                  |     | Rs. 15 lakhs |
| (c) On fixation of doors, windows, grills and completion of floorings and plastering | ... | Rs. 15 lakhs |

The second and subsequent instalment will be released upon receipt of information about the progress of work duly certified by a qualified Engineer/Architect. It is understood that the entire construction work will be completed by June 2000. The BORROWER has paid to the Lender Service Charges at 2% of the sanction amount and technical fee all of which are non-refundable.

... Rs. ....

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

Signed and delivered by the  
BORROWER Mr. AB, at Calcutta  
in the presence of:

(Signature)  
Borrower

Signed, sealed and delivered by  
Mr. .... pursuant to Board  
Resolution dated ..... of  
ELH Home Finance Ltd. in the  
presence of:

for and on behalf of  
ELH Home Finance Ltd.  
(Director)

### Letter of Guarantee for the Promoter's Loan

Place: Calcutta  
Date: 10th May 1999

To  
ELF Home Finance Ltd.  
56 G.C. Avenue  
Calcutta

Dear Sirs

In consideration of your having agreed to grant Promoter's loan of Rs. 30 lakhs to Mr. AB of ..... (hereinafter

referred to as BORROWER) broadly on terms and conditions stated in the Promoter's Loan Agreement dated 10th May 1999. I, Mr. CD, by occupation business, residing at ..... give you this Guarantee.

1. I hereby guarantee that the BORROWER will duly and punctually observe and perform each and every one of the obligations, to pay money whether for or towards principal, interest, other charges, expenses or otherwise howsoever on the BORROWER'S part to be performed under the said Promoter's Loan Agreement. I do hereby agree and undertake that in the event of default on the BORROWER'S part in making payment in discharge of such obligation I shall forthwith upon your notifying such default to make payment to you not only of the instalments due in respect of the defaulted instalments but also in the event of your having accelerated payment of the said amounts make payment to you of the entire loan without demur or protest on my part notwithstanding any objection from the BORROWER and I shall without prejudice to all your other rights indemnify you and keep you indemnified against all losses of principal, interest or other moneys due and payable to you in respect of the loan and all costs, charges and expenses whatsoever which you may incur by reason of any such default on the part of the BORROWER.

2. I hereby accord my consent to the terms of the said Promoter's Loan Agreement and/or any instruments that may hereafter be executed by the BORROWER in your favour varying or modifying the main agreement without requiring my consent or approval thereto and I agree that my liability under this Guarantee shall not in any manner be affected and/or reduced by such variation and modification and I expressly waive and relinquish my rights as a surety under the provisions of any law for the time being in force in that behalf.

3. You shall have the fullest liberty without in any way affecting this guarantee or discharging me from my liability hereunder to postpone for any time or from time to time the exercise of any power reserved to or conferred on you by the said Promoter's Loan Agreement or any other instrument that may hereafter be executed by the BORROWER in your favour and to exercise the same at any time and in any manner and either to enforce or forbear to enforce payment of the principal or interest or other moneys due and payable to you by the BORROWER or any of the remedies or securities available to you or to grant any indulgence or facility to the BORROWER and I shall not be released by any exercise by you of your liberty or by reasons of time being given to the BORROWER or any other forbearance, act or omission on your part or any other indulgence given by you to the BORROWER or by any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing me. I hereby waive all those rights relating to the suretyship and other rights which I might otherwise be entitled to and in force howsoever but for this provision have the effect of releasing me.

4. This guarantee shall be enforceable against me notwithstanding that the securities comprised in any instrument that may be executed by the borrower or any other person in your favour shall be at the time when the proceedings are taken against me hereunder are remaining unrealised.

5. In order to give effect to the guarantee you will be entitled to act as if I were a principal debtor to you for all payments guaranteed by me as aforesaid.

6. Without prejudice to anything stated in any other clause herein, and without in any way limiting or restricting the scope and operation of the guarantee herein contained all the obligations and liabilities would remain in full force and effect and I agree, assure and undertake that the BORROWER shall in terms of the said Promoter's Loan Agreement and/or any other Instrument or document that may be executed hereafter pay you every month during the period of loan a sum of Rs. .... as loan repayment by equated monthly instalments failing which I shall make good the deficit by full payment of the equated monthly instalments within seven days of notice of such default. I also undertake to pay forthwith without demur, protest or objection and notwithstanding any objections from BORROWER the amount demanded without being required to obtain any consent or confirmation from the BORROWER.

7. This Guarantee is a continuing one and shall be binding on me, my heirs, executors, successors, administrators, legal representatives and assigns for all amounts of the principal of the loan that may be advanced by you to the BORROWER under the said Promoter's Loan Agreement as also for all interest, additional interest, commitment charges, extra charges, service charges, cost and other moneys which may from time to time become due and remain unpaid to you by the BORROWER and shall remain in force until all such moneys shall be paid off in full with interest, costs and charges. Notwithstanding anything contained anywhere herein my liability towards the principal amount of the loan together with interest, additional interest, other charges, extra charges on arrears, service charges, costs or otherwise howsoever under the guarantee may not exceed Rs. 35 lakhs.

8. The benefit of this guarantee shall enure to your successors and assigns and shall be irrevocable until all obligations hereunder be discharged.

9. I assure that I am not under any disability or restriction to give you this guarantee and I undertake to make payment to you and discharge the pecuniary obligations of the BORROWER as set out in the Promoter's Loan Agreement.

10. I agree that this guarantee shall automatically come into force and become valid and binding on me immediately on disbursement being made under the Promoter's Loan Agreement executed between the BORROWER and yourself without requiring any further consent or approval from me.

11. You shall have the fullest liberty to increase the loan amount and vary the rate of interest and/or payment terms without any reference to me or prior consent from me. A certificate in writing signed by any of your duly authorised officers stating the amount at any particular time payable under the guarantee shall be conclusive evidence against me.

12. I further assure you that I have not applied for loan from you or any other bank or person or for myself or in respect of any person and I undertake not to apply for laon from you or any other Bank or person or give guarantee to any other company, Bank or person until this Guarantee has been cancelled by you on full repayment of your loan claims.

Signature of CD

Signature attested

**Irrevocable Power-of-Attorney**

KNOW ALL MEN BY these presents, I, Mr. AB, residing at .....  
....., hereinafter referred to as the PRINCIPAL state as follows:

WHEREAS I am the owner of the land with partly constructed house on which further construction is in progress as mentioned in the Schedule hereunder.

AND WHEREAS for effective management of the property I wish to engage an Attorney so that from the income of the property or from the sale proceeds of the property, the said Attorney can liquidate any outstanding claim lying or occuring or arising against me with Messrs. ELH Home Finance Limited, in the event of my failure to settle the same.

NOW KNOW ALL MEN by these presents that I, Mr. AB, do hereby and hereunder irrevocably nominate, constitute and appoint the said ELH Home Finance Limited or any Principal Officer thereof and/or any other person who may be nominated by the said ELH Home Finance Limited, or its assigns from time to time in this behalf to be my true and lawful Attorney for me and in my behalf and in my name to represent me and do all acts, deeds, matters and things in connection with the sale of the Property/Properties as per Schedule below that is to say:

1. To negotiate on terms for and sell my property, details whereof are mentioned in the schedule to any purchaser or purchasers at such price which my said Attorney in its absolute discretion think proper, to agree upon and to enter into any agreement or agreements for such sale and/or to cancel and/or repudiate the same.

2. To receive from the purchaser or purchasers any earnest money and also the balance of purchase-money and to give good valid receipt and discharge for the same which will protect the purchasers without being required to see the application of the money.

3. Upon such receipt as aforesaid in my name and on my behalf to sign and execute any conveyance or conveyances of the said property in favour of the said Purchasers or their nominee or assignees.

4. To sign and execute all other deeds, instruments and assurances which it shall consider necessary and to enter into such conveyance as may be required for fully and effectually conveying the said property and for that purpose to engage lawyers, file suits before appropriate Courts of Law and to execute decree as I could do myself.

5. To deliver possession of the aforesaid house, flats/apartments described in the schedule below, if necessary by evicting the occupants, irrespective of their legal status in the said property and for that purpose to engage lawyers, file suits before appropriate Courts of Law and to execute decree as I could do for myself.

6. To present any such conveyance or conveyances for registration, to admit execution and receipt of consideration before the Sub-Registrar or Registrar having authority for and to have the said conveyance registered and to do all acts deeds and things which my said Attorney shall consider necessary for conveying the said property to the said purchasers as fully and effectually in all respects as I could do the same myself.

7. And I hereby agree to ratify and confirm all and whatever other act or acts my said Attorney shall lawfully do execute or perform or cause to be done, executed or performed in connection with sale of the said property under and by virtue of this DEED NOT WITHSTANDING no express power in that behalf is herein provided.

8. This Power-of-Attorney shall remain in force and be irrevocable till all my dues with interest are liquidated finally with the said ELH Home Finance Limited and upon and full liquidation of my account with interest and costs the Power-of-Attorney shall be void automatically.

#### *Schedule*

All that pieces and parcel of land measuring 5 Cottahs be the same a little more or less together with under-construction four-storied building with all fittings and fixtures comprised in 16 self-contained flats/units/apartments and common areas, pathways, pumphouse being premises No. .... Khatian No. .... Mouza ..... butted and bounded.

On the North by ..	R. S. Dag No. 5	
On the South by ..	16 ft. wide common passage	
On the East by ..	Part of Dag No. 3	
On the West by ..	Part of Dag No. 6	

IN WITNESS WHEREOF I the said PRINCIPAL have hereunto sign and execute this Irrevocable Power-of-Attorney on this the ..... day of ..... 2000.

Signed, sealed and delivered by the above principal in the presence of witnesses:

1. ....

2. ....

Principal

**Agreement regarding Construction Loan with a Bank**

Date ..... 2000

The Agent

Bank of .....

(Address) .....

Dear Sir

I agree to grant to the Bank of Jaipur (hereinafter referred to as the BANK) a lease of my building bearing No..... situated in the main bazar owned by me and already in use of the bank for its branch.

2. I agree to carry out at my cost all the necessary additions and alterations to the premises by attaching further portion owned by me to the entire satisfaction of the BANK in accordance with the attached plan. The following covered accommodation would be available to the BANK after completion of the additions and alterations:

**GROUND FLOOR:**

- (a) Banking hall
- (b) Agent's room
- (c) R.C.C. locker room (existing strong room)
- (d) R.C.C. strong room (to be constructed)
- (e) Passage

*(Steel flexible gates would be provided in the entrance doors)*

**FIRST FLOOR:**

- (a) Staff lunch room
- (b) Stationery room
- (c) Record room
- (d) Guard room

- (e) Toilet
- (f) Covered verandah

*(Skylight vents would be provided in the ceiling of banking hall for light and ventilation)*

3. I will commence the said work within 30 days and will carry out and complete the same within four months from the date hereof.

4. The BANK will grant me a construction loan of Rs. .... @ ..... p.a. against a registered mortgage of the property, which will be repaid within five years by adjustment of Rs. .... per month out of the monthly rent payable by the BANK. The loan will be granted by the BANK in the following four instalments dependant on the basis of progress in construction work, as under:

- (a) *1st instalment of Rs. ....*: To be allowed after the mortgage is registered in favour of the BANK and other prescribed documents /certificates produced to the branch and the construction work is taken up in hand.
- (b) *2nd instalment of Rs. ....*: To be allowed when the construction of R.C.C. strong room is completed.
- (c) *3rd instalment of Rs. ....*: To be allowed when the entire construction work of the ground floor is completed.
- (d) *4th instalment of Rs. ....*: To be allowed when the construction jobs relating to 1st floor are completed and the building handed over to the bank complete in all respects with water connection/ sanitary and electric fittings, etc., and the prescribed lease deed is executed by me.

5. I shall arrange to get the building properly insured against fire and earthquake risk, and the insurance cover will be renewed every year till the entire loan is repaid in full. In the absence of my doing this, the BANK is fully authorised to get the insurance done at my cost.

6. I will, at my cost, do white washing/colour washing and painting/ varnishing on the wood work of the premises agreed to be demised to the BANK and deliver vacant possession of the same to the BANK not later than ..... as soon as it is approved by the BANK.

7. The BANK will pay or cause to be paid to me a monthly rent of Rs. .... only payable on or before the fifth day of every month for the preceding month. The said monthly rent will be payable from the date the said premises are ready for occupation and are complete in all respects and vacant possession is delivered to the BANK. The part amount of monthly rent, viz., Rs. .... shall, however, be deposited by the Agent direct



into my construction loan account towards its payment till the entire loan is liquidated with interest.

8. I will bear and pay and discharge all existing and future taxes, rates, charges and assessments payable by the owners of the said property. The BANK will pay only electricity, water and education taxes as per their actual consumption as shown in the meter/bills.

9. I will provide electric fittings, fixtures and sanitary equipment in accordance with a layout to be given by the BANK. I will also provide tap water facility in the building with an overhead tank.

10. I will construct a *pucca* strong room as per specifications supplied by the BANK. The work of construction of the *pucca* strong room will be done by me under the direct supervision of a P.W.D. official whose supervision and other charges will be borne by me. The strong room doors will, however, be provided by the BANK but affixed at my cost.

11. I will produce a certificate from the Executive Engineer, P.W.D., on completion of the work of construction of the *pucca* strong room to the effect that the strong room constructed in the premises is in accordance with the bank's standard specifications and plans. The Executive Engineer will certify that the strong room is duly reinforced with iron bars, cement and concrete from all sides including ceiling and floor, and it is fire and burglary-proof and quite safe and suitable for housing of currency chest and small coin depot.

12. The BANK shall be at liberty to remove at any time all materials employed by the bank in the construction of the strong room and all counters, strong room doors, safes, steel fittings, expanded metal apartments and temporary constructions which may have been brought in, fixed or erected by the BANK in the said premises during the continuance of the period of lease agreed to be granted by me to the BANK.

13. I will, during the terms of the lease, keep the said premises wind and watertight and will every year carry out white washing/colour washing and execute necessary repairs to the said premises as well as to any additions thereto, if any, erected and made by the BANK, at my cost. The oil painting/varnishing on wood work will be done every alternate year at my cost.

14. I will execute a deed of lease in favour of the BANK on the BANK'S standard form as per specimen enclosed for a period of five years with two options in favour of the BANK of renewing the said lease for a further period of five years each time, on the same terms and conditions. The cost of stamps for the lease deed and registration charges shall be borne by me and the BANK equally.

15. I will, in the event of my deciding to sell the said premises during the currency of the lease or at the expiration of the same, offer the same in the first instance to the BANK at the lowest price which I will be prepared to accept for myself and the BANK will, within one calendar month from the date of receipt of such offer, accept or reject such offer.

16. If I commit any breach of any of the terms and conditions herein to be observed and performed by me and if such breach is not remedied by me on a written requisition from the BANK within the time stipulated by the BANK in such written requisition, the BANK shall have an option to rescind this agreement and I shall be liable for payment of any loss or damage or compensation which the BANK may suffer either directly or indirectly or remotely as a result of such breach on my part.

Yours faithfully  
(Owner)

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## Public Interest Litigation

Article 32 of the Constitution is designed for the enforcement of fundamental rights of a citizen by the Supreme Court. If anything endangers or impairs the quality of life in derogation of laws recourse may be had to Art. 32. It is maintainable at the instance of affected persons or even by a group of social workers or journalists, genuinely interested in the protection of society on behalf of the community. Public interest litigations cannot be invoked by a person or body of persons to satisfy his or its personal grudge and enmity. Public interest litigation contemplates legal proceedings for implementation or enforcement of fundamental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law.<sup>1</sup>

Conversion of a public park into a private nursing home even by the Government is illegal and petition by inhabitants of the locality is maintainable under Art. 226 of the Constitution as public interest litigation.<sup>2</sup> Merely because authorities constituted under a Statute failed in their effort to get interim order vacated is hardly any occasion for invoking jurisdiction under Art. 226 by way of public interest litigation. Besides, in such a petition the person may be honest and his grievance genuine yet the court may dismiss it for want of territorial jurisdiction or the petition may be defective as the person approaching may not be entitled to file it. Decision by High Court on the basis of subsequent events and not on facts existing as they were on the date of filing is also not proper.<sup>3</sup> Order of the court must be a speaking order after affording reasonable opportunities of hearing to the parties.<sup>4</sup>

1 *Subhas Kumar v State of Bihar* AIR 1991 SC 420; (1991)1 SCC 598; (1991)1 SCR 5; 1991 AIR SCW 121; see also, AIR 1984 SC 802; (1987)2 SCC 295; (1990)4 SCC 449.

2 *Bangalore Medical Trust v B.S. Muddappa* AIR 1991 SC 1902.

3 *T.N. Rugmani v C. Achutha Menon* AIR 1991 SC 983.

4 *Gram Panchayet v Collector* AIR 1991 SC 1082.

Health care of workmen and members of their families and education of the children as also the adults in exclusive locality should be of the employer even of the State where it is the employer. Their necessities include reasonable housing, supply of water, a provision store at hand, facility for a hospital recreational facilities and attention to the law and order. A welfare State has to cater to these requirements. A public interest litigation is maintainable for the purposes and the High Court is competent to give directions for enforcement of its order.<sup>5</sup> There can be a public interest litigation to undo any mischief done by Government official affecting the upkeep and maintenance of the temple and also for doing certain *sevas* of the deity.<sup>6</sup>

High Courts cannot, however, *suo moto* register a public interest litigation assuming judicial jurisdiction to probe into matters even of an administrative nature relating to High Court.<sup>7</sup>

The public interest litigation should not be a cloak for attaining private ends of third party or of the party bringing the action. The court must be careful to weigh conflicting public interests before intervening.<sup>8</sup> An Administrative Tribunal cannot entertain any public interest litigation at the instance of a total stranger.<sup>9</sup>

## FORM

### Specimen of a Writ Petition for Public Interest Litigation

District .....

In the High Court at Calcutta, Constitutional writ jurisdiction

*Appellate Side*

C.O./C.R. No. .... (W) of 1999

In the matter of:

An application under Article 226 of the  
Constitution of India

And

5 *Bandhna v Union of India* AIR 1992 SC 38.

6 *S. Sumitra v State* AIR 1993 Kant 108.

7 *Kumar Padma v Union of India* AIR 1992 SC 1213.

8 *Raunaq International v I.V.R. Construction* AIR 1999 SC 393.

9 *Duryodhan Sahu v Jitendra* AIR 1999 SC 114.

In the matter of:  
Articles 14, 21, 48A and 51A(g) of the  
Constitution of India

And

In the matter of:  
West Bengal Municipal Act 1993

And

In the matter of:  
The Environment Protection Act 1986

And

In the matter of:  
West Bengal Town and Country (Planning  
and Development) Act 1979

And

In the matter of:  
Illegal attempt on the part of the  
Respondents (1) & (2) for raising a  
Cinema building by destroying one large  
water-body situated in the ..... in  
violation of the draft outline/Development  
Plan for the area concerned

And

In the matter of:  
Shri ..... son of .....,  
President of ..... residing  
at .....

*Petitioner*

*versus*

1. ...., a company incorporated  
under the Companies Act 1956 having its  
registered office at .....
2. Mr. .... managing  
partner for Cinema, a partnership firm  
having its office.
3. The Chairman, .....  
Municipality ....., having its office  
at .....
4. State of West Bengal, Department or  
Urban Development ..... having

its office at Writers Building, Calcutta  
through its Secretary

*Respondent*

To

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

The humble petition of and on behalf of  
the petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. The petitioner is a citizen of India and is also the President of ..... an unincorporated Association of persons formed on ..... by eminent citizens of ..... at a general meeting held at ..... with the object, *inter alia*, of protecting the ecology and environment of the country with particular emphasis on the preservation of national heritage buildings and architectures ..... as well as for upholding the Constitutional and Legal Rights of the Citizens of India, particularly of the persons belonging to economically weaker section of the society and living within the municipal area of ..... The petitioner craves leave to refer to and rely upon the aims and objects of the said ..... at the time of hearing, if necessary.

2. The petitioner is also an Ecologist and having a specialised knowledge in ecology and environment.

3. The instant application is being filed by the petitioner for and on behalf of the ..... as well as representing the weaker sections of the community residing within the municipal area of ..... seeking a writ or order or direction in the nature of mandamus upon the Respondents Nos. 1 and 2 commanding them to forbear from changing or disturbing the environment and ecological pattern of the land in respect of one large water-body situated in ..... under the jurisdiction of the ..... for the ostensible purpose of construction of a cinema building at the instance of Respondent No. 2 to be financed by the Respondent No. 1 or for any other purpose which might cause any such disturbance of ecology and environment.

4. The petitioner submits that such constructions, if effected, would not only cause disaster to the ecology and environment of the municipal area and in particular the south western portion of the town, but it would be in violation of the draft outline of Development Plan of the Greater Calcutta prepared for the ..... under the ..... and the said plan prohibits *inter alia*, filling up of any water-body covering an area beyond 200 sq. m. the petitioner craves leave to refer to a copy of the said draft plan, at the time of hearing, if necessary.

5. The land on which such water-body is situated is owned by the Commissioners of ..... Municipality for the purpose of converting the same into a green park and a swimming pool attached to it for the health and welfare of the residents and rate payers of the municipal area concerned but at present it is being used for pisciculture and which is being used by leasing out from time to time to different agencies for the purpose of pisciculture in order to accumulate the necessary finance for the ultimate object of laying the park and setting up the swimming pool and funds have been set apart for the same.

6. In course of time, almost the entire area round the said water-body has been built up by raising one school building besides residential complexes and a market place and the water-body in question is the only water-body in the area.

7. The petitioner has come to know that the Commissioners of the Municipality concerned are now devising various strategies to change the land use pattern of the said water-body by filling up the same as also by destroying the surroundings jeopardising the health and sanitation of the residents of the area in gross violation of the Constitutional Rights of the people of the area and the pupils of the educational institution close by as also in violation of the Town and Country (Planning and Development) Act 1979 and the Environment Protection Act 1986.

8. The Government has already taken steps for protection of wet-lands and in this regard has published an approach paper.

9. The State Government has also published a similar policy document for preservation of the wet-lands.

10. That the Respondent No. 1 is a company engaged in manufacturing iron rods having a Rolling Mill at Lilloah in the district of Howrah and it is a stranger to any cinema business but in order to augment its income has surreptitiously come to an understanding with the Respondent No. 2 to start a cinema business by providing the finance. The Respondent No. 2 is just a ghost firm set up by Respondent No. 1 to avoid the rigours of the Companies Act.

11. The wet-land described in the Schedule below serves the cause of environment in various ways which are indicated hereunder:

(a) Each water-body keeps the atmosphere cool by absorbing heat. Water vapours also keep the surrounding area cool. It absorbs carbon dioxide which are regularly discharged into the atmosphere.

(b) Wet-lands absorb dust particles discharged into the atmosphere by various sources and elements.

12. That the setting up of a cinema building so close to the school in the area will be dangerously affecting the education and health of the pupils and it is a co-educational institution.

13. Article 48A of the Constitution of India casts a duty upon the respondents to protect and improve the environment and to safeguard the forest and wild life of the country and they are also in duty bound to prevent any action which is likely to degrade the environment and affect the health and living conditions of the area and to prevent destruction of the aforesaid water-body.

14. The petitioner, therefore, begs to move this application as the President of ..... and its members, and also on behalf the citizens/residents of said municipal area in order to protect their rights as enshrined under Article 21 read with Article 48A of the Constitution inasmuch as the persons likely to be prejudiced and affected by the aforesaid action of the Municipality of ..... are so numerous and scattered and moreover the damage that is likely to be caused to them by the aforesaid action of the municipal authority will be slow and gradual before the same became manifest, it would not be possible for residents and tax payers to move this Hon'ble court individually. The petitioner and ..... society and the member of ..... are also duty bound under the provisions of Article 51A(g) of the Constitution to institute action for protection of environment since Article 51A(g) states that it will be the duty of every citizen of India to protect and improve the natural environment including various lakes and rivers and wild life to have combination for the living creatures, to initiate action for protection of the aforesaid water-body as the said municipal authority is bent upon destroying the water-body and has initiated urgent measures for the same, threats of destruction of the said water-body having become apparent and real and imminent the petitioner as the President of ..... along with some eminent citizens of the Municipal area have already written several letters to the Chairman of the Municipality urging him not to, in any way diminish or destroy the water-body.

15. The concern shown by the petitioner as well as other eminent citizens of the area have failed to elicit any positive response from the Municipality and they appeared to be bent upon destroying the water-body by filling up the same in violation of statutory provisions and Government circulars and directions.

16. The petitioner states that the purported decision of the municipal authority if implemented would cause destruction and disturbance of the ecological and environmental equilibrium in the impugned areas by filling up of the aforesaid water-body and the impugned action is not only arbitrary but is also in violation of Article 14 of the Constitution.

17. Being aggrieved by and dissatisfied with the various actions and threats of the municipal authority the petitioner begs to move the instant application under Article 226 of the Constitution of India on the following amongst other.

#### GROUNDS

- (I) For the purported decision of the municipal authority to fill up the aforesaid water-body is to cause great injuries to the ecology/



environment of the town and consequently would infringe the right of the residents of the area to a clean environment as impliedly enshrined in Article 21 of the Constitution and would thus be violative of the fundamental rights of the life of the residents of the area as guaranteed in Article 21 of the Constitution.

(II) For that the setting up of the cinema hall close to the school and the residential area and denial of a green park and swimming pool to the residents would amount to creating educational and health problems for the pupils and the residents.

(III) For that .....

18. The petitioner states that the petitioner has not moved any other application on the self-same cause of action before the Hon'ble Court or any other Court of Law.

19. The petitioner states that it is apparent that the Municipal Authority is actively proceeding towards the filling up the aforesaid water-body and unless restrained by an order of injunction, the respondent Nos. 1 and 2 as agents of the Municipality would fill up the said water-body which will render the instant application infructuous.

20. The cause of action of this instant application arose outside the Ordinary Original Civil Jurisdiction of this Hon'ble Court.

21. The petitioner has no other efficacious and alternative remedy and the remedies prayed for hereunder would give full and final relief to the residents of the area concerned on whose behalf the instant application is being moved.

22. The petitioner has also made demand for justice vide Annexure ..... to the petition, but justice has been denied.

23. As indicated hereinabove, the petitioner is moving this application in public good to protect the public interest and not intended to serve any interest of any individual and in case the orders, as prayed for hereunder, are not granted the residents of the area concerned would suffer irreparable loss and injury.

24. That this application is being moved *bona fide* and in the interest of justice.

In the premises, your petitioner humbly prays Your Lordships for the following orders:

- (a) Writ in the nature of *mandamus* directing the respondent Nos. 1 and 2 not to change the land use pattern of the water-body known as ..... situated in ..... of the Municipality of;
- (b) Writ in the nature of *mandamus* directing the respondent Nos. .... give suitable direction to the respondent Nos. 1 and 2 requiring them to maintain the water-body as mentioned above in its present nature and character.

- (c) An order or direction upon the respondent Nos. .... and each of them and their subordinates agents restraining them from according any sanction or permission or to do any act or omission which would enable the respondent Nos. 1 and 2 to disturb/diminish the said water-body.
- (d) An order or direction upon the respondent Nos. 1 and 2 directing them to bring into this Hon'ble Court all the records relating to any decision that might have been taken for construction of cinema building so that conscionable justice may be administered by quashing the same;
- (e) Rule nisi in terms of prayers (a), (b), (c) and (d) above;
- (f) Rule be made absolute;
- (g) Interim order of injunction restraining the respondent Nos. 1 and 2 from taking any steps towards destroying and/or diminishing the water-body known as ..... situated at ..... in any manner whatsoever till the disposal of this application;
- (h) *Ad interim* order in terms of prayer (g) above;
- (i) And pass such other or further order or orders as to Your Lordships may seem fit and proper.

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

*Affidavit*

I, Shri ..... son of ..... aged about ..... years, by religion ..... by occupation ..... residing at ..... do hereby solemnly affirm and say as follows:

1. I am the petitioner in the instant application and am well acquainted with the facts and circumstances of the case. I am duly authorised by the society to affirm this affidavit and I am competent to affirm this affidavit on behalf of the society and for self.
2. That the statements made in paragraphs ..... are true my knowledge and those made in paragraphs ..... are my humble submissions before this Hon'ble Court.

Prepared in my office  
Advocate

The deponent is known to me  
Clerk to: Mr. ....

Solemnly affirmed before me on this  
..... day of ..... 1999

Advocate

Commissioner

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## Claims against Railways

**Present position.** For breach of contract, say, for supply of goods or construction of roads or bridges or laying of railway line or supplying provisions, a suit in the Civil Court is maintainable against the Railways. Notice under s. 80 of the Code of Civil Procedure 1908 will be necessary and Union of India will be a necessary party along with the Railways to the suit. Section 43 of the Railways Act 1989 does not bar such a suit.

The Railways have to carry out construction and maintenance works and in connection therewith may enter into lands belonging to others, alter the position of pipe, electric supply line, drain, sewer, etc., remove obstruction to repair or to prevent accident.<sup>1</sup> The person aggrieved by any such act of the Railways and claiming damages or loss cannot file a suit against the Railway Administration. The Railway Administration shall pay or tender such sum by way of damages or loss as it may think reasonable. Either party, if aggrieved, may make an application to District Judge having jurisdiction over the matter for a decision. The decision of the District Judge shall be treated as a decision of the Appeal Court and shall be treated as final.<sup>2</sup>

The Railway Administration makes and maintains crossings, bridges, culverts, tunnels, drains, etc. at its own cost for the benefit of the owner of the adjoining lands. Such works are termed as "accommodation works".<sup>3</sup> Any person aggrieved may make a claim against the Railways. Such claim is to be made within six months of the cause of action and any claim should be filed with the Railways Claims Tribunal. No suit is maintainable.

**Notice.** The notice under s. 78B of the Railways Act 1890 or s. 80 of the Code of Civil Procedure 1908 is not any more necessary. Section 106 of the

- 1 Sections 11 to 14 of the Railways Act 1989.
- 2 Section 15 of the Railways Act 1989.
- 3 Section 16 of the Railways Act 1989.

Railways Act 1989 is a substitute for both the sections. Within six months of the cause of action a notice has to be served to the Railway Administration concerned. Such notice is to be given under s. 106 of the Railways Act 1989 by a person claiming compensation against Railway Administration for the loss, destruction, damage, deterioration, non-delivery of goods to the Railway Administration to which the goods were entrusted for carriage or on whose Railway the destination lies or the loss, destruction, damage or deterioration occurred. This notice has to be given within six months from the date of "entrustment" of the goods. The entrustment is the cause of action. So far as claim for refund of an overcharge in respect of goods is concerned, the notice has to be served to the Railway Administration to which the overcharge has been paid. This notice has to be served within six months from the date of such payment or the date of delivery of such goods at the destination station whichever is later.<sup>4</sup>

**Competent Tribunal.** An application for compensation for loss, destruction, damage, deterioration or non-delivery of goods shall be filed before the Tribunal against the Railway Administration on whom the notice under s. 106 has been served.<sup>5</sup>

**Mode of service.** Any notice or other documents may be served on the General Manager of the Zonal Railway or on the Railway servant authorised by the General Manager. The notice is to be served by delivering it to the General Manager or his authorised servant or leaving the notice at his office or by registered post to his office address. In case of a Railway other than a Zonal Railway the notice is to be served on the owner or lessee of the Railway or the person working the Railway under an agreement.<sup>6</sup> Similar provisions have been made in s. 193 for serving of notice, etc. by the Railway Administration.<sup>7</sup>

**Rules.** Under s. 198 Central Government may make Rules for carrying out the purposes of the Railways Act 1989.

**Tribunal.** The Railway Claims Tribunal Act 1987 provides for the establishment of Tribunals for determining claims against Railway Administration for loss, destruction, damage, deterioration or non-delivery of animals or goods entrusted to it to be carried by Railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of Railway accidents or untoward incidents and matters connected therewith or incidental thereto.

**Rules.** Central Government has made the Railway Claims Tribunal (Procedure) Rules 1989 providing, *inter alia*, the form in which applications to be made to the Tribunal, the fees to be paid and procedure for hearing of such applications.

4 Section 106 of the Railways Act 1989.

5 Section 107 of the Railways Act 1989.

6 Section 192 of the Railways Act 1989.

7 Section 193 of the Railways Act 1989.

**Limitation.** A suit for money claim for breach of contract will have to be filed within three years. A claim in Tort not covered by the Railways Act 1989 is to be filed within one year.

An application to the Railway Claims Tribunal for recovery of damages for carriage of goods or refund of excess payment of freight or fare the limitation is three years. For recovery of compensation arising out of accidents is one year.<sup>8</sup> From a final order of the Tribunal an appeal lies to the High Court within ninety days from the date of the order.<sup>9</sup>

**Procedure.** The Railway Claims Tribunal (Procedure) Rules 1989 framed under the Railway Claims Tribunal Act 1987 provides for the form of application, fees payable and proceedings before the Tribunal.

## FORMS

### Combined Notice under section 106 of the Railways Act 1989 and section 80 of the Code of Civil Procedure 1908

*Regd. A/D.*

Dated .....

General Manager  
Eastern Railway  
Koilaghat Street  
Calcutta

Dear Sir

*Re:* Payment for goods sold and delivered.

Please take notice that my client AB residing at ..... will institute a suit against the Union of India owning and administering the aforesaid Railway in a Court of competent jurisdiction after expiry of two months after service of this notice under section 106 of the Railways Act 1989 and section 80 of the Code of Civil Procedure for reliefs and on causes of action described in the draft plaint annexed hereto unless the reliefs claimed are granted to my client by the said Railway within the said period of two months.

The relevant facts justifying my client's claim and constituting cause of action of the proposed suit and reliefs thereunder are given in short hereinbelow.

8 Section 17 of the Railways Claims Tribunal Act 1987.

9 Section 23 of the Railways Claims Tribunal Act 1987.

On or about ..... at your request my client sold and delivered to you 100 reams of foolscap paper, 100 bottles of black writing ink 1000 pieces of lead pencils and 100 boxes of carbon papers for a total sum of Rs. .... You have duly received the said goods and signed challans and appropriated the said goods. My clients raised bills which you received and you did not complain either about the goods or the said bills but delayed payment on some pretext or other.

In spite of several demands made by my client, you have not paid the said sum or any portion thereof though you promised from time to time to pay the same.

My client hereby demands the said sum of Rs. .... with interest at 15% per annum from the date of submission of the bills till payment by you to my client.

Please note that unless payment is received within a period of 65 days from date of receipt of this notice, I have instructions to file suit against you for recovery of the claim of my client without any further notice to you and in that event you shall be held responsible for costs and consequences thereof.

Yours faithfully

### FORM I

**Rule 5 of the Railway Claims Tribunal (Procedure)**  
**Rules 1989 and section 16 of the Railway Claims Tribunal Act 1987**

Title of the Case : AB ..... *Claimant*  
 And  
 General Manager ..... Railways  
*Respondent*

Description of documents attached :  
 Signature of the applicant :  
 For use in Tribunal's Office :  
 Date of filing: :  
 Registration No. :  
 Registrar Signature

In the Railway Claims Tribunal  
 Before the ..... Bench

AB, residing at ..... *Applicant*  
 And  
 General Manager ..... Railways *Respondent*

1. Particulars of the applicant  
 Name: AB  
 Address:
2. Particulars of the respondent: General Manager .....
3. Value of claim and details of application fee:  
 (a) Value of claim: Rs. 5,00,000  
 (b) Details of application fee: .....
4. (i) Name and address of the Bank on which the draft is drawn:  
 X Bank Ltd.  
 (ii) Demand Draft No. .... for Rs. .... payable at Calcutta Branch
5. Full booking particulars of the consignment:  
 (a) Date of booking  
 (b) R/R or parcel way bill  
 (c) Station from ..... to .....  
 (d) description of consignment  
 (e) value of consignment  
 (f) any other particulars
6. Date on which notice served on Railway Administration under section 106 of the Railways Act 1989 (copy to be attached)
7. (i) Facts of the case  
 (ii) (a) nature of the relief sought  
 (b) grounds of relief
8. Matters not previously filed or pending with any other court.
9. Jurisdiction of the Bench:
10. List of enclosures

*Verification*

I, ..... son of ..... aged ..... residing at ..... do hereby verify that the contents of paragraphs ..... to ..... are true to my personal knowledge and paragraphs ..... to ..... are believed to be true to the best of my knowledge or the legal advice given to me and that I have not suppressed any material fact.

Signature of the applicant

Full address

Date:

Place:

To  
 The Registrar  
 Railway Claims Tribunal  
 ..... Road, Calcutta

## FORM II

Application for Compensation under section 16 of  
the Railway Claims Tribunal Act 1987 in respect of Claims  
for Compensation for Death Injury etc. in a Train Accident read  
with Rule 5 of the Railway Claims Tribunal (Procedure) Rules 1989

AB ..... *Claimant*

And

General Manager, Railways *Respondent*

## INDEX

Description of documents attached	:	
Signature of the applicant	:	
For use in Tribunal's Office	:	
Date of filing	:	
Registration No.	:	
Registrar		Signature

In the Railway Claims Tribunal  
Before the ..... Bench

AB ..... *Claimant*

And

CD/General Manager ..... Railways  
..... *Respondent*

I, ..... son of ..... residing at ..... having been injured  
in Railway accident hereby apply for the grant of compensation for the injury  
sustained.

I, ..... son of ..... residing at ..... hereby apply as  
dependant for the grant of compensation on account of injury sustained by  
Shri ..... son of ..... residing at .....  
who was injured in the railway accident referred to hereunder.

Necessary particulars in respect of the deceased/injured in the accident  
are given below:

1. Name and father's name of the person injured/dead and husband's name in case of married woman.
2. Full address of the person injured/dead.
3. Age of the person injured/dead.



4. Occupation of the person injured/dead.
5. Name and address of the employer of the deceased if any.
6. Brief particulars of the accident indicating the date and place of accident and the name of the train involved.
7. Class of travel, and ticket/pass No. to the extent known.
8. Nature of injuries sustained along with medical certificate.
9. Name and address of the medical officer/practitioner if any who attended on the injured/dead and period of treatment.
10. Disability for work if any caused.
11. Details of the loss of any luggage on account of the accident.
12. Has any claim been lodged with any other authority? If so, particulars thereof.
13. Name and permanent address of the applicant.
14. Local address of the applicant, if any.
15. Relationship with the deceased/injured.
16. Amount of compensation claimed.
17. Where the application is not made within one year of the occurrence of the accident the grounds thereof.
18. Any other information or documentary evidence that may be necessary or helpful in the disposal of the claim.
19. Mention the documents if any filed along with application.

I, ..... solemnly declare that

- (a) the particulars given above are true and correct to the best of my knowledge and
- (b) I have not claimed or obtained any compensation in relation to the injury/death which is the subject-matter of this application.

Signature or left thumb  
impression of the applicant

Date:

Place:

Name of witness & address in case  
of left thumb impression is put by  
the applicant

#### Verification

I, ..... son of ..... aged ..... residing at  
..... do hereby verify that the contents of paragraphs ..... to

..... are true to my personal knowledge and paragraphs .....  
 to ..... are believed to be true to the best of my knowledge or the  
 legal advice given to me and I have not suppressed any material fact.

Signature of the applicant

Full address:

Date:

Place:

To

The Registrar

Railway Claims Tribunal

..... Road, Calcutta

### FORM III

Application under section 16 of the  
 Railway Claims Tribunal Act 1987 read with Rule 5  
 of the Railway Claims Tribunal (Procedure) Rules 1989 in  
 respect of Claims for Refund of Fares or Part thereof or for  
 Refund of any Freight Paid in respect of Animals or Goods  
 entrusted to a Railway Administration to be Carried by Railway

In the Railway Claims Tribunal  
 Before the ..... Bench

AB ..... *Claimant*

And

General Manager ..... Railways  
 ..... *Respondent*

### INDEX

Description of documents attached	:	
Signature of the applicant	:	
For use in Tribunal's Office	:	
Date of Filing	:	
Registration No.	:	
Registrar	:	Signature

In the Railway Claims Tribunal  
Before the ..... Bench

BETWEEN

AB ..... Claimant

And

General Manager ..... Railways  
Respondent

1. Particulars of the applicant:
 

Name: AB

Address:
2. Particulars of the respondent:
3. Value of the claim and details of application fee.
  - (a) value of claims: Rs. 5,00,000
  - (b) details of application fee:
4. Particulars of Bank Draft/Postal Order in respect of application fee:
  - (i) name and address of the Bank on which the draft is drawn. X Bank Ltd., Calcutta Branch.
  - (ii) demand draft No. .... payable at Calcutta Branch.
5. Full particulars of payment of freight/fare:
  - (a) Claim for refund of freight.
    - (i) date of booking
    - (ii) R/R/Parcel Way Bill
    - (iii) Station from ..... to .....
    - (iv) description of consignment
    - (v) freight paid
    - (vi) amount of refund of claims
    - (vii) Money Receipt/Credit Note or other payment particulars.
  - (b) Claim for refund of fare:
    - (i) Date of journey
    - (ii) Train No.
    - (iii) Class of travel
    - (iv) Class actually travelled
    - (v) ticket or ticket deposit receipt/excess fare ticket etc. guard's or conductor's certificate
    - (vi) fare paid: Rs. ....
    - (vii) refund claimed: Rs. ....
6. Date on which notice served on Railway administration under

section 106 of the Railways Act 1989 in respect of claims for refund of freight. (attach proof).

7. (i) Facts of the case.
  - (ii) (a) Nature of relief sought
  - (b) grounds of relief.
8. Matters not previously filed or pending with any other court (in case the applicant took any legal action give details and attach certified copy of the order).
9. Jurisdiction of the Bench.
10. List of enclosures.

### *Verification*

I, ..... son of ..... aged ..... residing at ..... do hereby verify that the contents of paragraphs ..... to ..... are true to my personal knowledge and those of paragraphs ..... to ..... are believed to be true to the best of my knowledge or the legal advice given to me and that I have not suppressed any material fact.

Date:

Signature of the applicant

Place:

Full address:

To

The Registrar  
 Railway Claims Tribunal  
 ..... Bench  
 ..... Road  
 Calcutta

NOTE: Application fee: Rs. 314 for a claim of Rs. 5,000; Rs. 1,064 for claim of Rs. 20,000; Rs. 1,464 for a claim of Rs. 30,000; Rs. 1,664 for Rs. 40,000; Rs. 1,764 for claim of Rs. 50,000 and thereafter at half per cent subject to maximum application fee of Rs. 50,000.

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## Receipt and Acknowledgement

**Receipt.** It is defined in s. 2(23) of the Indian Stamp Act 1899 as under:

- (23) Receipt includes a note, memorandum or writing—
- (a) whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received, or
  - (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or
  - (c) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or
  - (d) which signifies or imports any such acknowledgement, and whether the same is or is not signed with the name of any person.

**Obligation to give receipt.** Any person receiving any money exceeding Rs. 20, or any bill of exchange, cheque or promissory note for an amount exceeding Rs. 20 or receiving in satisfaction or part satisfaction of a debt any movable property exceeding Rs. 20 in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Any person receiving or taking credit for any premium or consideration for any renewal or any contract of fire insurance, shall, within one month after securing or taking credit for such premium or consideration, give a duly stamped receipt for the same.<sup>1</sup>

The amount of stamp duty is prescribed by Art. 53, etc., of the Stamp Act. Section 65 of the Stamp Act prescribes punishment for refusal to give receipt. Section 25 of the West Bengal Premises Tenancy Act 1956, enjoins that a receipt for the rent paid shall be forthwith given to the tenant on payment of the rent.

1 Section 30 of the Indian Stamp Act 1899. This section refers to "stamped" receipt for money exceeding Rs. 20. However Art. 53 provides that stamp is payable only if the receipt is for more than Rs. 500.

**Instruments not duly stamped inadmissible in evidence.**<sup>2</sup> Section 2(11) of the Indian Stamp Act (Act 11 of 1899) defines the expression "Duly Stamped". It means that the instrument must bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been fixed or used in accordance with the law for the time being in force in India.<sup>3</sup> Receipts, promissory notes or a bill of exchange are not admissible in evidence if they are not duly stamped; provided that, where any person, from whom a stamped receipt could have been demanded, has given an unstamped receipt, and such receipt if stamped would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty by the person tendering it; and where any receipt chargeable with a duty tendered to produced before any officer unstamped in the course of the audit of any public account, such officer may, in his discretion, instead of impounding the document, require a duly stamped receipt to be substituted therefor.<sup>4</sup>

**Cancellation of adhesive stamps.** On any instrument bearing an adhesive stamp, the executant must cancel the stamp, so that it cannot be used again, by writing on or across its face his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner.<sup>5</sup>

**Penalties.**<sup>6</sup> If any person—

- (i) receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction or part satisfaction of a debt any movable property exceeding twenty rupees in value, refuses or neglects to give a receipt, or
- (ii) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value give a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered, or
- (iii) required to cancel an adhesive stamp, fails to cancel such stamp according to law,

he shall be liable to be punished with fine not exceeding one hundred rupees.

It will not be out of place to point out here the responsibility of lawyers and professional deed writers engaged by parties for preparation of

2 Section 35 of the Indian Stamp Act 1899.

3 Section 2(11) of the Indian Stamp Act 1899.

4 Section 37 of the Indian Stamp Act 1899.

5 Section 12 of the Indian Stamp Act 1899.

6 See ss. 62 & 63 of the Indian Stamp Act 1899. In view of Art. 53 of the Schedule to the Act Rs. 20 should be read as exceeding Rs. 500.

documents. A solicitor, advocate, pleader and even their respective clerks are liable to prosecution if they, with a view to defraud the Revenue Authorities, omit to set forth all facts in a document, *i.e.* suppress material facts to keep down stamp duty.<sup>7</sup>

**Instruments by or in favour of Government.** Receipts, any other instrument, executed by, or on behalf of or in favour of, the Government, in cases where the Government would otherwise be liable to pay the duty chargeable in respect of such instrument, are not subject to stamp duty.

**Registration.** Registration of receipts is not compulsory; but if a receipt by itself creates an interest in immovable property of the value of Rs. 100 and upwards, its registration will be compulsory.

**Exemptions.** Under Art. 53 of the Indian Stamp Act, the following receipts are exempted from stamp duty—

- (i) endorsed on or contained in any instrument duly stamped, or any instrument executed on behalf of the Government, or any cheque or bill of exchange payable on demand, acknowledging the receipt of the consideration money therein expressed or the receipt of any principal money, interest, annuity, or other periodical payment thereby secured;
- (ii) for any payment of money without consideration;
- (iii) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inam lands;
- (iv) for pay or allowances by non-commissioned or petty officers or soldiers, sailors or airmen of the Indian military, naval or air forces when serving in such capacity, or by mounted police constables;
- (v) for pensions or allowances by persons receiving such pensions or allowances in respect of their services as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;
- (vi) given by the headman or lambardar for land revenue or taxes collected by him; and
- (vii) given for money or securities for money deposited in the hands of any banker to be accounted for:

Provided that the same is not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for; provided also that this exemption is not extended to a receipt or acknowledgement for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share in any

7 *Trimbuck Mahadeo v Emperor* (1936)166 LC 681.

incorporated company or other body corporate or such proposed or intended company or body, or in respect of a debenture being a marketable security.

**Acknowledgements.** Article 1 of the Stamp Act provides for stamp duty on acknowledgement of a debt exceeding Rs. 20 in amount or value written or signed on behalf of a debtor in order to supply evidence of the debt. If there is any promise to pay the debt or interest or any other property, it is an agreement and not an acknowledgement.

Section 18 of the Limitation Act 1963, states that an acknowledgement of liability before the expiry of the prescribed period of limitation for a suit or application starts a fresh period of limitation for a suit or application from the date of signing of the acknowledgement.

An unconditional acknowledgement has been held to imply a promise to pay and a suit on the basis of such acknowledgement has been held to be competent.<sup>8</sup> A deposition signed by a party as witness<sup>9</sup> or an admission in a written statement<sup>10</sup> may be a sufficient acknowledgement.

## FORMS

### Receipt in Full Discharge of Claims

RECEIVED on this ..... day of ....., from AB the sum of Rupees ..... (Rs. ....) only, being in full discharge of all claims and demands which I have against him up to date.

CD (Creditor)

### Receipt of Account Due

RECEIVED on this ..... day of ....., from AB through EF the sum of Rupees ..... (Rs. ....) only, being in full (or part) payment on his account of Rupees ..... due to me (or us).

CD (Creditor)

### Receipt for Bond Debt

I, the undersigned CD, hereby acknowledge to have this ..... day of ....., received from AB the sum of Rupees ..... (Rs. ....) only, on account of the

8 *Hiralal v Budkual* AIR 1953 SC 225.

9 *Venkata v Partha Sarathi* 16 Mad 220.

10 *Srinivas v Narhar* 32 Bom 296.



principal sum and interest due to me under the bond dated the ..... day of ....., and executed by the said AB.

CD (*Creditor*)

### Receipt for Endorsement on Bond

RECEIVED on this ..... day of ....., from the within-named (or above) AB the sum of Rupees..... (Rs. ....) only, being in full payment of the debt (or in part payment of the debt, or, being the instalment due, or, on account of interest due) under the within-written (or above) bond.

Sd.

### Receipt for Loan

BORROWED AND RECEIVED on this ..... day of ....., from CD the sum of Rupees ..... (Rs. ....) only, to be repaid within ..... years from this date, with interest at the rate of Rs. .... per cent per annum.

AB (*Debtor*)

### Receipt for Price of Watch with Warranty

RECEIVED on this ..... day of ....., from AB Rs. .... being the price of a watch warranted by us to keep correct time within ..... minutes per week, for ..... months from this date.

CD (*Watchmaker*)  
for X & Co.

### Receipt for Sale of a Business

RECEIVED on this ..... day of ..... from Mr. .... of ..... the sum of Rs. .... being the price for the sale of the business in ..... carried on by me under the name and style of ..... at ..... including all assets, liabilities, furniture, fittings, stock-in-trade, benefits and obligations of all pending contracts, permits, licences and engagement in connection with the said business.

AB

### Rent Receipt

RECEIVED from AB the sum of Rupees ..... only, on account of the rent of the house No. ...., situate at, etc., inclusive of all taxes, for the month of ..... 2000, Arrears ..... nil (or Rs. ....).

CD (*Landlord*)  
(Date)

### Rent Receipt in Bill Form

Bill No. ....

Date .....

AB (*Tenant*) Dr. ....

To CD

INTEREST @ .....% p.a. will be charged if this bill is not settled within a month from the date of its presentation.

<i>Particulars</i>	<i>(Rs.)</i>
To the rent of the house ..... situate at, etc. for the month of ....., 2000, at Rs. .... per month ... ..	
To Municipal and other taxes ... ..	
" Arrears ... ..	
" Interest on arrears ... ..	
TOTAL ... ..	
	E. & O.E. Received Rs. ....
	..... in full/part payment
	CD ( <i>Landlord</i> )

WITNESS:

### Receipt at the End of Agreement

RECEIVED on the day and year first above-written from the above-named AB the sum of Rupees ..... (Rs. ....) only, being the deposit money (or, etc.), in terms of clause ..... of the above agreement.

WITNESS:

CD

### Receipt for Mortgage Money (For Endorsement on Deed)

RECEIVED on this ..... day of ....., from the within-named (or above-named) AB the sum of Rupees ..... (Rs. ....) only, being the amount (or balance) of the principal and interest due to me under the within-written (or above-written) mortgage deed.

WITNESS:

CD (*Mortgagor*)

### Receipt of Title Deeds by Mortgagor

RECEIVED on this ..... day of ....., from CD all the title deeds relating to the house (or, etc.), which had been mortgaged by me to the said CD on the ..... day of ..... as that mortgage has this day been fully paid off.

WITNESS:

AB (*Mortgagor*)

### Receipt of Title Deeds on Mortgage by Deposit of Title Deeds

RECEIVED on this ..... day of ....., from AB etc., the following documents of title deposited by him at ..... as security for due repayment of the sum of Rs. .... advanced by me to him this day with interest thereon at the rate of ..... per cent per annum.

List of documents deposited—

1. ....
2. ....

CD

### Receipt by Creditor for Composition of Debt

RECEIVED on this ..... day of ....., from AB of, etc., a payment from CD of, etc., the sum of Rupees ..... (Rs. ....) only, being a composition of ..... in the rupee upon a debt of Rs. .... owing by the said AB to me, and which composition I accept in full satisfaction and discharge of the said debt, and I undertake to execute a formal release of the said debt at his request and expense.

WITNESS:

EF (Creditor)

### Receipt for Earnest Money

I, the undersigned AB, hereby acknowledge to have this day of ....., received from CD of etc. Rupees ..... (Rs. ....) only, as earnest money for the sale of my house (or, etc.), situate at, etc., free from all encumbrances which I have agreed to sell to him for Rs. ...., and execute the sale deed on or before the ..... day of ....., on receipt of Rs. ...., being the balance of the purchase money.

WITNESS:

AB (Vendor)

### Receipt by Retiring Partner

I, the undersigned AB, of, etc., (*retiring partner*) hereby acknowledge to have this day received from CD of, etc., (*continuing partner*), the sum of Rupees ..... (Rs. ....) only being the full amount of all moneys due or owing to me in respect of my share in the partnership business of etc., carried on under the firm name of, etc., by me in partnership with the said CD up to the ..... day of ....., the date of my retirement from the said partnership.

Signed, etc.

WITNESS:

AB

### Receipt by Residuary Legatees

WE, the undersigned, hereby certify that we have respectively examined the foregoing accounts contained on this and the preceding ..... sheets of paper and the vouchers in support thereof, and that the same are correct. And we hereby severally acknowledge to have this day received from CD (or, CD and etc.), the executor (or executors) of the will (or the administrator, or the administrators of the estate) of the said AB deceased, the sum of Rupees ..... (Rs. ....) only each in payment of our respective shares of the residuary estate under the said will, and in full discharge of all our respective claims and demands under the said will as shown in the said accounts.

Signed, etc.

WITNESS:

EF

GH

(Residuary Legatees)

### FORMS OF ACKNOWLEDGEMENT

#### Acknowledgement to Save Limitation

Dated .....

I HAVE received your letter dated ..... demanding Rs. .... due to you on account of a bond dated ..... executed by me in favour of .....

I shall be much obliged if you will kindly wait for three months more within which time I hope to be able to pay the amount due.

Sd/- AB

#### Acknowledgement of Part Payment

Dated .....

I HEREBY acknowledge that I have this ..... day of ..... paid Rs. .... in part payment of the debt of Rs. .... which I borrowed from ..... on a pronote dated ..... executed by me in his favour.

Sd/- AB

#### Acknowledgement of Liability

Dated .....

THIS is to acknowledge and place on record that a sum of Rs. .... has been found due from me on the basis of account settled between us and I bind myself to pay off the same by .....

Sd/- AB

**Declaration of Change of Surname**

KNOW ALL MEN by these presents that I, the undersigned, do hereby absolutely renounce and abandon the use of my said *surname of (original surname)* and in lieu thereof assume and adopt the *surname of (assumed surname)* And for the purpose of evidencing such change of name I hereby declare that I shall at all times hereafter in all records, deeds, documents and other writings and in all actions, suits and proceedings, as well as in all dealings and transactions, matters and things whatsoever and upon all occasions use and subscribe the said name of (*assumed surname*) as my surname in lieu of the said surname of (*original surname*) so abandoned as aforesaid.

AND I therefore hereby expressly authorise and require all persons whomsoever at all times to designate, describe and address me and my heirs by such adopted surname of (*assumed surname*) only.

In witness whereof I have hereto subscribed my christened name of (*christened name*) and my adopted and substituted surname of (*assumed surname*) this ..... day of .....

Signed, sealed and delivered by the  
above-named ..... in  
the presence of:

Signature with original surname

Signature with assumed surname

---

## Rectification and Modification of Deeds

Mistakes or errors in deeds arising from any accidental slip or omission should be corrected by a deed of 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 parties<sup>1</sup> and the mistake relates to some facts and not of law.<sup>2</sup> A mistake of foreign law has the same force as mistake of facts.<sup>3</sup> 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. Relief action may be granted by the court even in 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.<sup>4</sup>

### FORMS

#### Deed of Rectification of Mistakes in a Previous Deed

THIS DEED is made the ..... day of ..... BETWEEN AB of, etc., (hereinafter called the RELEASOR) of the one part and CD of, etc., (hereinafter called the RELEASEE) of the other part.

- 1 *Amanti Bibi v Lachman* 14 Cal 308.
- 2 Section 26 of the Specific Relief Act 1963.
- 3 Section 20 of the Indian Contract Act 1872.
- 4 Section 21 of the Indian Contract Act 1872.

WHEREAS by a deed of release dated the ..... day of ..... the said AB granted and released to the said CD the land described in the schedule hereunder and the said deed has been registered at ..... Registration Office in Book No. 1, Volume No. ...., pages ..... to ..... being serial No. .... for the year ..... (hereinafter called the PRINCIPAL DEED). AND WHEREAS certain mistakes and inaccuracies have accidentally and inadvertently crept in the principal deed which require rectification in the manner hereinafter appearing: NOW THIS DEED WITNESSES that the principal deed shall be rectified and corrected in the following manner, namely,—

- (a) in the Schedule in the principal deed for the words "12 cottahs" the words "12 cottahs and 8 chittaks" should be substituted and read.
- (b) In page ..... line ..... of the principal deed after the words "....." insert the words ".....".

That as rectified and modified as aforesaid the principal deed shall remain in full force and effect.

#### *The Schedule*

IN WITNESS, etc.

Signed, sealed and delivered

AB

### Deed of Rectification of Hire Purchase Agreement

THIS DEED OF CORRECTION made this 15th day of December 1999 BETWEEN ELH Ltd., Calcutta, the OWNER, Transport Co. Ltd., Calcutta the HIRER and Mr. XY the GUARANTOR.

WHEREAS by the within written Hire Purchase Agreement bearing dated the 18th September 1999 and made between the ELH Ltd. therein called the OWNER of the One Part and the Transport Co. Ltd., Calcutta therein called the HIRER of the Second Part and Mr. XY of Calcutta therein called the GUARANTOR of the Third Part it was *inter alia* agreed between the parties that the OWNER shall purchase the Jeep described in the First Schedule thereunder written and shall let to the HIRER and the HIRER shall take on hire the said Jeep as may be available after the purchase thereof AND in the First Schedule included. .

One CJ 4A/4 WD. "Jeep Universal" with Petrol Engine, 6 Ply tyres.

AND WHEREAS the cost of the aforesaid item has been revised due to change in Machinery or increase in other charges it is necessary to rectify the said Agreement so as to include therein the revised figures in various clauses of the Agreement.

NOW IT IS AGREED between the Parties hereinabove:

(1) In cl. 1 of the said Hire Purchase Agreement bearing date the 18th September 1999 the amount of the total cost of the machinery, namely, Rs. 2,55,000 should be substituted by the total cost of Rs. 2,80,000 (Rupees two lakhs eighty thousand only) and similarly in cl. 2, the sum of Rs. 51,000 should be substituted by the sum of Rs. 60,000 (Rupees sixty thousand only) and shall be deemed always to have been substituted.

(2) Subject to the said modifications the within written Agreement bearing date the 18th September 1999 shall remain in full force and effect and shall be read and construed as the terms of these presents were inserted therein by way of substitution or rectification.

IN WITNESS WHEREOF these presents have been executed by the parties herein this the day of 15th December 1999.

Signed, sealed and delivered by  
Mr. ....  
pursuant to Board Resolution  
dated ..... of Transport Co. Ltd.  
in the presence of:

Signed, sealed and delivered  
by Mr. XY, the GUARANTOR in the  
presence of:

Signed, sealed and delivered by  
Mr. ....  
pursuant to Board Resolution  
dated ..... of ELH Ltd.  
in the presence of:



---

## Release

### Introductory observations:

(a) *Release*. Release is an instrument whereby a person renounces a claim upon another or against any specified property which he has or may be entitled to enforce. It may be a deed poll or an indenture. It cannot, however, be a substitute for assignment of a claim or transfer of any property.

(b) *Execution and attestation—registration*. A release must be executed and its registration is compulsory if the amount or value of the claim affecting immovable property is Rs. 100 or upwards.<sup>1</sup>

A deed of release does not create title. A release may be drafted in the same form as a deed of transfer or simply as a deed poll or a deed to which both parties may join stating the circumstances under which the release is based. Either the monetary consideration or "the premises", *i.e.* facts in consideration of which the release is made shall be stated.

A disclaimer as distinguished from a release operates merely as an agreement.

A release or disclaimer is a deed of relinquishment by which one person renounces a claim against another person, or any property or office.<sup>2</sup> A release, however, presumes some right or claim of the releasor in the subject-matter of the deed of release.

It may be of personal obligation. It is not a substitute for any assignment or surrender of any right or rights. A tenant in common cannot by release extinguish his interest in the property in favour of the other inasmuch as he has a distinct interest in the property.<sup>3</sup> On this principle, Hindu widows and

1 Section 17(1)(b) of the Indian Registration Act.

2 Article 55 of the Schedule of the Stamp Act.

3 Wharton's *Law Lexicon*, p. 859.

daughters cannot by execution of release create or establish absolute title in the property in favour of other co-sharers as under the Hindu Succession Act 1956, they are entitled to distinct shares in the property. Before the enactment of the Hindu Succession Act 1956, a Mitakshara coparcener could execute a valid release in respect of his coparcenary interest in favour of the other members of the family,<sup>4</sup> but the position has since been changed as she has a distinct interest in the joint family properties of which she can even make a will though the same is subject to fluctuation.

A *benamdar* may execute a release in favour of the real owner, but it is prudent to have a declaration of trust from him.

A release is distinguishable from a deed of surrender by a Hindu widow inasmuch as an estate for life is extinguished so as to make the reversioner the full owner of the property. It operates at the death of the widow.<sup>5</sup> The widow withdraws herself from the estate and the next heir steps into the inheritance as a matter of law.<sup>6</sup>

### Essentials of Release

- (i) Full recitals of the origin of the claim, which form the most important part;
- (ii) knowledge of the releasor about the claim, intended to be released;
- (iii) words and expressions sufficiently clear to convey the intention of the releasor to discharge the right or the claim.<sup>7</sup>

## FORMS

### Mutual Release by Two Persons

THIS DEED OF RELEASE is made on the ..... day of .....,  
BETWEEN AB of, etc., of the one part, and CD of, etc., of the other part.

WHEREAS the said AB and CD were lately carrying on the business under the name and style of, X & Co. in course of which several sums of money fell due mutually against each other as will appear from the books of account of the said business maintained by the said CD AND WHEREAS the said business has been closed with effect from the ..... day of ..... 1999  
..... AND WHEREAS in consideration of the services rendered by the

4 *Chander Kishore v Danpat Kishore* 16 All 369.

5 *Jwala Bank v Sheobodh* AIR 1947 All 104.

6 *Karunamoyee v Maha Moyi* AIR 1948 Cal 84.

7 *Davidson's Precedents*, vol. 5, p. 618.

parties hereto to each other for development of the business and with a view to maintaining good feelings and relationship between them the parties have agreed to write off all such amounts and to execute a mutual release: NOW THIS DEED WITNESSES that in pursuance of the said agreement, and for the consideration as aforesaid the said AB does hereby release, discharge and exonerate the said CD, and also that the said CD does hereby release, discharge and exonerate the said AB from all sums of money, accounts, proceedings, claims and demands whatsoever which either of them had or has or may have in future against the other, in respect of or in relation to, the said business which will be deemed as written off and the parties relieved from all liabilities on account therefor to all intents and purposes.

IN WITNESS WHEREOF etc.

Signed, sealed and delivered

AB  
CD

### Release by Creditors under Composition Scheme

THIS DEED OF RELEASE is made this ..... day of ..... 1999 BETWEEN AB son of ..... CD residing at ..... and EF residing at ..... (hereinafter called the CREDITORS which term shall include their successors and assigns) of the One Part and XY son of ..... residing at ..... (hereinafter called the DEBTOR which term shall include his heirs successors and legal representatives of the Other Part.

WHEREAS the DEBTOR was and still is indebted to each of the CREDITORS, whose names, addresses and descriptions are given in the schedule hereto, in the several sums written opposite their names in the said schedule: AND WHEREAS the creditors have agreed with the debtor to accept a composition of ..... in the rupee in full satisfaction and discharge of their respective claims and to forego, release and discharge the balance on terms and conditions hereinafter appearing. Now THIS DEED WITNESSES that in consideration of the mutual benefits between the parties under the scheme of composition as to payments of their respective dues the said creditors do and each of them doth hereby release and discharge the debtor and his heirs, executors, administrators and representatives from all their debts and claims other than the portion payable under the deed of composition on condition that the DEBTOR shall pay or cause to be paid to each of the CREDITORS on or before the ..... day of ....., a composition of ..... in the rupee on their debts:

PROVIDED, HOWEVER, AND, IT IS HEREBY AGREED THAT notwithstanding anything hereinbefore stated, this release shall stand *ipso facto* void and be of no effect, if the said payments or any one of them be not made on or before the above stipulated date or dates or if the DEBTOR be adjudged an

insolvent before the said date of payment, PROVIDED ALSO that this release shall be without prejudice to the right of the CREDITORS to proceed against the sureties or guarantors or co-debtors of the DEBTOR for their debts specified in the schedule hereto.

The CREDITORS hereby agree with the DEBTOR that this release shall be effectual and binding on them, although some creditors other than those who have executed this deed do not agree with the scheme of composition and are not willing to give up their right to realize in full their debts or claims.

It is hereby declared that the amount or value of the claims hereby renounced is Rs. ....

*The Schedule above referred to*

Serial No.	Name and address of the creditor	Amount of debt or claim	Date of payment	Remarks
1				
2				
3				
4				
5				
6				
7				
8				
9				

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, CD, EF the CREDITORS in the  
presence of:

Signed, sealed and delivered by XY  
the DEBTOR in the presence of:

**Release by a Minor in favour of  
the Certified Guardian on Attaining Majority**

THIS DEED OF RELEASE is made this ..... day of ..... 1999 BETWEEN  
AB son of ..... residing at ..... by caste  
..... by occupation ..... (hereinafter called the

RELEASOR which expression shall unless the context otherwise requires include his heirs, successors, and legal representatives) of the One Part and CD son of ..... residing at ..... by caste ..... by occupation ..... (hereinafter called the RELEASEE which term shall include his heirs, successors, legal representatives and assigns) of the Other Part.

WHEREAS by order dated the ..... day of ..... made by the District Judge of ..... in Misc. Case No. .... of 1999 the said CD was appointed certificated guardian of the person and properties of the aforesaid AB who was then a minor under the age of ..... years which properties are fully mentioned and described in the schedule hereto. And whereas the said order was in full force and virtue until the date hereunder mentioned.

AND WHEREAS in pursuance of the said order the said CD took charge of the management and control of the estate of the said AB and administered the same duly and faithfully and submitted accounts, which were passed by the said court.

AND WHEREAS the said AB having attained majority, on or about the ..... day of ..... his date of birth being ..... day of ..... and accepted the said accounts as true, correct, faithful and complete AND WHEREAS by an order dated the ..... day of ..... 1999 the said CD has been discharged from further acting as certificated guardian of the said AB.

AND WHEREAS the said CD has made over to the said AB all properties both movable and immovable of the said AB so long held by him as guardian and he the said AB has taken charge and possession of the same.

AND WHEREAS the said AB is fully satisfied that the aforesaid guardian CD did not commit any act of waste, negligence or misfeasance or malfeasance in respect of the properties or in management thereof or affairs ancillary and incidental thereto.

Now THIS INDENTURE witnesseth that in the circumstances aforesaid the said AB does hereby release and discharge the said CD from all claims as to management and administration of the estate or affairs ancillary or incidental thereto as well as all questions as to account and dealings with the estate.

*The Schedule above referred to*

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

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

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

**Disclaimer by a Member of a Joint Family  
in respect of the Separate Property of a Member**

TO ALL WHOM THIS MAY CONCERN

KNOW ALL MEN BY THIS DEED poll I, AB, son of etc. .... declare as follows:  
WHEREAS I, the said AB along with CD son of etc., both residing at .....  
constitute a Hindu undivided family joint in food, worship and estate AND  
WHEREAS by a conveyance dated ..... executed by one EF in favour of  
the said CD it was witnessed that the said CD purchased the property fully  
mentioned and described in the Schedule thereto with his own moneys and  
without any aid or contribution from the said family or its estate AND WHEREAS  
in the circumstances aforesaid the said property belongs absolutely to the  
said CD as his separate property but nevertheless it is necessary and  
expedient to have a disclaimer from me in terms hereunder contained to  
avoid future disputes and differences in relation thereto, NOW KNOW YE ALL  
BY THIS DECLARATION I, the said AB, declare and confirm the said property as  
the personal property of CD and disclaim and release all my supposed right,  
title and interest claim in the said property and every part thereof absolutely  
and forever.

*The Schedule above referred to*

IN WITNESS WHEREOF etc.

Signed, sealed and delivered

**Release of Property from Charge for Maintenance under a Will**

THIS DEED OF RELEASE made the ..... day of ..... BETWEEN AB  
wife of ..... residing at ..... by caste ..... by occupation  
..... etc. (hereinafter called the RELEASOR) of the one part and CD son of  
..... residing at ..... by caste ..... by occupation .....  
(hereinafter called the RELEASEE) of the other part.

WHEREAS one XY of ..... who died on the ..... day of ..... left  
a will dated ..... whereby and whereunder he appointed the said CD  
as the sole executor and bequeathed all his estate and effects thereof unto  
and to the use of the said CD subject to a payment of Rs. .... per  
month to his daughter, viz., the said AB for her maintenance for the term of  
her natural life to be paid out of his estate which was charged for the purpose  
of such payment AND WHEREAS the said will was duly proved in the court of  
the ..... Judge and probate thereof was granted to the said CD on the  
..... day of ..... AND WHEREAS the said CD has been regularly paying  
the said sum of Rs. .... to the said AB monthly and every month And  
Whereas the said CD has agreed to sell the properties now representing the  
estate (or one property viz. premises No. .... out of the estate) free from  
all encumbrances and charges, trust, lien whatsoever including the charge

for maintenance in favour of the said AB as aforesaid And Whereas at the request of the said CD the said AB has agreed to accept a lump sum of Rs. .... being the amount equivalent to 12 years' maintenance and give up her claim for future maintenance (or other properties being sufficient security for her maintenance the said AB has agreed to give up her claim as to future maintenance) as against this property NOW THIS INDENTURE witnesseth in the circumstances aforesaid and that in consideration of the said sum of Rs. .... paid by the said CD to AB which the said AB doth hereby admit, acknowledge and confirm (or other properties being sufficient security for her maintenance) the said AB does hereby and hereunder release and discharge the said CD from all her claims as to future maintenance under and by virtue of the hereinbefore recited will and also the properties (or property) fully mentioned and described in the schedule hereto and also from all actions, claims and demands whatsoever on account therefor.

*The Schedule above referred to*

IN WITNESS WHEREOF the said Sm. AB has hereinto set and subscribed her hand and seal the day, month and year first above-written and that the said CD doth hereby accept the Release hereunder made as testified by his being a party hereto and executing these presents.

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

Signed, sealed and delivered  
by CD as a token of acceptance  
of Release in the presence of:

**Disclaimer by a Benamdar**

THIS INDENTURE MADE THIS ..... day of ..... BETWEEN AB ..... son of XY ..... by caste ..... by occupation ..... residing at ..... hereinafter called the RELEASOR (which expression shall where the subject or context allows or admits of be deemed to include his heirs, executors, administrators and representatives) of the ONE PART AND CD ..... son of EF ..... deceased by caste ..... by occupation ..... residing at ..... hereinafter called the RELEASEE (which expression shall where the subject or context allows or admits of be deemed to include his heirs, executors, administrators, representatives and assigns) of the OTHER PART.

WHEREAS it appears that by a conveyance dated the ..... day of ..... 1976 executed by MN ..... in favour of the said AB ..... and registered in the office of ..... in Book I, vol. .... page ..... to ..... being No. .... for the year, the RELEASOR, hereto he, the said MN, for the

consideration mentioned therein purported to grant, convey, sell, transfer and assign in favour of the said AB ..... the property fully mentioned and described in the schedule thereto and also particularly written in the schedule below:

AND WHEREAS the transaction having been a *benami* purchase the said property was in fact and truth, reality and substance acquired by the RELEASEE with his own moneys and for his use and benefit though in the name of the RELEASOR but not intending to make a gift or advancement or otherwise settle or to create or confer any title or benefit thereof upon the RELEASOR or to defraud any creditor(s), who thus having acquired no title nor any interest in the said property but was a mere name lender or *benamdar* and the RELEASEE was at all material times and still now is the lawful owner and in possession, enjoyment and control of the said property and every part thereof and has at all times and is still been administering the same to all intents and purposes. AND WHEREAS all the documents of title in relation to the said property were and are also still in the possession and custody of the RELEASEE and all outstanding and liabilities of the property such as ground rent, municipal taxes, etc., were and are still paid and satisfied by the RELEASEE.

AND WHEREAS for reasons and considerations hereunder mentioned the RELEASOR has in the circumstances aforesaid and to avoid any dispute or difference in future and to safeguard the future interest of the RELEASEE agreed to disclaim the said property and execute and register a declaration in respect thereof in terms herein mentioned AND NOW THIS INDENTURE WITNESSETH that in the circumstances hereinbefore stated and for good reasons and considerations as aforesaid it is hereby agreed and declared by and between the parties as follows:

1. The RELEASOR doth hereby and hereunder agree, declare and confirm that although the purported conveyance of the said property stands in the name of the RELEASOR as purchaser, the same was a *benami* transaction for the RELEASEE and, as such, the RELEASEE was at all times and is also at present the sole beneficial owner in possession and real proprietor of the said property and every part thereof and that the RELEASOR had not nor at present has nor shall in future claim any right, title or interest whatsoever in, to, upon or otherwise relating to the same or any portion thereof or otherwise concerning the same.

2. The RELEASOR doth hereby and hereunder absolutely disclaim, disown and relinquish and for ever discharge all and every such pretended right, title, interest, claim or demand or cause of action which may now or hereafter be alleged or contended or construed in his favour in respect of the said purchase and/or the said property and otherwise relating thereto or concerning the same or any part thereof by virtue of the hereinbefore recited conveyance the same having been made in the name of the RELEASOR as hereinbefore stated.



AND THIS INDENTURE FURTHER WITNESSETH that for the consideration hereinbefore stated the RELEASOR doth hereby and hereunder acquit, release, discharge, grant, convey, transfer and assure unto and to the use of the RELEASEE the said property and every part thereof absolutely and for ever in the manner hereunder indicated AND the RELEASOR doeth hereby covenant with the RELEASEE that the RELEASOR had not done, executed, performed nor been party or privy to any act, deed or thing whereby of whereunder or by reason or means whereof the said property or any part thereof may be in any manner charged, encumbered or otherwise affected or prejudiced in title or estate or the releasor may be hindered or prevented from transferring the said property unto and to the use of the RELEASEE in the manner hereinbefore indicated.

The estimated value of the property is Rs. ....

*The Schedule above referred to*

IN WITNESS WHEREOF the said AB has hereunto executed these presents on the day, month, and year first above-written. And that the said CD doth hereby accept the Release hereunder made as testified by his being a party hereto and executing these presents.

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

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

*N.B.*— It was held by the Supreme Court in *Controller of Estate Duty v Alope Mitter*.<sup>5</sup> A *benamdar* has no interest at all in the property. He is not a trustee unless he is in actual possession of the property.

### Mutual Release between a Separated Member of the Mitakshara Family and the Old Branch

THIS DEED OF RELEASE made the ..... day of ..... 1999 BETWEEN AB, son of ..... residing at ..... etc. for himself and as Karta and representing the coparceners of a joint Hindu family consisting at present of himself and his sons and grandsons namely ..... hereinafter referred to as the RELEASOR of the ONE PART and CD son of ..... residing at ..... etc. for self and as Karta of and representing the coparceners of a joint Mitakshara family consisting of his sons and grandsons hereinafter referred to as the RELEASEE of the OTHER PART.

WHEREAS the said AB and his brother EF since deceased were joint in food, worship and estate and carried on a joint family business at various places, viz ..... under the name and style of.....

AND WHEREAS the said EF died on the ..... day of ..... leaving a son, viz., the said CD the RELEASEE hereto who did not have intention nor any inclination to remain joint with the said AB and/or to continue in the business of the family AND WHEREAS the said CD became thus completely separated from the joint family and its estate and the business thereof and started his own business independently at ..... under the name and style of ..... without any aid or contribution from the joint family funds or the estate AND WHEREAS the said CD having been in affluent circumstances independently of the joint family estate did never have nor at present claim any share or interest of the joint family estate nor in the profits or benefits thereof which he has renounced for ever.

AND WHEREAS it is nevertheless necessary and expedient to safeguard the future interest of the parties and their representatives after their demise and in order to end all possible claims or disputes and differences which the parties or their representatives may have or hereafter raise in respect of the separate properties of the said CD although such claim or claims do not in fact or reality exist;

NOW THIS DEED OF RELEASE WITNESSES in the circumstances aforesaid and for good reasons and considerations the said AB for self and representing all other persons who are jointly living with him doeth hereby release and discharge unto the RELEASEE and other members mentioned above as are joint with him absolutely and for ever, all the purported right, title, interest and claim which the said RELEASOR may have had or has in or against the property or properties of the said CD or his joint family now in existence fully mentioned and described in Schedule A hereto or which may hereafter be acquired by the RELEASEE or his family AND THIS INDENTURE FURTHER WITNESSETH that the said RELEASEE for himself and as Karta of and representing all persons constituting his joint family mentioned above doeth hereby release and for ever discharge the said RELEASOR and other persons as are joint with him as aforesaid from all right, title, interest, or claim which the said CD or the members of his joint family may have as against the RELEASOR or against his representative or their property or properties now existing fully mentioned and described in Schedule B or which he or they may hereafter acquire.

It is also mutually agreed that the value of the property for the purpose of stamp duty is Rs. ....

*Schedule A*

*Schedule B*

IN WITNESS WHEREOF the said AB and CD for themselves and as Kartas of their respective Joint Families have set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered by  
AB for self and as Karta of Joint  
Family in the presence of:

Signed, sealed and delivered by  
CD for self and as Karta of Joint  
Family in the presence of:

**Release of Right of Way**

THIS DEED OF RELEASE made the ..... day of ....., BETWEEN AB of, etc. (the RELEASOR), of the one part, and CD of, etc. (the RELEASEE), of the other part.

WHEREAS by a conveyance dated the ..... day of ..... 1999 and made BETWEEN the said AB of the one part, and YZ of, etc., of the other part, the land and property coloured blue and brown in the plan annexed thereto were conveyed to the said YZ absolutely, save and except and reserving nevertheless unto the said AB, his heirs, executors, administrators, representatives and assigns, and the owners and occupiers for the time being of the land and property coloured pink in the said plan and his and their sub-tenants and servants, and agents full and free right and liberty at all times thereafter and for all purposes to go, pass and repass over and upon the way or passage coloured brown in the said plan and described in the schedule hereunder: AND WHEREAS by a conveyance dated, etc., and made between the said YZ of the one part, and the said CD of the other part, the property coloured blue and brown was conveyed to the said CD absolutely, subject to the reservation of the right of way over the said way or passage, as excepted and reserved by the said conveyance of the ..... day of ..... 1999 AND WHEREAS the said AB has, for a token consideration of a sum of Rs. .... agreed to release unto the said CD the said right of way over the way or passage aforesaid: NOW THIS DEED WITNESSES that in consideration of the sum of Rs. ...., now paid by the said CD to the said AB (the receipt of which sum the said AB hereby acknowledges), the said AB, as the beneficial owner, hereby releases unto the said CD the said right of way over the said way or passage described in the schedule hereunder to the extent that the same shall henceforth cease and be extinguished, to all intents and purposes.

*The Schedule above referred to*

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

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

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

**Release by a Legatee in favour of an Executor**

THIS DEED OF RELEASE is made this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... (hereinafter called the LEGATEE) of the One Part and CD son of ..... residing at ..... (hereinafter called the EXECUTOR) of the Other Part.

WHEREAS XY died on the ..... day of ..... 1999 leaving a will dated ..... whereby and whereunder he appointed the said CD as the EXECUTOR of his estate and left and bequeathed all his estate unto and in favour of the said AB absolutely and for ever AND WHEREAS the said will was duly proved in the court of the ..... judge at ..... and probate thereof was granted unto and in favour of the said CD on the ..... day of ..... AND WHEREAS the said CD has duly and faithfully administered the estate and filed the inventory and account and/or otherwise completed the administration thereof AND WHEREAS the said CD has duly assented to the LEGACY provided for in the said will unto and in favour of the said AB and has made over all properties fully mentioned and described in the schedule below so long held by him as EXECUTOR who has taken charge and possession thereof and thus relieved the said CD AND WHEREAS the said AB after having gone through the accounts and taking charge of the properties is fully satisfied that the said CD has not committed nor suffered any act of mismanagement, waste, misfeasance or malfeasance in course of administration thereof. Now THIS INDENTURE WITNESSETH that in the circumstances aforesaid the said AB does hereby release the said CD from all claims as to management or administration of the estate and affairs ancillary or incidental thereto as well as from all liabilities as to account and dealings with the properties.

*The Schedule above referred to*

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 LEGATEE in the presence of:

Signed, sealed and delivered by  
CD the EXECUTOR in token of  
acceptance of the Release in the  
presence of:

Deed of Release of Mortgage

THIS DEED OF RELEASE made this 15th day of September 2000, BETWEEN Mr. X, son of ..... residing at ..... hereinafter called the RELEASOR (which expression shall include his heirs, legal representatives and successors) of the One Part and Mr. AB son of ..... residing at ..... hereinafter called the OWNER (which expression shall include his heirs, legal representatives and successors) of the Other Part.

WHEREAS the OWNER executed a Deed of Mortgage in favour of the RELEASOR mortgaging the premises No. .... (hereinafter referred as the said premises) as security for a loan of Rs. 4 lakhs bearing interest at 12% per annum with half-yearly rests on the 10th day of September 1992 and registered in the Book No. 1, vol. 1, page 1, being No. 1, for the year 1992 in the Registration Office at .....

AND WHEREAS the OWNER has this day paid to the RELEASOR a sum of Rs. 5 lakhs in full and final satisfaction of the Mortgage money and debt due under the aforesaid Mortgage, receipt whereof the Releasor hereby acknowledges.

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

1. The RELEASOR admits and acknowledges the receipt of payments from time to time and a sum of Rs. 5 lakhs being the outstanding amount as on this day in respect of the mortgage money both by way of the principal and interest up-to-date and of and from the same and every part thereof acquits, releases, exonerates and discharges the owner as also the said premises intended to be and thereby releases the said premises and the said owner of all indebtedness and liabilities to the Releasor and in respect of the said premises.

2. The RELEASOR hereby declares that the said premises is free from any charge, encumbrance, rates, taxes and levies and liabilities of any sort.

3. The RELEASOR hereby declares and warrants that he has not made any transfer of the interest in the said premises and has not done anything to encumber the said premises and has not created any interest thereon in any way.

4. The RELEASOR hereby agrees and undertakes to the OWNER to indemnify against and keep him harmless from all claims, proceedings, costs charges and expenses in relation to the said premises suffered or incurred by the OWNER arising out of or in relation to any act, deed or omission on the part of the RELEASOR in relation to the said premises.

5. The RELEASOR hereby returns and makes over to the OWNER the original Title Deed No. 56 and the Mortgage Deed dated 10th September 1992 and the said OWNER hereby acknowledges receipt of the original Title Deed made over by the RELEASOR and also the original Mortgage Deed.

IN WITNESS WHEREOF the parties hereto doth hereby and hereunto put their signatures in this DEED OF RELEASE on the day, month and year first above-written.

*Schedule of property,*

All those pieces and parcels of land measuring about 5 Cottahs with two-storied building thereon with fittings and fixtures, privileges and appurtenances thereto being the Premises No. .... and butted and bounded in the North by ....., in the East by Premises No. .... in the South by Canal and in the West by Premises No. .... and as described in the Title Deed.

Signature of RELEASOR

Signature of OWNER

WITNESSES:

- 1.
- 2.

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## Sales

**Introductory observations.** Section 54 of the Transfer of Property Act 1882 defines sale. It is a complete transfer of ownership of the property. No rights are left with the transferor.<sup>1</sup> Any property other than those prohibited under s. 6 of the said Act may be transferred. The Act imposes restriction as to transfer not only as to property but also as against persons who may be transferors and transferees, viz., a minor, lunatic, insolvent, alien enemy, persons having their properties managed by the Court of Wards who are disqualified persons to effect any transfer of their properties.<sup>2</sup> A contract for sale to a minor is, however, valid, but the minor must be represented by an appropriate guardian acting *bona fide* in the interest of and for the benefit of the minor. But he cannot bind the minor by any personal covenant.<sup>3</sup> Section 136 of the Transfer of Property Act deals with other disqualified transferees. Persons under disability cannot even take a transfer where the same involves covenants;<sup>4</sup> so also persons in fiduciary relationship, e.g. guardian and ward, parent and children, solicitor and client inasmuch as one is in a position to dominate the will of the other;<sup>5</sup> so a presumption of undue influence arises in cases of transaction between them.

**Sale—sale how made—contract for sale.** Sale is a transfer of ownership of any property or properties in exchange for a price paid or promised, or part-paid and part-promised.<sup>6</sup>

- 1 Section 8 of the Transfer of Property Act which corresponds with s. 63 of the English Law of Property Act 1925.
- 2 Sections 6(h) and 7 of the Transfer of Property Act 1925.
- 3 Section 8 of the Hindu Minority and Guardianship Act 1956.
- 4 *Satya Devi v Trebani* 161 IC 579: AIR 1936 Pat 153.
- 5 *Plowright v Lambart* 52 LT 645.
- 6 Section 54 of the Transfer of Property Act.

Such transfer in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of reversion or other intangible thing, can be made only by a registered instrument.<sup>7</sup> In the case of tangible immovable property of a value less than one hundred rupees such transfer can be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer or such person as he directs in possession of the property.

**Passing of title and ownership.** The execution of the conveyance and the payment of price are reciprocal.<sup>8</sup> Price is the essence of the contract for sale but its payment is not a *sine qua non* to passing of title and transfer of ownership. A contract fails and becomes void for want of consideration<sup>9</sup> but not a conveyance perfected by execution and registration. This was held by the Supreme Court in *State of Kerala v Cochin Chemical Refiners*.<sup>10</sup> A sale deed duly executed and registered and not tainted with any fraud passes the title notwithstanding non-payment of price.<sup>11</sup>

It always depends upon the intention of the parties as to when title to the property will pass unto and vest in the purchaser.<sup>12</sup> The vendor can prove that no consideration has in fact been paid notwithstanding an admission in the sale deed.<sup>13</sup> It was recently held by the Supreme Court in *Prosad v Govindaswami*<sup>14</sup> that if the sale deed is not supported by adequate consideration the transaction is void and so no relief will be granted to the parties.

Thus where the vendor retains possession of the property or the deed pending payment of price or where the deed expressly provides that it shall be void and of no effect unless the price, unpaid in whole or portion as the case may be, is paid within a fixed time, no right is acquired by the purchaser in such cases by the execution and registration of the deed. The intention of the parties being that the conveyance will take effect upon payment only. In other cases a sale is completed and perfected by execution and registration (when compulsory) of the conveyance, irrespective of the fact of non-payment of purchase money and it does not prevent the passing of the title of the property sold from the vendor to the purchaser; and the vendee, notwithstanding such non-payment, can maintain a suit for possession of

7 Section 54 of the Transfer of Property Act.

8 Section 51 of the Indian Contract Act and ss. 55(1)(d) and 55(5)(b) of the Transfer of Property Act.

9 Section 25 of the Indian Contract Act.

10 (1963)3 SCR 556.

11 *Chety Firm v Chety Firm* 34 IC 125.

12 *Raj Kumar v Uchit* AIR 1951 Pat 414.

13 *Sohlal v Indrojit* 22 All 370.

14 AIR 1982 SC 84.



the property except in cases of fraud.<sup>15</sup> It was held that a false assertion in the sale deed that money was paid will have the effect of invalidating the sale transaction.<sup>16</sup>

A contract for the sale of immovable property in view of s. 54 of the Transfer of Property Act 1882 does not of itself create any interest in or charge on the property. It creates a personal obligation as recognised in s. 10 of the Specific Relief Act of 1963 and s. 91 of the Trusts Acts and is described in s. 40 of the Transfer of Property Act—an obligation annexed to the ownership but not amounting to any easement or interest therein.<sup>17</sup> It was, however, held by the Hon'ble Mr. Justice G.N. Ray in *Jayanta Kumar Banerjee v State of West Bengal*<sup>18</sup> that an intending purchaser has the *locus standi* to challenge acquisition proceedings in respect of any property under Art. 226 of the Constitution of India inasmuch as the same may ultimately frustrate the contract. An agreement for sale of such property even after a decree for specific performance is made does not create any interest in the property.<sup>19</sup> Such a decree operates as an injunction but does not, by itself, create any interest in, or charge on such property; and it being a mere agreement to obtain another document,<sup>20</sup> unless it is an agreement under s. 5 of the West Bengal Apartment Ownership Act (Act XVII of 1972), its registration is not compulsory unless the earnest money forms a charge on it. A buyer does not acquire any right *in rem* in the property intended to be sold though he has paid its full value and obtained possession of the same. He can at best claim a charge on it under s. 55(6)(b) of the Transfer of Property Act and defend his possession under s. 53A of the Act. This is called equities of persons contracting to buy any property. A buyer, under such circumstances, is liable to take care of the property against physical destruction as a prudent man would have taken. The case of a sale of any property under agreement after attachment is discussed below. All these are old concepts of law about agreement. But in cases where the purchaser has been in possession of the property lawfully in the assumed character of the owner much of the period prescribed by the Statute of Limitation for creation of ownership and further peacefully exercising the ordinary rights of ownership he becomes its owner.<sup>1</sup> This case further held that such a purchaser can create a valid equitable mortgage by deposit of the title deeds of the property even though there is no conveyance in his favour.

15 *Somsundaram v Shwebwa* (1920)57 IC 948.

16 *Marni Veeranna v Kanumuri* AIR 1977 AP 405.

17 *Kartick Chandra Shaw v Ranjita Pul* AIR 1977 Cal 496.

18 AIR 1981 Cal 138.

19 *Enayatulla v Khaliullah* AIR 1938 All 432.

20 Section 17(2)(v) of the Indian Registration Act.

1 *Usha Rice Mills Co. Ltd. v United Bank of India* 82 CWN 92.

The English Rule of Law as it is under s. 40 of the Law of Property Act 1925, transfers an equitable estate to the purchaser. It does not apply to India, but the same was the law prior to the Transfer of Property Act and such an agreement required registration for its validity. So, in places where the Act is not in force, the English Rule still applies and an agreement for sale requires registration. The mode of transfer by sale under the Transfer of Property Act is twofold: (a) delivery of possession in cases of transfer of small value not exceeding Rs. 100; (b) registration.<sup>2</sup> There is no third method except as held in 82 CWN 92 as discussed above as the title to land cannot pass when the statute requires a deed.<sup>3</sup> Section 53A of the Transfer of Property Act though does not expressly confer any substantive right in the transferee, nevertheless protects him against any action for eviction by the transferor.<sup>4</sup> Mere delay in enforcing the agreement to sell is not sufficient to deny specific performance unless there is a waiver or abandonment of the rights.<sup>5</sup>

This section was first enacted in 1929 by the Transfer of Property (Amendment) Act 1929 which imported in India in modified form the equity of part performance as developed in *Maddison v Alderson*.<sup>6</sup> This amending Act reinforced the position by amending the Registration Act of 1908 and the Specific Relief Act 1881. Under s. 27A a suit for specific performance of a contract of lease could be filed. Section 27A was not, however, re-enacted in the Specific Relief Act 1963. It is based on the Doctrine of Part-performance. The rule in *Walsh v Lonsdale*<sup>7</sup> which laid down the principle—"Equity considers what ought to have been done as done"—is excluded from its operation by the statutory law in India. The requirement under s. 53A of the Transfer of Property Act is that the contract must be in writing and signed by the parties and further that the transferee shall take possession of the property. Section 53A therefore does not create any title. This is the distinguishing feature between the English law and Indian law of conveyancing. The other features are mentioned below. A word or two may be said here as to the rights and liabilities of the parties when any attachment is effected on any property after the agreement for sale. A contract for sale under s. 54 of the Transfer of Property Act 1882 does not create any interest in or charge in the property but nevertheless it creates a personal obligation as contemplated in s. 3 of the Specific Relief Act and s. 91 of the Trust Act—an obligation annexed to the ownership of the property of the nature of a trust, so a *bona fide* purchaser acquires good title in spite of attachment.<sup>8</sup>

2 Section 17 of the Indian Registration Act.

3 *Fati Chand v Leelamber* 14 MLA 129.

4 *Mathura Mohan v Ramkumar Saha* (1916)43 Cal 720.

5 *K.M. Rajendran v Arul Prakasam* AIR 1998 Mad 336.

6 53 IC 205; (1833)8 App Cas 467.

7 (1882)21 Ch D 9.

8 *Purna v Daulat* 78 CWN 352.

Under s. 64 of the Code of Civil Procedure, any private transfer of the property will be void as against the claim of the attaching creditor, but in the case of an agreement for sale, the contractual obligation will prevail.<sup>9</sup> The same result will be achieved if the purchaser institutes a suit for specific performance and the court enforces the conveyance.<sup>10</sup> In other words, s. 53A of the Transfer of Property Act creates a statutory right in favour of the transferee though derived from the English equitable doctrine of part performance. It cannot be whittled down on the concept of laches or implied limitation. The failure on the part of the transferee to sue for specific performance of the contract within the period of limitation under the Limitation Act 1963 does not lead to extinction of his statutory right created by s. 53A. In spite of limitation the right subsists and the contract remains valid and operative to exert his right to retain possession over the property in exercise of his statutory right under s. 53A by way of defence in a suit brought against him by his transferor for recovery of possession.<sup>11</sup>

Section 54 applies to Mahomedans as well; so in places where the Transfer of Property Act applies the rule in Mahomedan law that a sale becomes complete on payment of the price has become obsolete.

**Rights and liabilities of the seller under s. 55 of the Transfer of Property Act 1882.** In the absence of a contract to the contrary—

(1) the seller is bound—

- (i) to disclose to the buyer any material defect in the property, or *in the seller's title thereto*, of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (ii) to produce to the buyer on his request for examination of all documents of title relating to the property which are in the seller's possession, control or power;
- (iii) to answer to the best of his knowledge all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (iv) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (v) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and also of the documents;

9 *Madan Mohon v Rebate* (1916)21 CWN 158.

10 *Laxan v Ramchandani* 139 IC 650.

11 *Narasimhasetty v Padmasetty* AIR 1998 Kant 389.

- (vi) to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits; and
- (vii) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller will be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists, and that he has power to transfer the same.

(3) Where the whole of the purchase money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in seller's possession and power.

When, however, the seller retains a portion of the property or where he sells the same in different lots to different purchasers, a question very often arises as to who shall have the title deeds. In the former case, the seller retains the title deeds and in the latter event the purchaser, who buys the largest share, is entitled to the custody of the title deeds, but in any case they are to enter into covenant for production.<sup>12</sup>

Although under s. 55(1)(a) of the Transfer of Property Act 1882, a seller is bound to disclose any material defect in the property, nevertheless it applies to latent defects which the buyer cannot discover even by diligent searches and enquiries.

In the absence of a contract to the contrary, the seller under s. 55(4)(a) & (b) of the Transfer of Property Act 1882 is entitled—

(i) to the rents and profits of the property till the ownership thereof passes to the buyers; and

(ii) where the ownership of the property has passed to the buyer before payment of the whole of the purchase money, to a charge upon the property in the hands of the buyer. Any transferee without consideration or any transferee with notice of non-payment, for the amount of the purchase money or any part thereof remaining unpaid and for interest on such amount or part, from the date on which possession has been delivered, takes the property subject to the charge.

**Rights and liabilities of the buyer.** In the absence of a contract to the contrary, the buyer, under ss. 55(5)(a) to (d) of the Transfer of Property Act, is bound—

(i) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property, of which the buyer is aware, but of which

12 Section 55(3) of the Transfer of Property Act.

he has reason to believe that the seller is not aware and which materially increases the value of such interest;

(ii) to pay or tender at the time and place of completing the sale the purchase money to the seller or such person as he directs: Provided that, where the property is sold free from encumbrances, the buyer can retain, out of the purchase money, the amount of any encumbrances on the property existing at the date of the sale, and must pay the amount so retained to the persons entitled thereto;

(iii) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller; and

(iv) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances, subject to which the property is sold, and the interest thereon afterwards accruing due.

Section 92 of the Evidence Act does not debar the party to contract from adducing evidence for purpose of contradicting recitals of facts mentioned in the documents. The bar imposed by s. 92, sub-clause (1) applies only when a party seeks to rely upon the document embodying the terms of the transaction.<sup>13</sup>

In the absence of a contract to the contrary, the buyer, under s. 55(6)(a)(b) of the Transfer of Property Act 1882 is entitled—

(i) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(ii) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller's interest in the property, for the amount of any purchase money properly paid by the buyer in anticipation of the delivery, and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest money (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract, or to obtain a decree for its rescission;

(iii) where two properties are subject to a common charge and one of the properties is sold, the buyer is, as against the seller, entitled to have the charge satisfied out of the other property, so far as such property will extend.

**Contract for sale—effect of.** A contract for sale creates a right to obtain a sale deed and does not require registration, unless the charge for the earnest

money is created thereby. In view of s. 54 of the Transfer of Property Act it does not create any interest in or charge on the property. Nevertheless, it creates an obligation as recognised in s. 3 of the Specific Relief Act and s. 91 of the Trust Act. The enforceable agreement for sale shifts the benefits of ownership from the vendor to the purchaser if he has paid the price and has taken possession on the agreement. He is not the owner although he is entitled to a statutory charge under s. 55(6)(b) of the Transfer of Property Act for the advance made against the property and is protected from dispossession on the strength of his rights under s. 53(a) of the said Act.

An agreement to sell immovable property is enforceable by a decree for specific performance.

**Extension of time.** The fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract.<sup>14</sup> When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract.<sup>15</sup> Later, the Supreme Court held that even if it is not of the essence of the contract the court may infer that it is to be performed in a reasonable time if the conditions are (a) from the express terms of the contract; (b) from the nature of the property; and (c) from the surrounding circumstances for example, the object of making the contract.<sup>16</sup> As the Madras High Court recently held even though the time is not the essence of the agreement or the contract that does not mean that the vendor has to go on extending the time eternally and must always be ready to receive the money and execute the sale deed after the lapse of any amount of time.<sup>17</sup> Keeping in view the developments of recent times the Supreme Court recently held that the rigour evolved by courts that time is not the essence of the contract in the case of immovable properties requires to be relaxed. The Apex Court further observed that the courts should bear in mind that when the parties prescribe certain time-limit for taking steps by one or the other party it must have some significance and the said time cannot be ignored altogether. Thus where there was delay or rather total inaction on the part of the plaintiff for 2<sup>1</sup>/<sub>2</sub> years in clear violation of the term of the agreement and this delay coupled with substantial rise in prices the plaintiff was disqualified to get the relief by way of specific performance.<sup>1</sup>

An agreement for sale besides mentioning the property, fixes a time for completion, payment of earnest money or part payment of purchase money. It provides for delivery of possession. It fixes time also for delivery of

14 *Govinda v Hari Dutt Shastri* (1977)2 SCC 539; AIR 1977 SC 1005.

15 *Gomalthinayagam v Pallaniswami* AIR 1967 SC 868; (1967)1 SCR 227.

16 *Chand Rani v Kamal Rani* AIR 1993 SC 1742.

17 *Devchand v P. Sivapragasa* AIR 1998 Mad 304.

1 *K.S. Vidyadnam v Vairavan* AIR 1997 SC 1751.

requisitions on title and answers thereto, preparation of draft conveyance and approval and return thereof. If any defect in title is discovered before the sale the purchaser is entitled to refund of the earnest money with damages and costs but in case of discovery after the sale he can file a suit for cancellation and refund of the consideration money etc.

**Right of reconveyance.** Where the operative portion of the sale deed records that all rights and privileges in and concerning the property either in presenti or accruing in future as vesting in the vendor, formed the subject-matter of the sale and that the vendor retained no right of any kind whatsoever, the Supreme Court held that the right of reconveyance under contract for sale was also transferred by the sale deed.<sup>2</sup>

### Incidents of conveyancing

(i) *Abstract of title.* Drafting is more a science than an art. The careful draftsman should follow certain principles according to some well-established system to achieve the best result.

The first and foremost requisite, and also it is the duty of the lawyer to study the title deeds minutely and prepare an abstract of title which is a summary of the evidence of the ownership of the property in which all the title deeds are shortened and simplified. A solicitor or advocate may, in course of investigation, come across four types of title: (a) Absolute title, i.e. fee simple, (b) Qualified title i.e. freehold but subject to some defect mentioned in the register, (c) Possessory title i.e. a title acquired by virtue of long possession, (d) Good leasehold title.

In England, the common practice, where the title is not registered under the Land Registration Act 1925 is that the vendor's solicitor delivers an abstract of title to the purchaser's solicitor. In America, abstract of title are usually prepared by officials or professional abstractors. In India, the vendor's solicitor or advocate, as the case may be, makes the title deeds available to purchaser's solicitor or advocate for inspection and the latter prepares his own abstract of title.

An abstract of title starts from the document which is the root of the vendor's title to the property and indicates all intermediate transfers or change of ownership by acts *inter vivos* between the parties or operation of law, explains all links in the change of title. In England the root of title as fixed now by s. 44 the Law of Property Act 1925 has to cover 30 years. Originally it was 60 years under the Old Land Registration Act 1862 and thereafter reduced to 40 years by the Vendor and Purchaser Act 1874.<sup>3</sup> And to 30 years by s. 44 of Law of Property Act 1925. Although there is no such statutory limit in India and marketable title is the rule, nevertheless it is an obligation

2 *Khiria Devi v Rameshwar* AIR 1992 SC 1482.

3 37 & 38 Vic C 78, s. 1.

on the part of the vendor to establish a title free from any doubt.<sup>4</sup> See also *Duggan v Talyar Khan*.<sup>5</sup> A title by adverse possession is a marketable title as held in the above case if the property is acquired openly. The purchaser's solicitor or advocate shall see that at least a title of not less than 40 years is made out, although it is always prudent to investigate title up to 60 years; but if the root is from some Improvement Trust or Government or other statutory body or authority, no investigation of earlier title is necessary. Moreover, in England, under s. 45(6) of the Law of Property Act 1925, re-enacting s. 2 of the Vendor and Purchaser Act 1874 the purchaser cannot question the correctness of recitals of an abstracted deed more than 20 years old unless they are otherwise proved to be inaccurate. There is no such law in India except what are contained in s. 90 of the Evidence Act (1 of 1872).

A perfect abstract is one which contains the effect of all instruments which constitute the title of the vendor and shows that the vendor is the full owner and competent to dispose of the property free from encumbrances.

(ii) *Searches and Inquiries*. The doctrine of *caveat emptor* applies to sale of real estate as also to sale of goods in England, but in India, the same as embodied in s. 16 of the Sale of Goods Act is applicable to transactions as regards movables and purchase at the court sale but, nevertheless, the principle should not be ignored. The purchaser's solicitor or advocate, as the case may be, shall make a thorough search of the public index and map through some responsible person in the Municipal Office, local Registration Office, C.M.D.A., Collectorate, Court, Land Reform Office and Estate Acquisition, and Land Acquisition Office, M.T.P. Improvement Trust, if any, and Insolvency Court to ascertain who is the owner in the public records and other entries affecting the property in particular whether the property is subject to any encumbrance, attachment or other charges or any notice of acquisition or requisition. The Registrar of the Presidency town has jurisdiction to register any document in respect of any property situate anywhere in the Republic of India subject to payment of luxury fee. So it is always prudent to make searches there for a few years even in cases of transactions relating to properties outside the Presidency towns. A purchaser, who makes no enquiry as to encumbrances, is guilty of gross negligence and has constructive notice thereof.<sup>6</sup> Inspection of the Record of Rights is necessary in cases of Muffasil properties. If the party is a Mahomedan, a search is also necessary in the office of the Commissioner of Wakfs and Custodian of Enemy Properties. The Hindu Adoption and Maintenance Act of 1956 has codified the duties of the heirs of the deceased person to provide

4 *Hoje Mahomed v Musaji* 15 Bom 657.

5 AIR 1938 Bom 657; 173 IC 714.

6 *Bengal Coal Co. v Sitaram* AIR 1935 Cal 667; 61 CLJ 560.



for maintenance of the dependants, e.g. aged parents, widowed daughter-in-law, illegitimate children and others. A dependant's claim on that account, though not a charge under s. 27 of the Act but nevertheless the same, can be enforced against a transferee with notice or gratuitous transferee under s. 28 of the said Act. It is, therefore, the duty of the purchaser to make enquiry and be satisfied on this point also. As observed by Maitland (*Equity*, 2nd Ed., p. 117): "The Court of Equity set up a standard of diligence for the purchaser and a high one so high that it is difficult for the purchaser to buy land without having constructive notice of all trusts which concern the land". An enquiry shall be made also of the persons in occupation of the property and their rights also of the tenant or tenants as to the terms and conditions of tenancy<sup>7</sup> and to whom they have attorned their tenancy and also of the advance if any deposited by them, and the litigation, if any, with the owner. The nature of enquiry depends upon circumstances of each case.<sup>8</sup> Failing which he cannot get the benefit of s. 41 of the Transfer of Property Act much less of s. 50 of the said Act.

(iii) *Production of title deeds.* Sections 55(1)(a) & (b) of the Transfer of Property Act makes it obligatory on the part of the vendor to produce all title deeds which means and includes map paper receipts being evidence of title and answer all requisitions on title.<sup>9</sup> So if there is any link missing in the chain of title or any document is wanting, the purchaser's solicitor would call for an explanation for their absence. In case any title deed is lost or cannot be traced, it is prudent to advertise the loss in the newspaper and to get an inquiry from the vendor on that account.

All certificates about births and deaths of the predecessors in title or ancestors in interest shall be produced. It was held by the Privy Council in the case of *Imperial Bank of India v U. Rai Gyaw Thu & Co.*<sup>10</sup> that abstention from enquiry about the custody of the title deeds is an act of negligence and amounts to notice under s. 3 of the Transfer of Property Act.

(iv) *Requisition on title.* See s. 55(1)(c) of the Transfer of Property Act. This is prepared by the purchaser's solicitor and sent to the vendor's solicitor or advocate for answers. The answers should be signed by the vendor on all pages. The conditions in the agreement for sale may restrict the right of the buyer as regards requisition both in point of time and about facts to be assumed.<sup>11</sup>

7 *Hunt v Luck* (1902)1 Ch 428; 71 LJ Ch 239.

8 *Ram Kumar v Mc Queen* 18 WR 160 (PC).

9 See observation of Rankin, CJ. in *Jyotiprasad v H.W. Low & Co.* (1930)57 Cal 1189.

10 *Imperial Bank of India v U. Rai Gyam Thu and Co. Ltd.* 51 Cal 86; 50 IA 283 (PC); 71 IC 910.

11 Section 55(6)(b) of the Transfer of Property Act.

(v) *Marketable title*. It means a title must be free from any reasonable doubt.<sup>12</sup> Good title also means a title free from any reasonable doubt.<sup>13</sup> Under s. 17(b) of the Specific Relief Act 1963 a vendor cannot enforce specific performance in the absence of such a title made out by himself. Although every agreement for sale provides for approval of the title of the vendor by the purchaser's solicitor or advocate but such stipulation does not give absolute power to him to reject the title however much good the same may be. He must act reasonably and *bona fide*.<sup>14</sup> A purchaser is entitled to rescind a contract if his solicitor lawyer requisitions and the objections are proper, real and reasonable otherwise the agreement will be binding.<sup>15</sup>

(vi) *Preparation of draft conveyance*. After the vendor has made out a good and marketable title to the property intended to be sold and the same is also free from encumbrances, attachments and other defects and furthermore, there is no dispute about the possession of the vendor, the solicitor or advocate draws up the conveyance and sends the same to the vendor's solicitor or advocate for approval. In case of any doubt or dispute regarding the title of any property situate within the original jurisdiction of the High Court, he can take out an originating summons for the opinion of the court. Although no particular words are needed to validate a deed, the draftsman should nevertheless use such words and phrases as would make the intention of the executant amply clear and the sense is expressed in unequivocal language. The following are the component parts of a valid deed: (1) Date, (2) description of the deed, (3) names, addresses and descriptions of the parties, (4) introductory recitals about the history of the property and motive of the parties behind the proposed transaction, (5) testatum which runs as follows—"Now this Deed Witnesses" etc., (6) consideration and its acknowledgement, (7) operative portion, (8) description of the property by reference to its municipal number, boundaries, survey plots, police station, registration office, etc., (9) reservations and exceptions, if any, e.g., underground rights, right of way, right to discharge water, etc. It begins with the words "Provided Always", (10) habendum which begins as "To Have and To Hold" etc., and (11) covenants—Purchaser's solicitor or advocate shall see that the essential parts of a deed are there in the draft prepared by him so as to make the same a perfect conveyance. In case of transfer by a person who is authorised under certain conditions, they shall form part of the recitals.

(vii) *Execution and registration*. These two things are further necessary for completion of the transaction. A deed is always executed against payment

12 *Oosman v Haroon* 47 Bom 369; AIR 1923 Bom 148.

13 *Mahomed v Musaji* 15 Bom 657; *Mahamed Ziaid v Calcutta Vyapar Prathisthan* AIR 1966 Cal 605.

14 *Clack v Wood* 9 QBD 276.

15 *Nusri v Netai* 58 CLJ 513.

of the price or the balance by the purchaser and registered particularly if the same comes under s. 17 of the Registration Act. Execution of the conveyance and payment of the consideration are reciprocal. The rule of English law that a contract under seal is valid even without consideration is not applicable in India. Be that so, mere non-payment of consideration does not prevent passing of title unless otherwise intended by the parties.<sup>16</sup> If the price is not paid the seller can sue for it but cannot have the sale set aside. The execution is done according to the English practice at the residence of the vendor or the office of his solicitor. The text of the document must be explained to the executant in cases where he is not familiar with its language or possess a meagre knowledge of the same, more so in the case of *purdashin* lady and further she must have independent legal advice. All documents should be attested by independent witnesses and in particular mortgage, charge, gift, lease, settlement, bond and will where attestation is compulsory. The attestation means to bear witness to the fact of the execution.

Title under a sale deed passes on the date of the execution of the sale deed and even if the registration of the sale deed is completed on a later date, it must relate back to the date of sale.<sup>17</sup>

(viii) *Possession of the property.* It is to be taken simultaneously with the execution of the deed.<sup>1</sup> The section provides for delivery of possession as permitted by the nature of the property. So when any property is sold with all rights of the vendors and free from encumbrances, he must give vacant possession unless otherwise provided in the agreement. Possession was known as *seisin* in early English Law. Ownership was ignored when not accompanied by *seisin* which was equated with ownership. Such possession was recognised notwithstanding the fact that some other person or persons, even the public at large have a right of way and passage over the same. This is known as the Doctrine of *seisin*.<sup>2</sup>

*Mutation of the name* of the purchaser in the Municipal and Collectorate Records should be effected. Mutation does not confer title. The mutating authority cannot decide question of title.

**Duties and liabilities of a solicitor in matters relating to conveyancing.** Codery in his book on *Solicitors* has said as follows:

“A solicitor is the trustee, guardian and adviser of his client in all work entrusted to him.<sup>3</sup> He should be extra cautious in transactions relating to trust or *benami* or the property of any minor, widow, lunatic and also when any of the parties is Mahomedan or governed by the

16 *Ghoto Behari v Rohini* 13 CWN 692.

17 *Kameshwar v State* AIR 1998 Pat 141.

1 Section 55(1)(f) of the Transfer of Property Act.

2 Salmond's *Jurisprudence*, 12th Ed., p. 200.

3 *Plowright v Lambart* (1885)52 LT 646.

Mitakshara School of Hindu law. It is customary, though not the Rule of Law, for a solicitor to give a certificate as to the good title of the property.”

A transferee acting in good faith and for adequate consideration is always protected in law. A settlement of property made in good faith and *bona fide* in favour of wife and children is not liable to be set aside even if it has the effect of defrauding creditors subsequently.<sup>4</sup> So the mere knowledge of some pending execution or financial embarrassment is not enough inasmuch as the transferee does not share the intention of the transferor to defraud creditors.<sup>5</sup>

A Court of Law does not however lend its support at all to a party when a transaction is tainted with fraud. In refusing its assistance the court acts on the principle of letting the estate lie where it falls. This principle is based upon the *maxim in pari delicto potior est conditio possidentis* (in equal fault the condition of the possessor is far more favourable.

A transferor cannot recover the property from the transferee's possession when fraud has been accomplished by reason of the *maxim in pari delicto*, so it is not necessary that the unlawful agreement should have been fully carried out. It is sufficient if there has been substantial performance of the same.<sup>6</sup>

*Rights of a third party are not affected by the sale of the property.* Section 53 of Transfer of Property Act 1882 new as: The new section runs as follows:

“53. *Fraudulent transfer.* (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor as defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.....”

**Fraudulent preferences of a creditor.** In the leading case on the point *Musahar Sahu v Hakim Lal*<sup>7</sup> Lord Wrenbury observed:

“The transfer which defeats or delays creditors is not an instrument which prefers one creditor to another, but an instrument which removes property from the control of the creditors to the benefit of the debtor. The debtor must not retain a benefit for himself. He may pay one creditor and leave another unpaid.<sup>8</sup> As soon as it is found that the transfer impeached was

4 *Ibrahim v Fulbai* 26 Bom 577.

5 *Islan Chander v Bishu Sirdar* 24 Cal 825.

6 *Mathu Raman Chetty v Krishna Pilai* 29 Mad 72.

7 43 IA 104; 43 Cal 52.

8 *Middleton v Pollock* 1876 Ch D 104.

made for adequate consideration in satisfaction of genuine debts and without reservation of any benefit to the debtor, no ground for impeaching it lies on the fact that the plaintiff was a loser by payment being made to be preferred creditor, there being no question of bankruptcy. Where, however, the transferor has a fraudulent motive or design, the transferee is protected only if (1) he has acted in good faith and (2) paid consideration for the transfer.<sup>9</sup> A transfer by operation of law or by execution of a decree of a court would be caused by s. 53 if the person who obtained the transfer of the property under an order of the court by practising fraud upon it.<sup>10</sup>

**Fraudulent preference and insolvency law.** A transfer which prefers one creditor is therefore not within the mischief of s. 53, but where the debtor is adjudged an insolvent, the transfer may be impeached under the law of insolvency as a fraudulent preference. So s. 53 expressly provides that nothing in sub-s. (1) shall affect any law for the time being in force relating to insolvency.

The Transfer of Property (Amendment) Act XX of 1929, in recasting the s. 53 of Transfer of Property Act 1882 has omitted the rule of presumption enacted by the old section and thus brought the Indian law into line with the English authorities.

**Partition.** Though partition is not a transfer. Instruments of Partition relating to joint family properties brought about with intent to defeat or delay the creditors of the family or of any of its members may be impugned under s. 53 as fraudulent.<sup>11</sup>

(a) Where the partition is unequal and the father has been allotted a smaller share than would be his due with intent to defeat his creditors, the latter can avoid the partition under s. 53 and proceed against what would be his proper share in the family properties in execution of the decree obtained against him, ignoring the allotment of the properties at the partition; (b) they cannot however proceed against the sons' shares in execution, as the division of status brought about by the partition will stand notwithstanding the avoidance of the partition as a fraudulent transfer; but (c) where the partition is fair and in accordance with the proper shares of the parties, it is not liable to be impeached under s. 53, although it was entered into with a view to prevent attachment of the sons' shares in execution of decrees obtained against the father after the partition and was in that sense *mala fide*; and (d) a mere colourable partition not meant to

9 Section 53 of the Transfer of Property Act.

10 *Ramanathan v Unnamalai* AIR 1942 Mad 632.

11 *Waman Ramkrishna v Ganpat* (1935)60 Bom 34; *Vinoyak Samara v Moreswar* ILR (1944) Nag 342; AIR 1944 Nag 44 (FB); *Ratan Devi v Jagadhar* AIR 1956 Punj 46.

operate between the parties could be ignored and the creditor could enforce his remedies as if the parties still continued to be joint." Where in a partition no property was allotted to the father who was indebted the partition would be illusory though the sons were directed to pay the father's debts.<sup>12</sup>

**Persons entitled to maintenance.** Some persons have in law the right to maintenance out of the immovable property in the hands of another. A familiar instance of this is that of the widow in Hindu law to receive maintenance out of joint family property in the hands of her deceased husband's coparceners. As settled by the Supreme Court this right is the pre-existing right of the widow.

Section 39 of the Transfer of Property Act 1882 protects such rights providing that the claim to maintenance would prevail notwithstanding a transfer of the property made with the intention of defeating the right provided the transfer was gratuitous or the transferee took the property with notice of the transferor's fraudulent intention.

**Transfer when third person is entitled to maintenance.** According to s. 39 of the Transfer of Property Act where a third person has a right to receive maintenance or a provision for advancement or marriage from the profits of immovable property, and such property is transferred, the right may be enforced against the transferee, if he has notice or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

The Hindu Adoptions and Maintenance Act (Act 78 of 1956) provides for such right of maintenance for some persons, viz. wife (s. 18), widowed daughter-in-law (s.19), children including unmarried daughters and aged parents (s. 20) and other dependents, e.g. widow besides parents.

**Maintenance whether a charge.** The liability to maintenance is in some cases personal, in some cases dependent on possession of inherited property and in others on possession of joint family property. In none of these cases however is the right to receive maintenance a charge upon the assets of the person personally liable or upon the property in the hands of the heir or the manager. It is only enforceable like any other personal obligation until it is made a charge upon property either by virtue of a decree of a court or by agreement between the parties or by the terms of the will granting maintenance. In the absence of a charge, the claim to maintenance could prevail only where the property is alienated in fraud of the claim and the purchaser bought it with notice of such claim<sup>13</sup> and of the vendor's fraudulent intention, or the transfer is of all the property available for payment of

12 *Picha Moopnar v Velu Pillai* AIR 1947 Mad 203.

13 Section 39 of the Transfer of Property Act.

maintenance. The beneficiary is a necessary party to the deed of sale as otherwise the same is liable to be set aside.

In the event a wife has a right to maintenance not only from her husband personally but also out of his property, she can pursue the property even in the hands of a stranger who has purchased it with notice of her claim. Bare notice of the existence of the right would be sufficient to make it a burden on the property in the hands of the transferee.<sup>14</sup> It is therefore, prudent to make the wife a party to the deed of sale more so in a case where she is in possession of the property intended to be sold in lieu of maintenance.

**Maintenance suit and s. 39, Transfer of Property Act 1882.** In *Mst. Dan Kuer v Sarla Devi*<sup>15</sup> the property liable to maintenance was alienated on 5th August 1921, and the suit to enforce the maintenance claim was filed on 9th January 1933. Present s. 39 of the Transfer of Property Act was introduced by the Amending Act of 1929. The amended section under which notice of the right to receive maintenance would be enough was in operation at the date of the suit, 9th January 1933. It was held that s. 39 as amended was applicable to the case and that therefore the claimant need only prove that the purchaser had notice of the maintenance right.

#### *Future Ownership*

A property cannot remain without an owner:

Future estates fall broadly into two classes—(1) those vested in interest but not immediately in possession and enjoyment e.g. vested remainders and reversions and those contingent which takes effect at a future date on the happening of an uncertain event e.g. contingent remainders and contingent executory interests. A vested interest is the proprietary right acquired in a property except that the right of possession and enjoyment is deferred until the happening of a certain event. In contingent interest neither any proprietary right is acquired nor any right of enjoyment which is also deferred till the happening of a specified event, till such interest becomes vested and the future estate comes into existence there can be no owner or owners to convey the same. A transfer is not complete until happening of the stipulated event which is uncertain. So contingent estate is not transferable, but a vested interest is transferable and heritable. A vested interest is not defeated by the death of the transferor before he obtains possession. The present owner too cannot alienate the estate as contingent interest in discharge of such future interest. A restraint is thus imposed upon alienation although the future interest may never come into existence

14 *Radhabhai v Gopal Dhondo* AIR 1944 Bom 50.

15 40 Bom LR 123; AIR 1947 PC 8 at p. 13.

and the event contemplated may never occur.<sup>16</sup> The vested interest is also heritable on the death of the transferee.<sup>17</sup>

In other words a vested interest is not subject to any condition precedent and it takes effect on the happening of a certain event whereas the contingent depends upon happening of a most uncertain condition or event which may not happen at all.<sup>18</sup>

### Perpetuity

**English law.** A perpetuity is an interest which will not vest till a remote period. The period for which vesting may lawfully be postponed is called the perpetuity period. The rule against perpetuity or the rule against remoteness of limitation, defines the perpetuity period and lays down the test of validity of future limitations.<sup>19</sup>

**Indian law.** Under the Hindu law as it stood before the Hindu Disposition Property Act (Act IV of 1916) a gift to an unborn person not in existence at the time of distribution of the assets was under the rule as laid down in *Tagore v Tagore*<sup>1</sup> was void. Since then the law has changed. Section 14 of the Transfer of Property Act is the statutory recognition of the rule— life or lives in existence on the date of transfer and the minority of an unborn person not then in existence but must come in existence at the expiration of that period and be of full age. A perpetuity in the sense of a present interest having a tendency of being indefinitely inalienable has always been held to be invalid. The leading case on the subject is *Sookhmoy Chunder Doss v Monohuri Dassi*.<sup>2</sup>

Granting successive life-estate is not permissible under Hindu Law. No one can create an estate unknown to Hindu Law.<sup>3</sup> The rule against perpetuity relates to any property, whatever be its nature and whether it is movable or immovable.<sup>4</sup>

**Mahomedan law.** The rule against perpetuity embodied in s. 14 of the Transfer of Property Act was once held as having no application to Mahomedans. Nevertheless under the Mahomedan law a gift to remote and unborn generations is invalid except in the case of a wakf. i.e. charitable trust.

16 Subba Rao: *Law of Property*, p. 335.

17 *Krishna Aiyar v Swanilnath* 47 IC 723.

18 William on *Executors*, 11th Ed., vol. 11, pp. 973-74. See also ss. 119 & 124 of the Indian Succession Act (Act XXXIX of 1925) and ss. 19, 20, 21 of the Transfer of Property Act (Act IV of 1882).

19 See s. 14 of the Transfer of Property Act and s. 114 of the Indian Succession Act.

1 LR IA Supp vol. 47.

2 12 IA 103 (PC).

3 *Sitesh Kumar v Ramesh* AIR 1981 Pat 339.

4 *Cowanji v Rustomji* 20 Bom 511.



The scope of this rule was considered by the Privy Council in *Abdul Fata Mahomed v Russomoy*.<sup>5</sup> In that case a Mahomedan settled his property in perpetuity on his family with an ultimate gift to the poor was held as invalid. This decision caused great hardship to the Mahomedan community until the Mussalman Wakf Validating Acts 1913 and 1930 was passed providing that for remoteness a Wakf shall not be invalid (s. 4). The present law of Wakfs is governed by the Wakf Act 1995.

**Hindu law.** No transfer of property can operate to create an interest which is to take effect after the lifetime of one or more persons living at the date of such transfer and the minority of a person who shall be in existence at the time of death of last survivor-beneficiary. This applies to gift as also to bequest and to Private Trust. The rule against perpetuity does not apply to charitable or religious endowments. The rule is contained, *inter alia*, in s. 14 of the Transfer of Property Act 1882 and s. 114 of the Indian Succession Act 1925.

*Distinction between the English  
and the Indian Rules against Perpetuity*

The following points of distinction between the English and Indian rules against perpetuity may be noted:

- (1) The perpetuity period is different. Under the English law the perpetuity period is a life, or any number of lives in existence when the instrument under which the interest arises takes effect, plus a term of 21 years. Under the Indian law it is a life or lives in being at the time of the grant plus the period of minority of the beneficiary taking under the grant.
- (2) Under the English Rules the additional period of 21 years allowed after lives in being is a term in gross without reference to the infancy of any person. Under the Indian statutes the term is the period of minority of the person to whom if he attains full age the interest created is to belong.
- (3) The period of gestation, where it actually exists may be added to the perpetuity period as above defined. In English law it admits of addition at both ends of the perpetuity period. But in Indian law it may be added only at its commencement.
- (4) The Law of Property Act 1925, by s. 163 has validated certain remote gifts by allowing the substitution of the age of 21 years when the gift is to fail for remoteness on the ground that the ascertainment of the beneficiary or class of beneficiaries is made to depend on the attainment by the beneficiary or members of the class of an age exceeding 21 years. There is no corresponding provision under the Indian law.

### Pre-emption

**History of origin.** The law of pre-emption was introduced in this country by the Mahomedans. There is no indication of any such conception in the Hindu law and the subject has not been noticed or discussed either in the writings of the Smriti writers or in those of later commentators. Sir William Macnaghten in his *Principles and Precedents of Mahomedan Law* at page 14 has referred to a passage in the "Mahanirvana Tantra" which, according to the learned author, implies that pre-emption was recognised as a legal provision according to the notions of the Hindus. But the treatise itself is one on mythology, not on law. No value can be attached to a stray passage of this character, the authenticity of which is not beyond doubt.

**Pre-emption.** (1) Pre-emption is a right attached to the property. It arises from ownership. It protects against intrusion of strangers in the family property so as to check the same going out of family—judicial opinions in this aspect differed until recently on the point that is to say whether pre-emption is an incident of property or it was a mere personal right of repurchase. The Full Bench of Calcutta High Court in *Seikh Kudratullah v Mohirti Mohon*<sup>6</sup>, held (Norman and Macpherson, JJ., dissenting) that it was a mere personal right. Whereas contrary views were however expressed in Allahabad, Patna and Bombay in *Govinda Dayal v Inayatullah*<sup>7</sup> *Achyutananda v Biki*,<sup>8</sup> *Dasharathilal v Bai Dhondu Bai*<sup>9</sup> which held the right of pre-emption as an incident of the property.

Immediately on payment of the purchase money on or before the specified date the title to the property would vest in the pre-emptor without any further documentation. Where the pre-emptor executed a document describing it as a deed of assignment he clearly transferred his interest in the pre-emptional land and such assignee shall have the same rights which had accrued to the executant decree-holder. It would not be a case of a transfer of a mere decree with the property remaining vested in title in the pre-emptor.<sup>10</sup>

(2) All the divergence of judicial opinion has been set at rest by *A.B. Singh v G. Jaipuria*<sup>11</sup> which disapproved the Calcutta view and affirmed the view taken in Allahabad, Patna and Bombay. In other words the Supreme Court held that it is a right attached to the property.

(3) Section 8 of the West Bengal Land Reforms Act (Bengal Act X of 1956) gives right of pre-emption first to co-sharers of the holding analogous

6 4 BLR 134.

7 ILR 7 All 775.

8 ILR 1 Pat 578.

9 AIR 1941 Bom 262 (FB).

10 *Bhoop v Matadin* AIR 1991 SC 373.

11 AIR 1954 SC 417; 1955 SCA 132.

to s. 26F, B.T. Act (repealed) and then to owners of adjoining property, i.e. right of pre-emption on the ground of vicinage—the owner having longest common boundary having preference. A bargader is also entitled to pre-empt under the Act.

(4) Right of pre-emption does not infringe Art. 19(1)(f) of the Constitution of India ensuring to a citizen the right to acquire, hold and dispose of property.<sup>12</sup>

(5) Although there was some confusion earlier about the constitutional validity of the provision relating to right of pre-emption on the ground of vicinage, the enactment having been under the Ninth Schedule of the Constitution by the Constitution (Thirty-fourth) Amendment Act 1974, it can no longer be challenged as violative of any right conferred by Part III of the Constitution.<sup>13</sup>

(6) Section 29A of the Kerala Land Reforms Act was struck down as violative of Art. 14, Constitution of India. The effect of the Kerala Act being included in the Ninth Schedule is that the provision is revived back from the date of the Act retrospectively.<sup>14</sup>

(7) Sale of entire plot cannot prevent pre-emption under the Bengal Act by a raiyat owning contiguous land if the transferor raiyat has other lands or holding anywhere in West Bengal.<sup>15</sup>

## FORMS

### Agreement for Sale

#### ENGLISH FORM

ARTICLES OF AGREEMENT made this ..... day of .....1999  
 BETWEEN ..... son of ..... etc. residing at ..... (hereinafter  
 called the VENDOR) of the one part and Mr. .... son of ..... etc.  
 residing at ..... (hereinafter called the PURCHASER) of the other part.  
 Whereby it has been agreed and declared by and between the parties hereto  
 as follows:

(1) The expressions VENDOR and PURCHASER shall include their respective heirs, executors, administrators, representatives and assigns.

12 *Atam Prakash v State of Haryana* AIR 1986 SC 859.

13 *Narayan Chandra Ghosh v Sanat Kumar* (1975)2 Cal LJ 79; *Satish Chandra v Kalipada Maity* (1977)2 Cal LJ 480.

14 *Koshy v State of Kerala* AIR 1976 Ker 108.

15 *Devendra v Rekha Pal* 90 CWN 22; (1986)1 Cal LJ 227; (1986)1 Cal HN 183.

(2) The VENDOR shall sell and the PURCHASER shall purchase the property particularly mentioned described in Schedule hereto and hereinafter referred to as the said property as an absolute estate in fee simple or an estate equivalent thereto free from encumbrances, attachments or other defects in title. The vendor shall at his own costs make all other necessary persons join with him in the conveyance whether as conveying parties, confirming parties or assuring parties as shall be required to pass and convey unto and to the use of the purchaser a clear title of the said property free from all doubts as hereunder contemplated.

(3) The price of the property is settled at Rs. .... to be paid by the purchaser as follows (that is to say) a sum of Rs. .... as earnest money immediately upon execution of this agreement and the balance thereof at the time of the completion of the purchase.

(4) Subject to the vendor's making out a good and marketable title to the said property to the reasonable satisfaction of the PURCHASER or his solicitor and performing the other terms of this Agreement as hereunder appearing, the purchase shall be completed on or before the 5th day of December 1999 and the relevant conveyance shall be executed at the office of the vendor's solicitor. Time for this purpose shall be deemed as Essence of Contract.

(5) Upon the PURCHASER paying the purchase money in full, he shall, as from the date fixed for completion, be entitled to possession of the property and shall as from that day pay all outgoing and liabilities in respect thereof; the outgoing and liabilities up to and inclusive of the date of completion being cleared by the vendor.

(6) (a) If the completion of the purchase is delayed beyond the date fixed for completion by reason of any act, default or negligence on the part of the PURCHASER in spite of the readiness and willingness on the part of the VENDOR, he shall be entitled to interest on the balance of the purchase money at the rate of 12 per cent per annum from the date fixed for completion of the purchase.

(b) No interest shall become payable by the PURCHASER if delay in completion is due to failure on the part of the VENDOR to establish a good and a marketable title to the property or performance or non-performance of any of the covenants, conditions or stipulations contained in this Agreement.

(7) The VENDOR or his solicitor shall on or before the ..... day of ..... deliver to the PURCHASER or his solicitor an abstract of title of the property intended to be sold and make all the title deeds and other papers and writings concerning the title thereto available for inspection for which he will deliver them to the purchaser's solicitor on accountable receipt.

(8) The PURCHASER shall within 14 days after the actual delivery of the abstract on title and the production of the documents send to the VENDOR or

his solicitor a statement in writing containing all the objections and requisitions (if any) to or on the title and the documents and all particulars and information relating to the same required by him and send back the title deeds and other papers and writings received by him to enable the vendor or his solicitor to answer them.

(9) Any answer to any objection or requisition shall be replied to in writing within 10 days after delivery thereof.

(10) (a) If notwithstanding a good and marketable title as hereunder contemplated is made out, the PURCHASER shall nevertheless make any objection or further requisition or requisitions, which the VENDOR is unable to comply with, and the PURCHASER shall not withdraw such objection or requisition within 10 days after being so required, in writing, the VENDOR may, in that event by notice in writing delivered to the PURCHASER or his solicitor cancel this agreement notwithstanding any intermediate negotiations to the contrary.

(b) If the contract is so rescinded, the VENDOR shall within three days after rescission, refund to the PURCHASER the entire earnest money but without interest and the purchaser shall return forthwith all title deeds, abstracts and other papers and writings in his possession belonging to the VENDOR and shall not make any claim on the vendor for costs, compensation or otherwise. Otherwise the vendor shall pay a sum of Rs. .... as the assessed costs of the PURCHASER for searches, investigation on title; preparation of the draft conveyance and other connected matters.

(11) (a) The conveyance(s) shall be prepared by the purchaser at his own costs and expenses and the draft thereof shall be delivered at the office of the Lawyer of the VENDOR at least 14 days before the date fixed for completion, for perusal and approval on behalf of the VENDOR.

(b) The conveyance(s) engrossed on stamped paper ready for execution by the VENDOR shall be left at the office of his Solicitor within four days next after the draft has been returned approved on behalf of the VENDOR.

(12) Upon payment of the purchase money at the time and in the manner aforesaid and tender of the sale deed, the VENDOR shall execute a conveyance of the said property with proper covenants for title, peaceful enjoyment, non-encumbrance and further assurance in favour of the purchaser or his nominee.

(13) The VENDOR shall hand over to the PURCHASER all documents of title relating to the property sold and deliver possession of the same simultaneously with the execution of the conveyance.

(14) (a) If the PURCHASER shall neglect or fail to perform his part of the contract, the vendor may give to the purchaser or to his lawyer at least 15 days' notice in writing specifying breach and requiring the PURCHASER to make good the default before the expiration of the notice.

- (b) If the PURCHASER does not comply with the terms of such notice—
  - (i) The deposit money shall be forfeited to the VENDOR.
  - (ii) The VENDOR may resell the property without previously tendering a conveyance or instrument of transfer to the PURCHASER.
  - (iii) The resale may be made by auction or private contract at such time subject to such conditions and in such manner—generally as the VENDOR may think proper and the defaulting purchaser shall have no right to any part of the purchase money thereby arising.

(15) If in course of searches and investigation of title the property is found to be affected by any notice of acquisition or requisition by the Government or any statutory body or authority or injunction or prohibitory order from any court the PURCHASER shall be entitled to rescind this agreement in which event the VENDOR shall refund the earnest money.

(16) The VENDOR shall have his name recorded in the municipal and revenue records relating to the property as owner of the property unless the same has already been done as will appear from the title deeds.

(17) Notwithstanding anything hereinbefore contained, each party shall have the right to sue for specific performance with or without damages.

The intended sale includes all fittings and fixtures in the property sold as they are now and the VENDOR shall not remove nor cause any damage to any of them before the sale.

(18) Save and except what are hereinbefore provided, the rights and liabilities of the parties shall be governed by the law in force as between VENDOR and PURCHASER.

*The Schedule above referred to*

(Full description of the property intended to be sold)

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seal the day, month and year first above-written.

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

Signature

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

Signature

MEMO OF CONSIDERATION

RECEIVED from the within named PURCHASER the sum of Rupees ..... as earnest money for within-mentioned Agreement for Sale.

WITNESS

Signed by VENDOR

NOTE: An agreement as defined in s. 2(f) of the Contract Act is a promise and promise forming the consideration of each other. In other words it is the result of mutual assent of the parties. But before it becomes enforceable in law it must fulfil certain conditions (vide s. 10 of the Indian Contract Act), viz. (i) free consent of the parties, (ii) competency of the parties, (iii) lawful consideration. The English doctrine about solemnity of a contract in writing under seal was never applied in India. Although law permits the parties to make their own bargain but inadequacy of consideration raises presumption as to fraud, undue influence etc. vitiating a contract which weighs heavily with a court of Equity in deciding whether a contract shall be set aside or specific performance should be granted or refused under s. 53 of the Transfer of Property Act. Any transfer without consideration motivated by fraud is voidable. The amended section mentions no fraud as inadequacy of consideration unless established by evidence. See also s. 20 of the Specific Relief Act of 1963.

Agreement for Sale

INDIAN FORM

MEMORANDUM OF AGREEMENT made this ..... day of ..... 1999 BETWEEN ..... son of ..... by caste ..... by occupation ..... residing at ..... hereinafter called the VENDOR (which expression shall unless excluded by or repugnant to the context be deemed to include his heirs, executors, administrators and representatives) of the one part and..... son of ..... by caste ..... by occupation ..... residing at ..... hereinafter called the PURCHASER (which expression shall unless excluded by or repugnant to the context be deemed to include his heirs, executors, administrators, representatives and assigns) of the other part: IT IS HEREBY AGREED by and between the parties as follows:

1. The VENDOR agrees to sell and the PURCHASER agrees to purchase the entirety of the premises No. .... comprising an area of ..... cottahs ..... chittacks ..... sq. ft. particularly mentioned and described in the Schedule hereunder written and hereinafter referred to as the said premises as an absolute estate in fee simple or an estate equivalent thereto subject to a good and marketable title being made in respect thereof and the property being found free from all encumbrances, attachments, charges and other claims and demands at or for the price of Rs. .... subject to the terms and conditions hereunder contained.

2. The PURCHASER has this day paid to the VENDOR the sum of Rs. .... (Rupees ..... ) as and by way of earnest money and the balance of the purchase money amounting to Rs. .... shall be paid at the time of completion of the purchase. Simultaneously with the execution of this agreement, the VENDOR shall deliver to the purchaser's solicitor on his accountable receipt all title deeds and other papers and writings including the sanctioned building plan and municipal bills relating to the premises and the purchase shall be completed within ..... days from the date hereof provided a good marketable title is made out and the VENDOR makes the property free from all encumbrances, claims and demands whatsoever and not subject to any scheme of acquisition or requisition. Time shall for this purpose be deemed to be the essence of contract.

3. The VENDOR doth hereby agrees to answer all reasonable requisitions on title to be made by the purchaser's solicitor.

4. If a good and marketable title is made out and the property is found to be free from all encumbrances, attachments and charges and other claims and demands and not affected by any notice or scheme of acquisition or requisition, the VENDOR will execute a proper conveyance or conveyances in favour of the PURCHASER or his nominee or nominees or assignee in which the VENDOR shall make such other person or persons, if any, join, if necessary, as conveyancing, confirming or assuring party or parties as the case may be to pass and convey an absolute title unto the PURCHASER or to redeem any charge or encumbrance. The VENDOR shall bear and pay all outgoing and liabilities of the property up to and inclusive of the date of sale.

5. The VENDOR shall deliver peaceful vacant possession of a portion of the said premises which is in his occupation and the rest by attornment of tenancy to the PURCHASER at the time of completion of the purchase. In case any other portion(s) now occupied by the tenants falls vacant, the VENDOR shall not induct any new tenant or tenants nor allow the same to be otherwise occupied and shall also deliver vacant possession thereof to the PURCHASER.

6. If a good and marketable title is not made out or the property is found to be subject to any encumbrances, attachments or charges or other claims or demands, the PURCHASER shall be at liberty to rescind this agreement and the VENDOR shall in that event and on demand by the PURCHASER refund the said earnest money with interest @ 15% per annum and shall pay to the PURCHASER a sum of Rs. .... only as settled costs of searches and investigation of the VENDOR'S title and of this agreement as between party and party.

7. If the VENDOR fails and/or neglects to complete the sale after the title being made out as aforesaid or otherwise to carry out any one or more of the obligations on his part as hereunder provided or otherwise required by law, the PURCHASER will be at liberty to enforce specific performance of agreement by institution of legal proceedings or, at his option, may sue the VENDOR for recovery of the earnest money with interest, costs and other reliefs.



8. If on the title being found good and marketable, the PURCHASER fails to complete the purchase within the time aforesaid, the earnest money shall be forfeited to the VENDOR or the VENDOR may at his option enforce specific performance of this agreement by the PURCHASER and the PURCHASER will also be liable to pay the costs and expenses of proceedings for specific performance.

9. The said premises or any portion thereof is not at present affected by any Notice or Scheme of the Municipality or any other local public authority or body corporate. If it be found to be so affected before the completion of the sale, it shall be optional on the part of the PURCHASER to rescind this agreement and in that event the VENDOR shall refund the earnest money to the PURCHASER and shall further pay to his said solicitor a sum of Rs. .... as aforesaid as settled costs of investigation of title, and of this agreement.

10. The VENDOR shall procure the necessary certificate under s. 230A of the Income Tax Act 1961 and permission under s. 27 of the Urban Land Ceiling (Regulation and Control) Act 1976, if necessary and produce the same for inspection of the purchaser's solicitor.

*The Schedule above referred to*

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

Signed, sealed and delivered by  
the within-named VENDOR at  
Calcutta in the presence of:

Executed by the within-named  
PURCHASER at Calcutta in the  
presence of:

**MEMO OF CONSIDERATION**

Received of and from the within-mentioned purchaser a sum of Rs. 1,50,000 as Earnest Money for the within-mentioned agreement for sale by bank draft No. 34, dated 15th December 1999 for Rs. 1,50,000 on X Bank Ltd. payable in Calcutta.

WITNESS:

Received  
Signature of the VENDOR

**Agreement for the Sale of Assets of  
a Running Business to a Limited Company**

AGREEMENT FOR SALE made this ..... day of ..... in the year 1999  
BETWEEN Messrs ..... hereinafter called the VENDORS (which expression shall, unless repugnant to the context, include the vendors, their successors and assigns) of the first part and MB Co. Ltd. a company duly registered

under the Companies Act 1956 (Act 1 of 1956) having its registered office at ..... hereinafter called the PURCHASER (which expression shall, unless repugnant to the context, include its successors in business and assigns) of the SECOND PART, WHEREAS the vendors who have been for some time past carrying on business as cabinet makers and dealers in furniture etc., at ..... And whereas the VENDORS have agreed to sell to and the PURCHASER has agreed to purchase the entire stock-in-trade and other assets of their business and transfer the same as a going concern (excluding, however, the liabilities) as on this day for the consideration hereinafter mentioned.

Now IT IS HEREBY AGREED by and between the parties hereto as under:

1. The VENDORS shall sell and the PURCHASER shall purchase the entire stock-in-trade and other assets of the aforesaid business of the VENDORS consisting of lands, factory buildings, temporary constructions, structures, machinery, stock-in-trade, book-debts, benefit of all the subsisting contracts, formula, trade marks, patents, goodwill, rights, concessions, licences and other privileges, more particularly detailed in the schedule hereunder on or after the date when the PURCHASER company shall be entitled to commence business.

2. The consideration of the sale shall be a sum of Rs. .... which shall be satisfied by the allotment to the VENDORS of ..... shares in the capital of the company as fully paid-up shares. In determining the amount of consideration referred to above, the machinery, furniture and stock-in-trade have been assessed at their book-value as per balance-sheet as on ..... plus a sum of Rs. .... to be paid by the VENDORS to their predecessors in title Messrs ..... when making over the business to the latter, while the book-debts (which have all along been considered good) have been taken into account at their full value and the land at its actual purchase price. The value of other assets has for the present been tentatively fixed at ..... as correctly as the circumstances permit, subject however to such adjustments (by payment in cash by either side) as may later on be found necessary at the date of the sale.

3. The VENDORS shall make all necessary arrangements for delivering to the company all assets of the said business agreed to be transferred as fully detailed in the Schedule hereunder upon the allotment of the shares to the VENDORS as aforesaid.

4. The purchase shall be completed on the day the PURCHASER obtains the commencement certificates or as soon thereafter as possible, when the VENDORS shall, at the expenses of the PURCHASER company, execute and register a deed of sale as may be necessary for effectually vesting the said assets in the PURCHASER company.

5. That the PURCHASER company shall have no responsibility for the debts and liabilities of the vendors which the vendors shall pay for and discharge themselves.

6. The VENDORS shall at all times keep the PURCHASER company harmless from and indemnified against any or all claims by any person or persons whomsoever in respect of any or all of the assets agreed to be transferred to the PURCHASER company as detailed in the Schedule hereunder.

*Schedule above referred to*

IN WITNESS WHEREOF the parties hereto have set their respective hands and seals hereunto and to a duplicate hereof, on the day, month and year first hereinabove written.

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

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

**Model Form of Requisition on Title & Answers**

*Questions*

*Answers*

(1) Please produce paid-up Municipal rate bills or receipts for the last 12 years, showing that no taxes are in arrears.

(2) (a) Is the property vacant or in the occupation of anybody?

Any other person, if any, interested in the property who is in actual possession of the property (vide Exp. 11 of s. 3 of the Transfer of Property Act 1882).

(b) In the latter event, under what right is he in occupation thereof?

(c) If the property is held by virtue of a lease, please state all particulars of the lease and produce the rent receipts.

(d) Have all covenants and conditions of the lease been observed and performed? In case of any continuing breach necessary steps should be taken for its remedy.

(e) Any notice received from the landlords regarding any complaint in respect of the property.

(3) Is the property subject to or affected by any trust, mortgage, charge, lease, lien, lispendens maintenance, marriage expenses, attachment or any other encumbrance or any right of easement in favour of any person or persons?

## Questions

## Answers

Any right of pre-emption in favour of any person?

(4) Is the property subject to any prescriptive rights of anybody?

(5) Is the property affected by—

(i) any scheme of acquisition of the Calcutta Improvement Trust, C.M.D.A. or Tube Railway?

(ii) any scheme of alignment of the Corporation of Calcutta or any other scheme under the Municipal Act?

(iii) any notice under the Land Acquisition Act?

(iv) Any notice under the Calcutta Metropolitan Planning Area (Use and Development) of Land Control Act (W.B. Act XIV of 1965)?<sup>1</sup>

(6) Are any requisitions of the Municipality or Corporation subsisting in respect of the property including notice re. unauthorized construction, demolition, encroachment, etc.?

(7) Are any impositions or outgoing other than the Municipal rates and taxes payable out of or in respect to the said property?

If so, please state the amount thereof and to whom they are payable and produce receipts, challans, dakhilas or other documentary evidence showing payment up to date.

(8) Is there any defect in the title which it is not possible for the purchaser to discover or ascertain by searches

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1 Although named as the Calcutta Metropolitan Planning Area (Use and Development) of Land Control Act which received the assent of the Governor on 17th June 1965, the State Government, in exercise of the power conferred under sub-sec. (1) read with sub-sec. (2) of s. 4 may by Notification in the *Official Gazette*, extend its application to any area throughout the State of West Bengal except the Cantonment as declared under s. 3 of the Cantonments Act 1924. These areas are called "controlled areas" where no construction or development is permitted without the permission of the Controller. The Calcutta Metropolitan District extends to the west and east banks of the River Hooghly. The Act has now been extended to the District of Darjeeling which is now declared a controlled area (vide Notification No. 6259-T&C.P. 3a-1/6711 dated 22.10.75). In the result no construction shall be made and development undertaken without the written permission of the Controller who is the Deputy Commissioner of Darjeeling.

## Questions

## Answers

and enquiries but which is or may be within the vendor's knowledge or which the vendor may be in a position to ascertain?

(9) Was any agreement entered into by the vendor previously for sale of the said property to any other party and was any earnest money received? (See s. 91 of the Indian Trusts Act as to acquisition of the property with notice of an existing agreement. Also see s. 92).

(i) If so what is the present position with reference to such agreement?

(ii) If it was cancelled,

(a) on what grounds?

(b) was the earnest money refunded?

Please produce the cancelled agreement, if any.

NOTE: If the vendor sells all his properties without any exception the person entitled to maintenance will be deprived of their resources. So it is prudent to issue an advertisement inviting claims and objections to such a sale and to make the dependants particularly the wife of the vendor a party to the sale in case the vendor has no other property or properties.

(10) (a) Who are the persons entitled to maintenance against the property under the Hindu Adoption and Maintenance Act 1956?

(b) Any suit for maintenance touching or concerning the property. Any portion of the property occupied separately in lieu of maintenance.

(11) Please produce income-tax clearance under s. 230A of the Indian Income-tax Act.

(12) Who are the persons in actual possession of the property and under what rights?

(13) Are there any public rights, easements or any restrictive covenant affecting the property?

(14) Which title deeds and documents will be handed over to the purchaser on completion of sale?

(15) Did the property ever vest in Official Trustee or Official Assignee?

(16) Have all roads or streets abutting on or traversing the property been taken over by the local authority?

(17) Are there any outstanding charges for street works, sewers etc?

*Questions**Answers*

- (18) Official certificates about the deaths of persons concerned with the property.
- (19) Whether any member of the family was given in adoption?
- (20) Whether any widow is in possession of any portion of the property in lieu of maintenance?<sup>2</sup>
- (21) Any execution proceeding pending against the vendor?

In view of the fact that the purchaser as well as his solicitor desire to complete the transaction with as much expedition as possible, these requisitions are sent before completing the necessary searches and enquires. The right to make further requisitions arising from the result thereof and from the answers to the above requisitions is therefore reserved.

Purchaser's Solicitors

Vendor's Solicitors

### Special Requisitions in Case of Sale of Agricultural Land

*Questions**Answers*

- (1) What is the total area of land in the possession of the vendor? Are they all in his khas possession and also, under personal cultivation? Are they situated in irrigated or non-irrigated area? Are there any bhagchase in the property?
- (2) In case the lands are held since before the acquisition of the interest of intermediaries under the Estate Acquisition Act 1953 have the vendor submitted return in terms of s. 6 of the said Act? Did the vendor file any return in Form No. 10 of the West Bengal Land Reforms Act 1955 (see r. 15A of the West Bengal Land Reforms Rules 1965)? If so, please produce a copy of the same for my inspection. Old rent receipts granted by zamindars are to be produced.
- (3) Who are the person or persons actually cultivating the lands and the nature of products? Was there any proceeding or report to the Bhag Chase Board in connection with the land? Any person other than the owner cultivating the same not being a member of his

## Questions

## Answers

family. [Vide West Bengal Land Reforms (Amendment) Act 1977. Amended s. 21B of the Act].

(4) What is the total area of lands in possession of the members of the vendor's family? Did the same ever exceed the maximum ceiling limit permitted under the Estate Acquisition Act and its amendments from time to time. Are they also *benamdars* of the vendor or real owners?

(5) Are the lands subject to any levy? How much paddy is delivered by the vendor? Please produce the relevant papers in that connection.

Any proceedings in the High Court in connection with the levy under Art. 226 of the Constitution of India?

(6) Was the land ever subject to any proceeding under the Bengal Restoration of Alienated Land Act (Act XXIII of 1937) or the West Bengal Acquisition and Settlement of Homestead Land Act (W.B. Act XV of 1969)? If so give full particulars.

(7) Name of the Gram Panchayat and taxes if any payable.

(8) Mutation certificate of the J.L.R. rename of the vendor.

(9) Names of the co-sharers in the jama (they have right of pre-emption under s. 8 of the West Bengal Land Reforms Act 1955).

(10) What is the amount of rent and public charges *e.g.* road cess, education cess, etc. in respect of the lands?

Please produce receipts showing payments up to date.

(11) Corresponding C.S. Khatians are to be produced for inspection.

(12) In cases of transfer of land by a member of the Scheduled Tribes, permission of the Revenue Officer. (Chapter IIA of the West Bengal Land Reforms Act 1955).

## Form of Conveyance—English Precedent

THIS INDENTURE MADE THIS ..... day of ..... BETWEEN AB son of ..... etc., hereinafter referred to as the VENDOR which expression shall where the

subject or context allows etc. of the one part and CD son of etc. hereinafter referred to as the PURCHASER which expression shall where the subject or context allows, etc. etc. of the other part.

*State the recitals concisely and precisely*

WHEREAS the VENDOR ..... as lawful owner is seized and possessed of or otherwise well and sufficiently entitled to the messuage, tenements, land, hereditaments and premises (hereby intended to be granted and conveyed and hereinafter referred to as the said property) as an absolute and indefeasible estate in fee simple or an estate equivalent thereto free from encumbrances AND WHEREAS the VENDOR has contracted with the PURCHASER for the absolute sale to him of the said property hereinafter more particularly mentioned and described free from encumbrances at or for the price of Rs. .... NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and consideration of a sum of Rs. .... to the VENDOR paid by the PURCHASER at or immediately before the execution of these presents the receipt whereof the vendor doeth hereby admit and acknowledge and of and from the same and every part thereof acquit, release and discharge the PURCHASER, his heirs, executors, administrators, representatives and assigns and everyone of them and also the said property he the VENDOR as beneficial owner doeth by these presents indefeasibly grant, sell, convey and transfer, assign and assure unto the PURCHASER, his heirs, executors, administrators, representatives and assigns free from encumbrances, attachment and other defects in title ALL THAT the said premises No. .... fully mentioned and described in the schedule hereto or HOWSOEVER otherwise the said property now or heretofore were or was situate, butted, bounded, called, known, numbered, described and distinguished TOGETHER with the land or ground whereupon or on part whereof the same is erected and built together further with all houses, out-houses or other buildings, erections, fixtures, walls, yards, courtyards and benefit and advantages of ancient and other lights, liberties, easements privileges, appendages and appurtenances whatsoever to the said property or any part thereof belonging or in any wise appertaining to or with the same or any part thereof usually held, used, occupied or enjoyed or reputed to belong or be appurtenant thereto AND the reversion and reversions, remainder and remainders, rents, issues and profits thereof and of every part thereof together furthermore all the estate, right, title, inheritance, use, trust, property, claim and demand whatsoever both at law and in equity of the VENDOR into and upon the said property or every part thereof AND all deeds, pattas, muniments, writings and evidences of title which in any wise relate to the said property or any part or parcel thereof and which now are or hereafter shall or may be in the custody, power or possession of the VENDOR, his heirs, executors, administrators or representatives or any persons from whom he or they can or may procure the same without action or suit at law or in equity TO ENTER INTO AND HAVE HOLD, OWN, POSSESS AND ENJOY the said property and every part thereof hereby granted, sold, conveyed and



transferred or expressed and intended so to be with their rights, members and appurtenances unto and to the use of the PURCHASER, his heirs, executors, administrators, representatives and assigns forever freed and discharged from or otherwise by the vendor well and sufficiently indemnified of and against all encumbrances, claims, liens etc. whatsoever created or suffered by the vendor from to these presents AND the VENDOR doeth hereby for himself, his heirs, executors, administrators and representatives, covenant with the PURCHASER, his heirs, executors, administrators, representatives and assigns, THAT notwithstanding any act, deed, or thing whatsoever, by the VENDOR or by any of his predecessors and ancestors in title, done or executed or knowingly suffered to the contrary he the VENDOR had at all material times heretofore and now has good right, full power, absolute authority and indefeasible title to grant, sell, convey, transfer, assign and assure the said property hereby granted, sold, conveyed and transferred or expressed or intended so to be, unto and to the use of the PURCHASER, his heirs, executors, administrators, representatives and assigns in the manner aforesaid AND THAT the PURCHASER, his heirs, executors, administrators, representatives and assigns shall and may at all times hereafter, peaceably and quietly enter into hold, possess and enjoy the said property and every part thereof and receive the rents, issues and profits thereof, without any lawful eviction, hinder and interruption, disturbance, claim or demand whatsoever from or by the VENDOR or any person or persons lawfully or equitably claiming any right or estate thereof from under or in trust for him or from or under any of his ancestors or predecessors in title AND THAT free and clear and freely and clearly absolutely acquitted, exonerated and released or otherwise by and at the costs and expenses of the VENDOR well and sufficiently save indemnified of from and against all and all manner of claims, charges, liens, debts, attachments and encumbrances whatsoever made or suffered by the VENDOR or any of his ancestors or predecessors in title or any person or persons lawfully or equitably claiming as aforesaid AND FURTHER THAT the vendor and all persons having or lawfully or equitably claiming any estate or interest whatsoever in the said property or any part thereof from under or in trust for him the vendor or from or under any of his predecessors or ancestors in title shall and will from time to time and at all times hereafter at the request and costs of the PURCHASER, his heirs, executors, administrators, representatives and assigns do and execute, or cause to be done and executed all such acts, deeds and things whatsoever for further better and more perfectly assuring the said property and every part thereof unto and to the use of the PURCHASER, his heirs, executors, administrators, representatives and assigns according to the true intent and meaning of these presents as shall or may be reasonably required AND FURTHERMORE THAT the VENDOR and all his heirs, executors and administrators shall at all times hereafter indemnify and keep indemnified the purchaser, his heirs and executors, administrators and assigns against loss, damages, costs, charges and

expenses if any suffered by reason of any defect in the title of the vendor or any breach of the covenants hereinunder contained.

*The Schedule above referred*

IN WITNESS WHEREOF the VENDOR has hereunto set and subscribed his hand and seal by the day, month and year first above-written.

Signed, sealed and delivered at

Seal

MEMO OF CONSIDERATION

RECEIVED from the within-named PURCHASER the said sum of Rs. .... being the full amount of consideration as per memorandum below:

WITNESS:

Signature of VENDOR

**Deed of Sale of House Property**

(SHORT FORM)

THIS DEED OF SALE is made this ..... day of ..... 1999 BETWEEN AB of ..... hereinafter referred to as the VENDOR (which term shall unless the context otherwise requires include his heirs, administrators, successors and assigns) of the ONE PART and CD of ..... hereinafter called the PURCHASER (which term shall unless the context otherwise requires include his heirs, successors, administrators and assigns) of the OTHER PART.

WHEREAS the VENDOR is lawfully seized and possessed of or is otherwise well and sufficiently entitled to the dwelling-house being premises No. .... in the town ..... as its absolute owner in fee simple free from encumbrances which is fully mentioned and described in the schedule hereunder written and hereinafter referred to as the said property.

WHEREAS by an agreement dated the ..... day of ..... made between the parties hereto the vendor agreed with the PURCHASER for the absolute sale to him of the property on terms thereunder contained at and for the price of Rs. .... NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rupees ..... paid by the PURCHASER to the VENDOR simultaneously with the execution of these presents (the receipt whereof the VENDOR hereby admits and acknowledges and of and from the same releases and discharges the PURCHASER and the said property the said AB as beneficial owner does hereby grant, convey, sell, transfer, assign and assure unto and to the use of the said CD free from encumbrances. ALL THAT dwelling-house with compound, outhouse, gardens, garage and appurtenances belonging thereto, commonly called or known premises No. .... situate at, etc. together with the land or ground whereupon or on part whereof the same

is erected and built and bounded on the north by etc. (*boundaries on all sides*) containing land by measurement ..... Bigha ..... cottah ..... chittaks ..... square feet approximately, which dwelling-house and premises now is (or late) was in the occupation of, etc. as monthly (*or yearly*) tenant thereof, more particularly delineated and coloured red in the map or plan hereto annexed: TOGETHER WITH all buildings, trees, fences, hedges, ditches, ways, waters, watercourses, lights, liberties, privileges, easements and appurtenances whatsoever to the said dwelling-house and premises belonging or in any way appertaining or usually held or occupied therewith, or reputed to belong or be appurtenant thereto.

AND ALL the estate, right, title, interest, claim and demand whatsoever of the vendor into or upon the same and every part thereof in law and equity TO ENTER UPON AND TO HAVE HOLD OWN and possess the same unto and to the use of the PURCHASER, absolutely and for ever together with title deeds, writings, muniments and other evidences of title, AND THE VENDOR does hereby covenant with the PURCHASER, that notwithstanding any acts, deed or things heretofore done, executed or knowingly suffered to the contrary the vendor is now lawfully seized and possessed of the said property free from any encumbrances, attachments or defect in title whatsoever and that the vendor has full power and absolute authority to sell the said property in manner aforesaid. AND the purchaser shall hereafter peaceably and quietly hold, possess and enjoy the said property in khas or through tenants without any claim or demand whatsoever from the VENDOR or any person claiming through or under him. AND further that the VENDOR, covenants with the purchaser, to save harmless, indemnify and keep indemnified the PURCHASER, from or against all encumbrances, charges and equities whatsoever. AND the VENDOR, further covenants that he or they shall at the request and costs of the PURCHASER, his heirs, executors, administrators or assigns do or execute or cause to be done or executed all such lawful acts, deeds and things whatsoever for further and more perfectly conveying and assuring the said property and every part thereof in manner aforesaid according to the true intent and meaning of this deed.

### *The Schedule*

IN WITNESS WHEREOF the said VENDOR and PURCHASER have hereunto set and subscribed their respective hands, the day, month and year first above-written.

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

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

## MEMO OF CONSIDERATION

RECEIVED of and from the within-named PURCHASER the within-mentioned sum of Rs. .... in full payable under these presents by Bank Draft No. 567891 dated. .... for Rs. .... drawn on PM Bank.

Signature of VENDOR

## Deed of Assent from Executor

(SHORT FORM)

THIS DEED OF ASSENT made ..... BETWEEN ..... AB, son of ..... residing ..... service-holder executor to the estate of ..... deceased under his will dated ..... hereinafter referred to as the EXECUTOR to the estate of ..... of ..... the FIRST PART and CD, son of ..... Hindu ..... residing at ..... and EF, wife of ..... residing at ..... Hindu ..... hereinafter collectively referred to as the BENEFICIARIES of the second part: WHEREAS the parties hereto of the second part are amongst other legatees under the said will of the deceased ..... which *inter alia* provides as follows:

\* \* \* \*

AND WHEREAS the said will was proved before ..... and probate thereof was granted to the said ..... out of and under the seal of the said court ..... as its EXECUTOR ..... AND WHEREAS the said grant is still in force and virtue AND WHEREAS the said AB ..... as such EXECUTOR took possession of the estate in pursuance of the said probate, duly discharged all funeral and testamentary expenses and has completed administration of the immovable properties and filed the inventory and account thereof as provided under the grant, and whereas the parties hereto of the second part have requested the said EXECUTOR to assent to the legacy of the immovable property fully mentioned and described in the Schedule below pending realisation and distribution of the movables amongst the legatees in terms of the said will NOW THIS INDENTURE WITNESSETH that the said AB ..... as such EXECUTOR as aforesaid doeth hereby and hereunder assent to the vesting of the legacy in respect of the said Premises No. .... in the party of the second part as the BENEFICIARY so as to make their title clear complete and perfect to the property bequeathed under the will of the deceased absolutely and for ever. And this DEED OF ASSENT FURTHER WITNESS that AB as such EXECUTOR doth hereby deliver possession of the said property to the beneficiaries and covenant with the BENEFICIARIES that the said EXECUTOR has not done, executed or performed or knowingly suffered to the contrary or been party or privy to any act, deed or thing whereby or by reason or means whereof the said premises No. .... particularly mentioned and described in the Schedule hereunder written are, is or can or may be in anyway affected or prejudiced in title or estate or he may be hindered and/or prevented from assenting to the legacy in respect of the same in the manner as aforesaid and further he does hereby acknowledge

the right of CD as to production of the original probate and inspection to copy thereof or abstract thereof as may be desired. AND THAT the BENEFICIARIES do hereby accept the legacy as testified by their being parties hereto and executing the same.

### *The Schedule*

IN WITNESS WHEREOF the said EXECUTOR and the BENEFICIARIES have hereunto set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered by	AB
the within-named EXECUTOR	CD
at ..... and CD and EF	EF

Beneficiaries in the presence of:

### Deed of Transfer from the Executor to the Beneficiary under a will

THIS INDENTURE MADE THIS..... day of..... 2000 BETWEEN AB son of..... as Executor to the Estate of XY hereinafter referred to as the TRANSFEROR (which term shall unless the context otherwise requires include all persons representing the Estate of the said XY from time to time) of the one part and CD son of..... residing at..... hereinafter referred to as the TRANSFEREE (which expression shall unless the context otherwise requires include his heirs, executors, administrators, successors and assigns) of the other part.

WHEREAS the said XY who was a Hindu by faith and by nationality Indian died on the day of..... leaving *inter alia* the property mentioned and described in the schedule below as part of his estate AND whereas prior to his death the said XY made and published his last will and testament in English language and character whereby and whereunder he appointed the said AB as executor of his said will and trustee of his estate and left and bequeathed the same among the legatees mentioned therein AND whereas by his said will the said XY left and bequeathed the undermentioned property unto and to the use of the said CD, AND whereas the said will was duly proved before the court of..... and probate thereof was granted to the said AB out of and under the seal of the said court AND whereas the said probate is still in full force and virtue AND whereas the said AB has duly paid and/or discharged all the testamentary and general expenses and other debts and liabilities of the estate completed the administration thereof and filed the usual account and inventory thereof on the day of..... Now this Indenture witnesses that in pursuance of the said will and in order to give full and complete effect to the wish and desire of the said XY he the said AB does hereby and hereunder assent to the legacy in respect of the said property as provided under the said will with intent to divest himself from and vest

the same in the said CD to all intents and purposes and for that purpose grant, transfer, convey, assign and assure the same unto and to the use of the said CD to have and to hold the same absolutely and forever.

And that the said AB does hereby covenant with the said CD that he, the said AB has not done, executed or performed nor suffered anything to the contrary whereby or by reason or means whereof the said property or any part thereof may be in any way affected or prejudiced in title or estate or that the said AB may be hindered or prevented from granting, transferring, conveying, assigning or assuring the same unto and to the use of the said CD in the manner hereinbefore indicated AND FURTHER THAT the said AB has had at no time heretofore given or made any assent or conveyance affecting the said property or any part thereof in favour of any other person or persons nor expressed or intended so. And furthermore he acknowledges the right of the beneficiary as to production of the original probate and inspection or copy thereof as may be desired.

*The Schedule above referred to*

IN WITNESS WHEREOF the parties hereto have put their signatures hereto the day, month and year first above-written.

Signed and delivered by the  
within-mentioned TRANSFEROR in  
the presence of:

Signed and delivered by the  
within-mentioned TRANSFEREE in  
the presence of:

**Assignment of a Lease in the  
Absence of any Restriction on Assignment**

THIS DEED OF ASSIGNMENT made this ..... day of ..... 2000 BETWEEN AB of, etc., (hereinafter called the ASSIGNOR) of the ONE PART and CD of, etc., (hereinafter called the ASSIGNEE) of the OTHER PART.

WHEREAS by an Indenture of lease dated the ..... day of ..... and made BETWEEN XY described therein as lessor and the said AB, namely, the ASSIGNOR to these presents described therein as lessee of the OTHER PART and registered in Book I, Vol. .... etc. it was witnessed that the property fully mentioned and described in the schedule hereto was granted, transferred, assigned and demised unto and use of the assignor on a lease for a term of ..... years with effect from the ..... day of ..... subject to payment of such rent as thereby reserved and the covenants and conditions thereunder contained AND WHEREAS the said lease is still valid and subsisting and all its covenants and conditions have been observed and performed.

AND WHEREAS the ASSIGNOR has agreed with the said CD, *viz.*, the ASSIGNEE for sale of the said property as comprised in the said lease for the residue of the term thereof at and for the sum of Rs. .... being the consideration thereof. Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the said sum of Rs. .... paid by the assignee to the ASSIGNOR simultaneously with the execution of these presents the receipt whereof ..... etc. (as in the case on conveyance) he the ASSIGNOR as the lessee does by these presents grants, convey, sell, transfer and assign all his leasehold estate or interest of the ASSIGNOR in the said property inclusive of land thereunder acquired under and by virtue of the hereinbefore lease together with all house, outhouses etc. (as in the case of a conveyance) TO ENTER INTO AND TO HAVE HOLD AND ENJOY the same for the unexpired term of the said lease together with all benefits and advantages thereof and subject to performance of the covenants, agreements and conditions provided therein.

AND THIS Indenture further witnesseth that the ASSIGNOR does hereby covenant with the assignee that the said lease is still valid and subsisting and that the ASSIGNOR has duly paid all rents due and payable thereunder and observed and performed all the covenants and conditions thereof AND the ASSIGNOR does hereby covenant with the ASSIGNEE that notwithstanding any acts, deeds, or things heretofore done, executed or knowingly suffered to the contrary the ASSIGNOR now lawfully is seized and possessed of said property free from all encumbrances attachments or defect in title whatsoever and that the ASSIGNOR has the full power and sole authority to assign the said property in the manner aforesaid and the ASSIGNEE shall hereafter peaceably and quietly hold, possess and enjoy the said property without any claim or demand whatsoever from the ASSIGNOR or any person claiming from or under him. AND further that the ASSIGNOR covenants with the ASSIGNEE to save him harmless, indemnify and keep indemnified the ASSIGNEE against all encumbered charges and equities and the ASSIGNOR further covenants that he shall at the request of and cost of the ASSIGNEE do or execute or cause to be done or executed all such lawful acts, deeds and things whatsoever for further and more perfectly assigning the said property in the manner aforesaid according to the true intent and meaning of this deed of assignment.

AND this Indenture furthermore witnesses that the assignee does hereby agree and covenant with the ASSIGNOR that the assignee shall at all times regularly and punctually pay or cause to be paid the rent payable to the lessor under and by virtue of the lease and observe and perform all the covenants, conditions thereof to keep the lease alive with all its benefits and advantages and shall also indemnify and keep indemnified the ASSIGNOR and his estate against any act, default, negligence or error in judgment arising out of performance or non-performance thereof on his part.

*Schedule above referred to*

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands and seals the day, month and year first above-written.

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

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

### Deed of Sale by a Certificated Guardian of a Hindu Minor

THIS DEED OF SALE made the ..... day of ..... 1999 BETWEEN AB of, etc., (VENDOR) of the one part and CD of, etc. (PURCHASER) of the other part whereas by an order made by the District Judge of ..... in Case No. .... of ..... under Act VIII of 1890 (cause title) the said AB was appointed certificated guardian of XY who was then and is still now a minor under the age of 21 years AND whereas by an order dated ..... the ..... day of ..... made by the District Judge of ..... in Misc. Judicial Case No. .... of ..... the said AB was authorised to sell the lands, hereditament and tenement belonging solely and exclusively to the said minor on terms thereunder contained which property is fully mentioned and described in the Schedule hereto AND whereas the said order is still in full force and virtue AND whereas in pursuance of the said order the said AB as such certificated guardian has contracted with the said CD for absolute sale of the said property at and for the sum of Rs. ....

NOW THIS Indenture witnesseth that for the consideration as aforesaid and in exercise of the powers, authorities and liberties conferred upon and vested under and by virtue of the hereinbefore recited order dated ..... and all other powers and authorities enabling him in that behalf the said AB does hereby grant, convey, sell, transfer, assign and assure as certificated guardian of the said minor the said property and every part whereof unto and to the use of the said CD, TO HAVE AND TO HOLD the same absolutely and for ever.

AND THIS Indenture further witnesseth that the said AB does hereby covenant with the said CD that the said AB has not heretofore done, executed, performed or knowingly suffered to the contrary any act, deed or thing whereby or by reason or means whereof the said property or any part thereof may in any way be encumbered or prejudiced in title or estate or the said AB may be hindered or prevented from granting, transferring, conveying, selling, assigning or assuring the same in the manner hereinbefore indicated.



*The Schedule above referred to*

IN WITNESS WHEREOF the parties hereto have executed this Deed of Sale on the day, month and year first above-written.

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

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

## MEMO OF CONSIDERATION

**Sale Deed of Agricultural Land**

THIS DEED OF SALE made this..... day of..... 1999 BETWEEN AB, son of..... residing at..... hereinafter called the VENDOR (which term shall include his heirs, successors and assigns) of the one part and Mr. CD son of..... residing at..... hereinafter called the PURCHASER (which term shall include his successors and nominees) of the other part.

AND WHEREAS the VENDOR is lawfully seized and possessed of or otherwise sufficiently entitled to the property described fully in the schedule below AND WHEREAS the VENDOR (or vendor's predecessor-in-interest exercised his option to retain the said property by submission of B form under the W.B. Estates Acquisition Act 1953 or whereas the property described in the schedule below stands retained by reason of the then raiyat not having agricultural lands beyond the ceiling of the predecessor-in-interest as the case may be. AND WHEREAS the land described in the schedule below has been recorded in the finally published khanda-khatian of the VENDOR or vendor's predecessor-in-interest as the case may be AND WHEREAS the land fully described in the schedule below stands retained by the vendor through operation of family ceiling as envisaged in Chapter IIB, W.B. Land Reforms Act.

AND WHEREAS the VENDOR has obtained previous permission in writing under s. 14C, W.B. Land Reforms Act by Revenue Office for transfer (this is necessary when the VENDOR is a member of Scheduled Tribe but vendee is not—it is appropriate to quote the number of the case through which the permission was obtained).

NOW THIS DEED WITNESSES THAT in consideration of a sum of Rs. .... paid by the vendee or promised to be paid by the vendee or a sum of Rs. .... paid by the vendee out of the total agreed sum of Rs. .... being agreed as the price of the property, and the receipt whereof is being acknowledged the VENDOR does hereby and hereunder grant, convey, sale,

transfer, assign and assure all his estate and interest in the scheduled property with all appurtenances, together with all homestead, trees, tanks, hedges, ditches, ways, waters, watercourse, lights, liberties, privileges easements whatever to the land described in the Schedule, to the PURCHASER.

AND ALL the estates, right, title, interest, claim and demand whatsoever of the VENDOR into or upon the same and every part thereof: TO HAVE AND TO HOLD the same unto and to the use of the PURCHASER, his heirs, executors, administrators, assigns absolutely and forever together with title deeds, writings, muniments and other evidences of title AND the VENDOR does hereby covenant with the purchaser, his heirs, executors, administrators, representatives and assigns that notwithstanding any acts, deed or things hereto before done, executed or knowingly suffered to the contrary the VENDOR is now lawfully seized and possessed of the said property free from any encumbrances, attachments or defect in title whatsoever and that the VENDOR has full power and absolute authority to sell the said property in manner aforesaid AND the PURCHASER shall hereafter peaceably and quietly hold, possess and enjoy the said property in khas without any claim or demand whatsoever from the VENDOR or any person claiming through or under him. AND FURTHER THAT the VENDOR, his heirs, executors, administrators or assigns, covenant with the PURCHASER his heirs, executors, administrators and assigns to save harmless indemnify and keep indemnified the PURCHASER, his heirs, administrators or assigns from or against all encumbrances, charges and equities whatsoever. AND THE VENDOR, HIS HEIRS, ADMINISTRATORS OR ASSIGNS FURTHER COVENANT THAT HE OR THEY SHALL AT THE REQUEST AND COST OF the PURCHASER, his heirs, executors, administrators or assigns do or execute or cause to be done or executed all such lawful acts, deeds and things whatsoever for further and more perfectly conveying and assuring the said property and every part thereof in manner aforesaid according to the true intent and meaning of this deed.

*Schedule of property*

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

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

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

### Deed of Sale of Mortgaged Property, Mortgagee Joining

THIS INDENTURE IS MADE this ..... day of ..... 1999 BETWEEN AB of etc., (VENDOR and MORTGAGOR), of the first part, CD of ....., etc. (MORTGAGEES), of the second part, and MN of, etc., etc., (PURCHASER) of the third part.

WHEREAS BY DEED OF MORTGAGE dated ..... day of ..... made BETWEEN the said AB described therein as MORTGAGOR of the one part and the said CD described therein as MORTGAGEE of the other part and registered in Book I, Vol. .... pages ..... to ..... in the office of ..... it was witnessed that the said AB did for the consideration mentioned therein grant, convey, sell, transfer, assign and assure unto and to the use of the said CD the property fully mentioned and described in the Schedule thereto and also particularly written in the Schedule below subject to the proviso for redemption as therein contained AND WHEREAS there is now due and payable to the said CD by the said AB a sum of Rs. .... as principal and a further sum of Rs. .... as interest making thus an aggregate of Rs. .... which sum the said AB has no resources to repay except by sale of the said property as hereunder mentioned AND whereas in the circumstances aforesaid the said AB has agreed with the said MN for sale of the said property at and for the sum of Rs. .... AND WHEREAS the said CD has agreed to join with the said AB in effecting such sale and assuring the same so as to pass an absolute title in the said property unto the said MN free from encumbrances. Now this Indenture witnesseth that in consideration of the said sum of Rs. .... out of which a sum of Rs. .... has been paid to the said CD in satisfaction and discharge of the mortgage debt and the balance retained by the said AB the receipts whereof they, *viz.* the said AB and CD do hereby and hereunder respectively admit, acknowledge and confirm he, the said AB doth hereby and hereunder grant, convey, sell, transfer, assign and assure and the said CD join with the said AB and convey, sell, transfer and release unto and to the use of the said MN the said property and every part thereof TO HAVE HOLD AND POSSESS the same absolutely and forever freed and released from the said mortgage and all moneys due and payable thereunder together with buildings etc.

And the VENDOR doeth hereby covenant with the PURCHASER that except the said mortgage the VENDOR is now lawfully seized and possessed of the said property free from all encumbrances attachments or defect in title whatsoever and that the VENDOR has full power and absolute authority to sell the said property in the manner aforesaid and the PURCHASER shall hereafter peaceably and quietly hold, possess and enjoy the said property without any claim or demand whatsoever from the VENDOR or any person claiming through or under him. And further the VENDOR covenants to save harmless and indemnify and keep indemnified the PURCHASER from or against all such acts, deeds and all encumbrances, charges and equities whatsoever and shall execute and do all such lawful acts, deeds and things for further and more perfectly conveying and assuring the said property and every

part thereof in the manner aforesaid according to the true intent and meaning of this deed.

And that the said CD doeth hereby covenant with the said MN that he has not done any act, deed or thing, nor suffered anything to the contrary whereof or by reason or means whereof the said property or any part thereof may be in any way affected or prejudiced in title or estate. And that he has full power and absolute authority to grant, convey, sell, transfer, assign and release the same in the manner hereinbefore indicated.

*Schedule above referred to*

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

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

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

Signed, sealed and delivered by  
the MORTGAGEE in Calcutta in  
the presence of:

MEMO OF CONSIDERATION

**Deed of Sale by Co-owners of Undivided Property**

THIS DEED OF SALES IS MADE on ..... day of ..... 1999, BETWEEN AB, son of ..... residing at ..... and CD, son of ..... residing at ....., hereinafter referred to as the VENDORS (which term shall include their heirs, successors and legal representatives) of the one part and EF, son of ..... residing at ..... hereinafter referred to as the PURCHASER (which term shall include his successors, nominees and assignees) of the other part.

WHEREAS one PQ late of, etc. who was a Hindu governed by the Dayabhaga or Bengal School of Hindu Law died on the ..... day of ..... intestate, leaving him surviving only two sons *viz.*, the said AB and CD as his heirs and legal representatives under the said school and whereas the said PQ left *inter alia* the following property as part of his estate AND whereas the estate of the said PQ has been fully administered AND WHEREAS the said AB and CD are in joint possession and enjoyment of the property hereinafter described as co-owners in equal shares without effecting any partition or division thereof AND WHEREAS the said AB and CD have agreed to sell the said properties free from encumbrances, to the said EF for the sum of

Rs. .... *Now this deed witnesses* that in pursuance of the said agreement and in consideration of the sum of Rupees ....., paid to the said AB and CD by the said EF at or immediately before execution of these presents the receipt whereof the said AB and CD hereby admit, acknowledge and confirm, they, the said AB and CD and each as beneficial owner of one equal undivided moiety thereof do hereby and hereunder grant, convey, sell, transfer, assign and assure unto and to the use the said EF ALL THAT, etc. (*parcel etc., as in a conveyance*): TO HAVE AND TO HOLD the same unto and to the use of the said EF, his heirs, executors, administrators, representatives and assigns absolutely and forever.

AND THE VENDOR doth hereby covenant with the PURCHASER that notwithstanding any act, deed, matter or thing whatsoever by the VENDOR or any person lawfully or equitably claiming by, from, through, under or in trust for the VENDOR, made, done committed or omitted or knowingly suffered the contrary the VENDOR hath the rightful power and absolute authority to grant, convey and assure the said premises hereby convey and assure the said premises hereby and assure and intended so to be unto and the use of the PURCHASER in the manner aforesaid and it shall be lawful for the PURCHASER from time to time and at all times hereafter peaceably and quietly to enter upon possess and enjoy the said premises described in the Schedule hereunder written and to receive all rents issues and profits thereof and of every part thereof to and for the Purchaser's own use and benefit without any suit lawful eviction interruption claim or demand whatsoever for or by the VENDOR or any person lawfully or equitably claiming or to claim by, under or in trust for VENDOR and that free and clear and freely and clearly and absolutely acquitted exonerated and forever discharged or otherwise by the VENDOR well and sufficiently saved, defended and kept harmless and indemnified of from and against all former and other estates titles charges and encumbrances whatsoever had made executed occasioned or suffered by the VENDOR or any other person lawfully or equitably claiming or to claim by from under or in trust for VENDOR and further that the VENDOR and all persons having or lawfully or equitably claiming any estate or interest whatsoever in the said premises or any of them or any part thereof from under or in trust for the VENDOR shall and will from time to time and at all times hereafter at the request and costs of the PURCHASER do and execute or cause to be done and executed all such further and other lawful reasonable acts, deeds, things and assurances in the said land hereditaments and premises whatsoever for the better and more perfectly assuring the said premises described in the Schedule hereunder written and for every part thereof unto and to the PURCHASER in the manner aforesaid as by the PURCHASER shall be reasonably required.

*The Schedule above referred to*

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

Signed, sealed and delivered by  
the within-mentioned VENDOR  
in the presence of:

Signed, sealed and delivered by  
the within-mentioned PURCHASER  
in the presence of:

#### MEMO OF CONSIDERATION

RECEIVED of and from the within-named PURCHASER the sum of Rs. .... (Rupees ..... ) being the full consideration mentioned above by Bank Draft No. .... dated ..... for Rs. .... on X Bank Ltd., Calcutta Branch.

WITNESS

Received  
Signature

#### Deed of Sale of Joint Family Property for Legal Necessity

THIS DEED OF SALE made this..... day of..... 2000 BETWEEN AB for self and as karta of and representing all other coparceners, viz., his sons named ..... all constituting a Hindu Mitakshara undivided family of, etc., (hereinafter called the VENDOR) which expression shall, where the subject or context allows, be deemed to include at all times hereafter all persons being from time to time the coparceners of the said family of the one part and CD of etc. (hereinafter called the PURCHASER) of the other part.

WHEREAS the said joint family for several years past owned and still owns and possesses *inter alia* the lands, hereditaments and premises described in Schedule A hereto as part of its estate AND WHEREAS the said joint family also carried on and still carries on business as dealers and suppliers of ..... at No. .... under the name and style of ..... which suffered a heavy loss of its capital and reserves estimated at Rs. .... in the year ..... owing to outbreak of fire ..... at its godown at No. .... on the day of ..... AND WHEREAS the joint family could not also pay its income tax and other capital and revenue liabilities of the said business aggregating to Rs. .... for the years ..... and also its business debts estimated at Rs. .... AND whereas the said joint family has at present no funds nor any other means or resources to make up the deficit as regards capital loss and to pay the liability of the family as regards the said income-tax except by sale of one of its properties AND WHEREAS in the circumstances aforesaid the said AB for self and as Karta of the said joint family has by an agreement in writing dated ..... agreed with the said CD for sale of the property fully mentioned and described in the Schedule hereto at and for the sum of Rs. .... AND WHEREAS such sale is to the interest and for the benefit of the said joint family and its estate. And whereas the said CD after *bona fide* and independent enquiry is satisfied about the

present financial condition of the family and in particular the debts and liabilities as aforesaid and the reasons for circumstances behind and the necessity for the sale. Now this Indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of Rs. .... paid by the said CD to the said AB simultaneously with the execution of these presents he, the said AB both hereby and hereunder for self and as karta for and representing all other coparceners of the said joint family do hereby grant, sell, convey, transfer, assign and assure the said property together with all houses, buildings, fixtures etc. (as usual in a conveyance) unto and to the use of the said CD absolutely and forever.

AND THE VENDOR doth hereby covenant with the PURCHASER that notwithstanding any act, deed, matter or thing whatsoever by the VENDOR or any person lawfully or equitably claiming by, from, through, under or in trust for the VENDOR, made, done committed or omitted or knowingly suffered the contrary the VENDOR hath the rightful power and absolute authority to grant, convey and assure the said premises hereby and assure and intended so to be unto and the use of the PURCHASER in the manner aforesaid and it shall be lawful for the PURCHASER from time to time and at all times hereafter peaceably and quietly to enter upon possess and enjoy the said premises described in the Schedule hereunder written and to receive all rents issues and profits thereof and of every part thereof to and for the Purchaser's own use and benefit without any suit lawful eviction interruption claim for or demand whatsoever for or by the VENDOR or any person lawfully or equitably claiming or to claim by, under or in trust for VENDOR and that free and clear and freely and clearly and absolutely acquitted exonerated and forever discharged or otherwise by the VENDOR well and sufficiently saved defended and kept harmless and indemnified of from and against all former and other estates titles charges and encumbrances whatsoever had made executed occasioned or suffered by the VENDOR or any other person lawfully or equitably claiming or to claim by, from, under or in trust for VENDOR and further that the VENDOR and all persons having or lawfully or equitably claiming any estate or interest whatsoever in the said premises or any of then or any part thereof from under or in trust for the VENDOR shall and will from time to time and at all times hereafter at the request and costs of the PURCHASER do and execute or cause to be done and executed all such further and other lawful reasonable acts, deeds, things and assurances in the said land hereditaments and premises whatsoever for the better and more perfectly assuring the said premises described in the Schedule hereunder written and for every part thereof unto and to the PURCHASER in the manner aforesaid as by the PURCHASER shall be reasonably required.

*The Schedule above referred to*

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

Signed, sealed and delivered by  
the within-mentioned VENDOR  
in the presence of:

Signed, sealed and delivered by  
the within-mentioned PURCHASER  
in the presence of:

#### MEMO OF CONSIDERATION

RECEIVED of and from the within-named PURCHASER the sum of Rs. .... (Rupees ..... ) being the full consideration mentioned above by Bank Draft No. .... dated ..... for Rs. .... on X Bank Ltd., Calcutta Branch.

WITNESS

Received

Signature

#### Conveyance on Sale of Property by the Executor

THIS DEED OF SALE made this ..... day of ..... 2000 BETWEEN AB, son of, etc., as executor to the estate of XY (hereinafter called the VENDOR) which expression shall, where the subject or context allows or admits to be deemed to include person or persons being representing the said estate and all beneficiaries from time to time of the one part and EF Ltd., a public limited company whose registered office is at etc. (hereinafter called the PURCHASER) of the other part.

WHEREAS the said XY, late of, etc., died on the ..... day of ..... leaving a will dated, etc., whereby and whereunder he appointed the VENDOR to be the executor and trustee thereof, And whereas the said will was duly proved before the District Judge of ..... in Probate Case No. .... of ..... and probate thereof was granted to the said AB on the ..... day of ..... AND WHEREAS the said grant is still in full force and virtue And whereas by virtue of the grant of the probate the estate of the deceased was vested in the said AB for the purpose of representation and administration AND WHEREAS the said AB has paid all funeral and testamentary expenses and filed the inventory and account in the court AND WHEREAS and in order to complete administration of the estate it is now necessary to sell some portion of the estate for payment of certain debts and discharge of the legacies provided for in the will, specified in Schedule A hereunder written there having been no funds to the credit of the estate or any other available resources, the said AB has agreed with the said EF Ltd. to sell the property fully mentioned and described in Schedule B below at and for the price of Rs. .... the same being the highest offer received so far according to present conditions of the market, AND WHEREAS the intended sale is in due course of administration and for the benefit of the estate. Now this Deed of Sale witnesses that in pursuance of the said agreement and in



consideration of the sum of Rupees ..... now paid by the PURCHASERS to the VENDOR (the receipt of which sum the VENDOR do hereby acknowledge), the said AB as executor to the estate of the said XY doth hereby grant, convey, sell, transfer, assign and assure (description of the property) unto and to the use of the said EF Ltd. TO HAVE AND TO HOLD the same absolutely and forever.

And this Indenture further witnesses that the said CD do hereby join with the said AB and ratify and confirm these presents for enabling the said AB to grant, convey, sell, transfer, assign and assure unto and to the use of the said EF Ltd. the said property in the manner hereinbefore indicated.

AND the Deed of Sale further witnesses that the said AB doth hereby covenant with the said EF Ltd. that the said property is free from all encumbrances and attachments and further that the said AB has not at any time done, executed or performed or suffered to the contrary or been party or privy to any act, deed or thing whereby or by reason or means whereof the said property is or may be impeached, charged, encumbered or affected or whereby the said AB be prevented from transferring or conveying the said property in the manner aforesaid and furthermore that the said AB has not at any time heretofore assented to the vesting of the said property nor given nor made any conveyance or conveyances thereof in favour of any person or persons whomsoever.

IN WITNESS, etc.,

A

*Schedule of the debts and legacies*

AB

B

*Schedule of the property sold*

CD

Signed, sealed and delivered

NOTE: It is prudent to have the deed attested by the adult coparceners with the endorsement as follows: "I attest this document with full knowledge of its contents".

NOTE: Section 307 of the Indian Succession Act—

An executor has power to sell any property of the deceased which vests in him under sec. 211 of the Act. He has no beneficial interest in the estate. So it is prudent to make the beneficiaries parties to the deed of sale.

**Power of executor.** The executors are vested with large powers as extensive as those enjoyed by executor in England before 1926.<sup>3</sup> The principle why executors are vested with such large powers was stated by Lord Thurlow in *Scott v Tyler*<sup>4</sup>: "IT is of great consequence that no rules should be laid down

3 *Gitarani v Narendra Krishna* 60 Cal 394; AIR 1933 Cal 429.

4 2 Dick 725.

here which may impede executors in their administration or render their disposition of the testator's effects unsafe or uncertain to the purchaser, his title is complete by sale and delivery what becomes of the price is of no concern to them."

The alienee from an executor who is acting as such has a right to infer that the latter is acting fairly. The fact that the alienation does not purport to be made for administrative purposes does not affect his title. The alienee is not bound to see to the application of the money. The immunity is however lost when the alienee has notice, actual or constructive, of the title of other persons and of the fact that the executor is acting in breach of trust, or the alienation is made for purposes which the executor has no power to do in the course of the administration.<sup>5</sup> This section does not mean that an executor must be clothed with a probate of the will before he can dispose of any property of the testator. The title of the executor is derived from the will and not from the probate, the definition of "executor" in s. 2(c) does not suggest that probate is any part of his title. Consequently it is impossible to hold that unless probate is obtained the executor has no power of disposal at all.<sup>6</sup> An alienation made by an executor before the grant of probate is validated if the probate is subsequently granted.<sup>7</sup>

### Agreement for Sale of Stock-in-Trade, Furniture and Effects

THIS AGREEMENT IS MADE this ..... day of .....1999 BETWEEN AB of etc. (hereinafter called the VENDOR), of the one part, and CD of etc. (hereinafter called the PURCHASER), of the other part:

NOW THIS AGREEMENT WITNESSES and the parties hereby agree as follows:

1. The VENDOR will sell and the PURCHASER will purchase, at the valuation and upon the terms hereinafter mentioned, all the stock, implements, trade utensils, household furniture, fixtures, fittings and effects fully mentioned and described in the Schedule hereunder now being in and about the, etc., premises, at present in occupation of the VENDOR.

2. The sale of the stock, implements, etc., shall be "as they are and where they are" and no complaint on any account shall be entertained after the sale.

3. The PURCHASER shall deposit with the VENDOR a sum of Rs. .... as earnest money and shall pay the balance immediately after the valuation is

5 *Adeline Maud Elenor v Sunderlal* 85 CLJ 256; AIR 1950 Cal 559 relied on the *Tincouri v Narayan* AIR 1957 Cal 364.

6 *Venkatasubbamma v Ramayya* 55 Mad 443 (PC); 62 MLJ 365; 36 CWN 441 (455); 136 IC 111; AIR 1962 PC 92.

7 *Khaivala Venkata Subamma v Katreddi Rammayya* 59 IA 112 (PC).

made unless the time for payment is extended by mutual consent when and in such event the goods shall be at the risk of the PURCHASER.

4. The valuation of the goods shall be made on or before the ..... day of ..... unless the date is extended by mutual consent when the PURCHASER shall make it convenient to attend at the sale and shall immediately upon completion thereof pay the balance to the VENDOR, who will thereupon deliver to the purchaser possession of the said movables and effects.

5. The said valuation will be made by two independent valuers, one to be chosen by each party, or by an umpire to be chosen by such valuers before entering upon such valuation, and such valuation shall be deemed to be, for all purposes, an arbitration within the meaning of the Arbitration and Conciliation Act 1996 and its statutory re-enactment or modification.

6. In the case the PURCHASER shall refuse or neglect to pay the balance amount on such valuation on the date thereof, he shall lose and forfeit the deposit and the goods shall be sold by auction and he shall further be liable for the shortfall, if any. If however, the VENDOR refuses or neglects to deliver up possession of the said movables and effects, then and in such an event he shall be liable to pay to the PURCHASER a sum of Rs. .... as liquidated damages, and this deed shall become void to all intents and purposes.

*The Schedule of goods above referred to*

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

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

AB

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

CD

**Sale of Ownership Flats**

THIS CONVEYANCE MADE this the ..... day of ..... 1999, BETWEEN AB son of ..... hereinafter referred to as the VENDOR which expression unless repugnant to the context shall mean and include the said vendor, his heirs, successors, executors, administrators and assigns of the ONE PART AND CD son of ..... hereinafter referred to as the PURCHASER which expression unless repugnant to the context shall mean and include the said purchaser, his heirs, successors, executors, administrators and assigns of the OTHER PART witnesses as follows:

WHEREAS the VENDOR the sole and absolute owner of the multi-storeyed building consisting of ..... floors divided into ..... flats with all other houses, outhouses, garages, servants' quarters and other erections, fittings and fixtures

together and with the piece or parcel of land or grounds thereunder whereupon or on part whereof the same is erected and built being premises No. .... fully mentioned and described in Schedule A hereto and hereinafter referred to as the said building AND WHEREAS the VENDOR offered sale of the said flats as ownership flats AND WHEREAS by an agreement dated ..... made between the parties the VENDOR agreed to sell and the PURCHASER agreed to purchase and thereby own the flat in the front portion of the third floor of the building known as flat No. .... with sole exclusive transferable and irrevocable right to use the same together with undivided ..... share of interest in the staircase and equipments other common parts services and of the building. NOW THE INDENTURE WITNESSES that in pursuance of the said agreement and in consideration of the sum ..... paid by the PURCHASER to the VENDOR the receipt of which sum the VENDOR hereby acknowledges, the said VENDOR as beneficial owner does hereby grant, convey, transfer and assign, assure unto the said PURCHASER free from all encumbrances the flat on the front portion of the second storey of ..... being the property described in Schedule B hereunder written with half the depth in all the joints above between its ceiling and the floor above and also between the floor and its ceiling of the flat below and with full ownership of all doors, windows, fittings, fixtures both sanitary and electrical, all external and internal walls with ..... share or interest in the staircase, land below and all ways and passages, drains, water courses, together with the benefit of all ancient and other lights, liberties, easements, appendages and appurtenances and all estate right, title, interest, property claim, whatsoever of the VENDOR in the said flat free from encumbrances and attachments whatsoever to have and hold the property hereby conveyed to the PURCHASER absolutely.

AND THAT the VENDOR doth hereby covenant and agree with the PURCHASER that notwithstanding any acts, deeds or things heretofore done executed or knowingly suffered to the contrary the VENDOR is now lawfully seized and possessed of the said property free from any encumbrances attachments or defects in title whatsoever and that the VENDOR has full power and absolute authority to sell the said property in the manner aforesaid.

AND the PURCHASER shall hereafter peaceably and quietly hold, possess and enjoy the said property in khas or through tenant without any claim or demands whatsoever from the VENDOR or any person claiming through or under him.

AND FURTHER that the VENDOR covenants with the PURCHASER to save harmless from and indemnified against all encumbrances, charges and claims whatsoever.

AND the VENDOR further covenants that he shall at the request of and costs of the PURCHASER do and execute or cause to be done or executed all such lawful deeds and things whatsoever for further and more perfectly conveying and assuring the said property and every part thereof in the matter aforesaid according to the true intent and meaning of the Deed.

And it is further agreed and declared between the parties as follows:

(1) The PURCHASER shall be liable to pay directly to the authorities or contribute in proportion to the floor area of the flat and garage, if any, hereby conveyed to the PURCHASER towards payment of municipal taxes and other outgoings payable in respect of the property and in cases where the said payments are not made directly to any statutory authority then the same shall be made by the PURCHASER to the co-owners of the flats in the building represented by the co-operative of the purchasers of the flats in the building for the said purpose and the said co-owners as a body shall have right of attachment and sale of the purchaser's flat No. .... as security for the dues as aforesaid in case of non-payment.

(2) The PURCHASER shall have full and absolute proprietary rights such as the VENDOR derives from his title save and except that of demolishing or committing waste in respect of the property described in Schedule B in any manner so as to affect the VENDOR or other co-owners who have already purchased and acquired or may hereafter purchase or acquire similar property rights as covered by this conveyance.

(3) The PURCHASER shall also be entitled to sell, mortgage, lease or otherwise alienate the property hereby conveyed subject to the terms herein contained to any one without the consent of the VENDOR or any other co-owner who may have acquired before and who may hereafter acquire any right, title or interest similar to those acquired by the PURCHASER under the terms of this conveyance.

(4) The PURCHASER'S undivided interest in the soil as more fully described in Schedule C hereunder written shall remain joint for all times with the VENDOR and/or other co-owners who may thereafter or heretobefore have acquired right, title and interest in the land and in any flat/garage in the building, it being hereby declared that the interest in the soil is impartible.

(5) The PURCHASER shall have the right and ownership of the servants' quarters and the garage indicated in the map or plan hereunto annexed which are also hereunder conveyed and allotted for his separate use.

#### *Schedule A*

#### Description of the property

#### *Schedule B*

#### Schedule of property hereby conveyed

(a) Flat No. .... on ..... floor in building named ..... under Municipal No. .... comprising a floor area of ..... sq. ft. with all doors, windows, fittings, fixtures, walls consisting of ..... rooms ..... bath ..... kitchen.

(b) The VENDOR'S entire right, title and interest in all common parts and services the ..... which shall be impartible together with the owners of the other flats in the said building.

*Schedule C**Particulars of undivided interest in the soil*

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

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

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

**MEMO OF CONSIDERATION**

RECEIVED of and from the within-mentioned PURCHASER a sum of Rs. .... being full consideration within-mentioned and payable by PURCHASER to the VENDOR by Bank Draft No. 6 dated ..... for Rs. .... on X Bank Ltd. payable in Calcutta.

WITNESSES:

Received

Signature of the VENDOR

**Deed of Sale of a Business and Assignment of Goodwill**

THIS INDENTURE MADE THIS..... day of..... 1999 BETWEEN AB son of..... residing at..... hereinafter referred to as the VENDOR (which term shall unless inconsistent with the contexts include his heirs, administrators and assigns) of the one part and CD, son of..... residing at..... hereinafter referred to as the PURCHASER (which term shall unless inconsistent with the context shall include his heirs, successors, administrators, executors and assigns) of the other part.

WHEREAS the said AB has been carrying on the trade and business of, etc., etc., at premises No. .... under the name and style of ..... AND WHEREAS the said AB has contracted with the said CD for the sale to him of all his stock-in-trade and other assets and goodwill of the said trade of and the business in entirety as a going concern together with all book debts and other debts and all rights and benefits of all pending contracts, orders, securities, etc., full particulars whereof are contained in the books of the said business and all moneys due and payable to the said AB on account therefor whether adjusted or unadjusted subject however to all contracts, orders and engagements which are still to be executed or for which the said AB is otherwise liable; at and for the sum of Rs. .... upon the terms hereinafter mentioned: AND WHEREAS the said AB has delivered to the said CD the books of account and other books relating to the said business containing full particulars of the debts, respectively due and owing to and

from the said AB and also the particulars of the contracts and engagements to which he is liable in respect of the said business: NOW THIS DEED OF SALE WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rupees ..... paid by the said CD to the said AB (the receipt whereof the said AB hereby admits and acknowledges), and also in consideration of the covenants and conditions hereunder contained to be observed and performed on the part of the said CD the said AB does hereby and hereunder grant, convey, sell, transfer, assign and assure unto and to the use of the said CD all that the trade or business carried under the name and style of ..... at premises No. .... with ALL beneficial interest and goodwill of the said AB, in the said trade and business of, etc. so carried on by him as aforesaid, and also all the book and other debts now due and owing to him on account of the said trade and the business and all securities for the same, and also all contracts and engagements and benefits and advantages thereof which have been entered into with the said AB and also all the stock-in-trade goods, fixtures, articles and things which, at the date of this deed, belong to the said AB on account of the said trade and business, and all the right, title and interest of the said AB to and in the said premises: TO HAVE AND TO HOLD the same to the said CD absolutely.

AND THAT THE SAID AB does hereby covenant with the said CD that he, the said AB, will not at any time hereafter, either by himself or in collaboration with any other person or persons, or as a partner or as a director of any limited company carry on the said trade and business of, etc., within a radius of ..... miles of, etc. AND that the amount and particulars of the debts respectively due and owing to and from the said AB on account of the said trade and business and the particulars of the contracts and engagements to which he is liable with respect to the said trade and business, are correctly stated in the books of account and other books delivered by the said AB to the said CD AND further that the said AB will pay or cause to be paid all and every sum to the said trade and business in excess of the amount or amounts which by the said books appear to be so due and owing AND furthermore that the said AB has good right, full power, absolute authority and title to grant, convey, sell, transfer, assign and assure the trade or business of "...." unto and to the use of the said CD in the manner hereunder indicated together with the benefit of the tenancy according to the nature and tenure of the contract. AND THIS INDENTURE also WITNESSES that in pursuance of the said agreement in this behalf and in consideration of the premises, the said CD does hereby agree with the said AB that he, the said CD, shall and will from time to time and at all times hereafter execute and perform all outstanding contracts and orders and engagements and/or otherwise save harmless, indemnify and keep indemnified the said AB and his estate and effects against all losses, claims, demands, costs, charges and expenses as against the several sums of money which by the said books appear to be due owing from the said AB in respect of the said trade and business, and

also from and against the contracts and engagements to which by the said books the said AB appears to be now liable for performance or non-performance thereof.

AND this indenture also witnesses that the said AB does hereby irrevocably nominate, appoint and constitute the said CD as his attorney for him and in his name to do, execute and perform all acts, deeds and things as shall be necessary or requisite to carry on the said business as his successor and for that purpose to represent him before all appropriate authorities and in all courts of law and to sue for, recover, realise and to give good valid discharges for all moneys due and payable to him on account of or in connection with the said trade or business hereby assigned and appropriate the same for his use and purposes.

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

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

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

#### MEMO OF CONSIDERATION

#### Assignment of Decree

This deed of ASSIGNMENT made this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... hereinafter referred to as the ASSIGNOR (which term shall include his successors-in-interest and persons claiming under him) of the one part and CD son of ..... residing at ..... hereinafter referred to as the ASSIGNEE (which term shall include his heirs, successors and assigns) of the other part.

WHEREAS by a decree dated ..... made in Suit No. .... of ..... (cause title) of the court ..... it was ordered and decreed that the said CD do pay to the said AB a sum of Rs. .... with interest at ..... % and costs AND whereas there is now due and payable to the said AB a sum of Rs. .... inclusive of interest under the said decree AND whereas the said AB has agreed to assign and sell the said decree unto and in favour of the said CD at and for the sum of Rs. .... Now this Indenture witnesses that in pursuance of the said agreement and in consideration of the sum of Rs. .... paid by the said CD to the said AB the receipt whereof ..... he, the said AB, doth hereby and hereunder transfer, sell and assign unto the said CD all moneys now due or hereafter to be due and payable to the said AB by the said (Judgement-debtor) under and by virtue of the aforesaid decree



inclusive of interest and costs and all benefits and advantages thereof including the right to execute the same in any manner prescribed by law to have the same unto and to the use of the said CD absolutely: AND the said AB doth hereby covenant with the said CD that the said sum of Rs. .... in entirety is due and payable to the said AB by the said judgment-debtor under the said decree AND further that he has not entered satisfaction of the decree nor into any compromise or arrangement with the judgment-debtor or otherwise written off the said debt or claim with a view to exonerate him from his liability on that account and that the said decree is in full force and virtue and fully executable AND that there is no cross-decree as against him and this Indenture furthermore witnesses that the said AB doth hereby and hereunder irrevocably nominate, appoint and constitute the said CD as his constituted attorney to execute the said decree, realise all moneys payable thereunder and appropriate the same for his own use and purpose to all intents and purposes.

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:

**Deed of Assignment of Mortgage, Mortgagor Joining**

THIS TRANSFER OF MORTGAGE made this ..... day of ..... 1999 BETWEEN AB of, etc. (hereinafter called the MORTGAGEE) of the first part, CD of, etc. (hereinafter called the MORTGAGOR), of the second part, and EF of, etc. (hereinafter called the TRANSFEREE), of the third part, whereas by an Indenture dated ..... made between the parties hereto of the first and second parts and registered in Book I, Vol. .... etc. it was witnessed that the said CD did for the consideration mentioned therein grant, convey, sell, transfer, assign and assure unto and to the use of the said AB the property fully mentioned and described in the schedule thereto and also particularly written in the schedule below absolutely and forever subject to the proviso for redemption thereunder contained AND whereas there is now due and payable to the said AB a sum of Rs. .... by the said CD under and by virtue of the hereinbefore recited mortgage all interest having been paid up till the date of these presents AND whereas the said AB has agreed to assign the said mortgage unto and to the use of the said EF at and for the sum of Rs. .... NOW THIS DEED OF transfer witnesseth as follows:

In consideration of the sum of Rupees ..... now paid to the MORTGAGEE by the TRANSFEREE (the receipt of which sum the MORTGAGEE) hereby admits,

acknowledges, and confirms the said AB as MORTGAGEE with the concurrence of CD the MORTGAGOR, doth hereby grant, transfer, assign and assure unto and to the said EF (1) All the said principal sum of Rs. .... due and owing upon the principal deed and all interest to be hereafter due thereon and the benefit of all existing securities thereof: TO HAVE AND TO receive the same to the TRANSFEREE absolutely. (2) All that the mortgaged premises being Premises No. .... fully mentioned and described in the Schedule hereto and vested in the MORTGAGEE under and by virtue of the hereinbefore recited mortgage ..... TO HAVE AND TO HOLD the same absolutely and forever subject to the proviso for redemption thereunder contained. AND THIS INDENTURE further witnesseth that the said AB doth hereby agree and declare that the said sum of Rs. .... is due and owing to him under and by virtue of the hereinbefore recited mortgage AND THAT the said AB has not done, executed or performed nor suffered anything to the contrary whereby or by reason or means whereof the mortgaged property or any part thereof may be in any way affected or prejudiced in title or estate or that the said AB may be prevented from transferring and assuring the same unto and to the use of the said EF in the manner hereinbefore indicated.

AND THIS Indenture furthermore witnesseth that the said CD doth hereby join with the said AB and concur with him in effectively transferring, assigning and assuring the said sum of Rs. .... together with the benefit of the security created on the property under and by virtue of the hereinbefore recited mortgage and further that the said CD doth hereby agree and confirm with the transferee to pay to him on or before the ..... day of ..... the said principal sum of Rs. .... with interest thereon at the rate of ..... per cent per annum. AND ALSO so long after that day as any principal money shall remain due interest at the same rate on the days mentioned in the principal deed. And further to observe and perform all the covenants and conditions and stipulations provided for in the deed of mortgage.

*The Schedule above referred to*

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 and EF in the presence of:

## Grant of Right of Way

THIS GRANT MADE this ..... day of ..... 1999 BETWEEN AB son of ..... residing at ..... hereinafter referred to as the GRANTOR (which term unless repugnant to the context shall include his heirs, successors, representatives, executors, administrators and assigns) of the one part and CD, son of ..... residing at ..... hereinafter called the GRANTEE (which term unless repugnant to the context shall include his heirs and assigns) of the other part.

WHEREAS the grantor is the absolute owner of the plot of land (servient heritage), more particularly delineated and described in the plan annexed to this deed and thereon coloured pink: AND WHEREAS the grantee is also the absolute owner of the contiguous plot and land (dominant heritage) more particularly delineated and described in the said plan and thereon coloured green: AND WHEREAS for better approach to and other facilities for enjoyment of the plot of the GRANTEE the GRANTOR has agreed to grant the GRANTEE the full and free right and liberty of way and passage through his said plot of land as hereunder indicated: NOW THIS DEED WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs. .... now paid by the GRANTEE to the GRANTOR (the receipt of which sum the GRANTOR doth hereby admit and acknowledge and confirm) he, the said AB, doth hereby and hereunder grant, convey, transfer, assign and assure unto and to the use of the said CD full and free right and liberty of way and passage for ingress unto and egress from for himself, his tenants, servants, agents, guests and others authorised over a portion of the said plot of the said AB measuring about X ..... in area as indicated in the said plan to have and hold at all times hereafter and for all purposes, to go, return, pass and repass, with or without cars, horses, carts, trucks and other vehicles or carriages, laden or unladen and also to drive cattle and other beasts and take electric, gas, water and sewage connections over and under the same TOGETHER WITH further liberty for the GRANTEE, his heirs and assigns (at his or their expenses) to keep the said road or way in good and sufficient repair, and to make drains or channels or drain the surface water therefrom:

*The plan above referred to*

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

### Conveyance of Land Accidentally omitted in Sale Deed

THIS DEED OF DECLARATION and confirmation made this ..... day of ..... 1999 BETWEEN AB son of etc., hereinafter referred to as the VENDOR which expression shall ..... of the one part AND CD son of etc., hereinafter referred as to the PURCHASER which expression shall where ..... of the other part.

WHEREAS by an Indenture of conveyance dated ..... made between the parties hereto and registered in Book I, Vol. .... page ..... to ..... being No. .... in the office ..... the VENDOR did for the consideration mentioned therein though intended for and did in fact and truth and substance grant, convey, sell, transfer and assign the entirety of the said property as described in the correct and complete Schedule B hereto unto and to the use of the PURCHASER and delivered possession thereof but nevertheless the undermentioned portion as described in the Schedule A hereto was inadvertently and accidentally left out in the schedule thereto although the price thereof has been already paid being included in the consideration for the said conveyance and further the VENDOR has delivered possession also of the same to the PURCHASER as hereinbefore stated.

AND WHEREAS it is now necessary and expedient to rectify the said error or omission to remove all doubts and to avoid all disputes and differences about the meaning and construction of the said conveyance regarding the title, ownership and possession of the PURCHASER as regards the same which he has had already acquired under and by virtue of hereinbefore recited conveyance AND WHEREAS in the circumstances aforesaid the VENDOR has agreed to reassure the PURCHASER and to execute this deed of confirmation as supplementary to and in rectification of the said conveyance. *Now this indenture witnesses* that in pursuance of the said agreement and in consideration of the original price of the property paid by the PURCHASER to the VENDOR which includes the price of the portion accidentally and inadvertently left out in the Schedule to the said conveyance, the said AB as a beneficial owner doth hereby agree, declare, confirm and make known that he has had granted, conveyed, sold and transferred the undernoted property also unto and to the use of the PURCHASER, his heirs, representatives and assigns to have and to hold the same absolutely and forever *and* that the portion accidentally and inadvertently left out in the schedule of the said conveyance shall be treated as incorporated therein and the correct and complete schedule as amended and rectified shall be as under Schedule B hereto.

A

Schedule of Property accidentally and inadvertently omitted in the said conveyance

B

Correct and complete description of the Schedule of the property as sold

IN WITNESS WHEREOF the parties hereunto execute these presents on the day, month and the year first above-mentioned.

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

AB

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

CD

### Sale by the Liquidator of a Company in Voluntary Liquidation

THIS SALE DEED MADE on this ..... day of ..... 1999 by X Co. Ltd. (in liquidation) having its registered office at ..... (hereinafter called the COMPANY) and AB, son of ..... residing at ..... liquidator of the company, (hereinafter called the VENDOR) of the one part and ML Co. Ltd. a company registered under the Companies Act 1956 having its registered office at ..... (hereinafter called the PURCHASER which term shall include its successors, nominees and assigns) of the other part.

WHEREAS by extraordinary resolution dated the ..... day of ..... 1999 the company resolved to go into voluntary liquidation:

AND WHEREAS the COMPANY in its extraordinary general meeting held on the ..... day of ..... 1999, appointed the said AB liquidator for the purpose of winding up the affairs of the company.

AND WHEREAS the premises hereinafter described were at the date of the said resolution and are still vested in the COMPANY absolutely and free from encumbrances:

AND WHEREAS the VENDOR has for and on behalf of the Company agreed to sell to the PURCHASER the premises hereinafter described for the sum of Rs. .... (in words, Rupees ..... ) absolutely and free from encumbrances:

NOW THIS Indenture witnesses that in consideration of the sum of Rs. .... (*in words* Rupees ..... ) now paid by the PURCHASER to the VENDOR as such liquidator as aforesaid (the receipt of which sum the vendor and the COMPANY hereby acknowledge), the COMPANY by the direction of the VENDOR as liquidator and the VENDOR doth hereby sell and convey to the PURCHASER all that premises (99 White Road, Calcutta) which is more particularly described in the Schedule hereto together with all rights, easements and appurtenances whatsoever to the said premises belonging or in any wise appertaining: To hold the same unto and to the use of the PURCHASER absolutely and forever.

The VENDOR as liquidator of the COMPANY and pursuant to authority given by the resolution passed by the shareholders and in due course of realisation of assets, debts and properties doth hereby and hereunder grant, convey,

sell, transfer, assign and assure the said property and every part thereof unto and to the use of the PURCHASER to have and to hold the same as an absolute owner thereof forever. And that the VENDOR doth hereby covenant with the PURCHASER that the said property is free from all encumbrances to the best of his knowledge and further that he as liquidator has not done, executed, performed or suffered any act, deed or thing whereby or by reason or means thereof may be in any way affected or prejudiced in title or estate or he as liquidator may be prevented from granting, conveying, selling, transferring, assigning or assuring the same in the manner hereinbefore indicated. And furthermore that the said VENDOR has not at any time given or made any assent or conveyance affecting the said property or any part thereof in favour of any person whatsoever.

*The Schedule above referred to*

IN WITNESS WHEREOF the VENDOR as such liquidator as aforesaid has caused the common seal of the COMPANY to be affixed to these presents and the VENDOR has hereunto set his hand and seal the day and year first above-written.

Signed, sealed and delivered by  
the said AB as liquidator of X Co.  
Ltd. appointed under resolution  
dated ..... of the Company:

Signed, sealed and delivered by  
Mr. .... pursuant to  
Board Resolution of ML. Co. Ltd.  
dated ..... in presence of:

MEMO OF CONSIDERATION

RECEIVED of and from the within-mentioned Purchaser the sum of Rs. .... being the consideration payable by the Purchaser by Bank Draft No. 7 dated ..... for Rs. .... on X Bank Ltd. payable at Calcutta.

WITNESSES:

Received, Signed by Vendor

**Sale on behalf of a Mentally ill Person**

THIS DEED OF SALE made on the ..... BETWEEN AB, etc., a mentally ill person represented by and acting through XY etc., manager of his estate appointed by the court (hereinafter called the VENDOR) which expression shall, when the subject or context allows or admits of, be deemed to include all persons managing the estate and affairs of AB of the one part, etc., and CD son of etc. hereinafter referred to as the PURCHASER which expression shall etc., etc., his heirs, executors, administrators and representatives of the other part.

WHEREAS by an inquisition held before the District Judge of ..... in Case No. .... of ..... the VENDOR was declared to be and confirmed as mentally ill person and by order of the said Judge dated ..... the said XY was appointed as the manager of his estate.

AND WHEREAS in pursuance of the said order the said XY took possession of the estate of AB and is now managing the same and all its affairs.

AND WHEREAS in course of such administration it having been necessary to raise a sum of Rs. .... in order to pay off certain debts of the VENDOR incurred for purchase of food, medicine and necessaries supplied aggregating to Rs. .... and also to pay for the necessary expenses for the maintenance and support of the VENDOR and his family relations, the estate having no other resources to meet those liabilities, the said XY as such manager submitted a report to that effect and applied before the said District Judge for permission to sell one of his properties AND WHEREAS such sale is to the interest and for the benefit of the vendor.

AND WHEREAS by an order dated the ..... the said District Judge after full enquiry about the necessities for such sale authorised the said XY to raise the said sum of Rs. .... by sale certified such sale as beneficial to the lunatic and of property of the VENDOR fully mentioned and described in the Schedule hereto on terms contained therein.

AND WHEREAS by an agreement in writing dated ..... the said XY has agreed to sell and the said CD has agreed to purchase the property fully mentioned and described in the schedule hereto at and for the sum of Rs. .... the same being the highest offer received so far according to the present conditions of the market.

NOW THIS INDENTURE WITNESSES as follows:

1. In pursuance of the said agreement and in exercise of the power, authority and liberty granted by the order dated ..... as aforesaid and all other powers enabling him and in consideration of the sum of Rs. .... paid by the said CD the purchaser hereto to the said XY as such manager as aforesaid (the receipt of which the said XY doth hereby and hereunder admit, acknowledge and confirm) he the said AB represented by and acting through the said XY as such manager as aforesaid doth hereby grant, convey, sell, transfer, assign and assure unto and to the purchaser, viz., the said CD the property fully mentioned and described in the schedule hereto and hereinafter referred to as the said property absolutely and forever AND THAT the said XY doth hereby covenant with the purchaser that the said order dated ..... is still in force and virtue AND THAT the said XY has not encumbered the property in any way nor at any time heretofore done, executed, performed or suffered to the contrary any act, deed or thing whereby by reason or means whereof the said property of AB may be in any way prejudiced in title or estate or the said XY prevented from granting, transferring or conveying the said property in the manner hereinbefore indicated.

*The Schedule above referred to*

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

Signed, sealed and delivered by the said AB acting through and represented by said XY as Manager in the presence of:

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

MEMO OF CONSIDERATION

**Sale by a Hindu Widow<sup>8</sup> as Limited Owner for Legal Necessity**

THIS DEED OF SALE made on the ..... day of ..... 1999 BETWEEN AB widow of XY of ..... (VENDOR) of the one part and CD son of ..... of (PURCHASER) of the other part.

WHEREAS the VENDOR is seized and possessed of and/or otherwise entitled to a limited estate in the properties fully mentioned in the schedule and has been in use and occupation thereof accordingly under and by virtue of the will left by XY of which the probate has been obtained from the Court of ..... AND WHEREAS the said grant is in full force and virtue and which right has been created in her favour of the first time only.

AND WHEREAS the said AB has no funds nor any other resources to meet her necessary expenses for her maintenance and livelihood as provided in the said will.

AND WHEREAS in the circumstances aforesaid and under legal necessities and justifying causes the said AB has agreed to sell unto the said CD at and for the sum of Rs. .... (in words, Rupees ..... ) the premises hereinafter described absolutely out of which a sum of Rs. .... shall be applied for satisfaction and discharge of the loan of Rs. .... already incurred from creditors namely, EF and GH, who are pressing for the same, there being

8 The latest concept of law about the estate of a Hindu widow is that under the Hindu Succession Act (Act XXX of 1956) which has improved her status and rights over the estate is that unless the property is given for the first time without any pre-existing right she will have an absolute estate—*Vaddboyina v Vaddboyina* AIR 1977 SC 1944. See also *Limba v Manikrao* AIR 1978 Bom 83. Possession in lien of maintenance created an absolute title. Her title to be ascertained in each individual case.



no other funds to liquidate the same, the loans having been incurred for repairs of the dwelling house and maintenance and the balance to be held as provisions for her maintenance for the time being AND WHEREAS the said CD has after *bona fide* and independent enquiries as to the existence of the necessity for the sale is satisfied as to the existence and validity of the debts and of the said necessity and emergency of the party as to the immediate sale of the said property.

NOW THIS DEED of sale witnesseth that in the circumstances aforesaid and in consideration of the sum of Rs. .... paid by the said CD to the said AB to be appropriated for the purposes hereinbefore indicated, the said AB doth hereby grant, convey, transfer, sell, assign and assure unto and to the use of the said CD the said property and every part thereof for the term of her natural life and the VENDOR covenants that the PURCHASER shall hereafter peaceably and quietly hold, possess and enjoy the said property without any claim or demand whatsoever from the VENDOR and the VENDOR shall keep the PURCHASER harmless and indemnified from or against all encumbrances, charges and equities whatsoever and the VENDOR further covenants that she at the request of and costs of the PURCHASER will execute and do all such lawful acts deeds and things for further and more perfectly conveying and assuring the said property in the manner and according to true intent and meaning of this DEED.

#### *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 the VENDOR in Calcutta in the  
presence of:

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

#### MEMO OF CONSIDERATION

RECEIVED of and from the within-mentioned purchaser the sum of Rs. .... being the full consideration payable by the PURCHASER by Bank Draft No. 9 dated ..... for ..... Rs. .... issued by X Bank Ltd. payable in Calcutta.

WITNESS

Received

Signature of VENDOR

### Sale of Equity of Redemption of Simple Mortgage

THIS DEED OF SALE MADE THIS 15th day of December 1999 BETWEEN, AB son of ..... aged ..... residing at ..... hereinafter referred to as the VENDOR (which term shall unless excluded by or repugnant to the context, include his heirs, successors, legal representatives and assigns) of the ONE PART and CD, son of ..... aged ..... residing at ..... hereinafter referred to as the PURCHASER (which term shall unless excluded by or repugnant to the context include his heirs, legal representatives and assigns) of the other part.

WHEREAS by a Deed of Mortgage dated the ..... day of ..... 1999 made BETWEEN the said AB described therein as MORTGAGOR of the one part and XY son of ..... of ..... described therein as Mortgagee of the OTHER PART and registered in Book I, Vol. .... pages ..... to ..... being No. .... for ..... in the office of ..... it was witnessed that the premises hereinafter described in the Schedule hereto was charged and assured unto and in favour of the said XY as and by way of simple mortgage for securing the principal sum of Rs. .... (in words Rupees ..... ) with interest thereon at ..... per cent per annum, subject to the proviso for redemption thereof on the ..... day of ..... as thereunder provided AND WHEREAS there is now due and payable to the said XY the said sum of Rs. .... as principal and a further sum of Rs. .... as interest thereon making thus a sum total of Rs. .... under and by virtue of the hereinbefore recited deed of mortgage AND WHEREAS the said AB has agreed to sell and the said CD has agreed to purchase the said property at and for the sum of Rs. .... free from all encumbrances except, however, the hereinbefore recited mortgage and subject to payment of all moneys due thereunder.

NOW THIS INDENTURE WITNESSES that in pursuance of the said agreement and in consideration of the sum of Rs. .... (in words Rupees ..... ) now paid by the said CD to the said AB (the receipt of which sum the said AB hereby acknowledges) the said AB doth hereby grant, convey, sell, transfer, assign and assure the said property and every part thereof (with the boundaries thereof more particularly described in the Schedule hereto): TO HAVE AND TO HOLD the same to the use of the said CD absolutely and forever, subject, nevertheless, to the payment of the debt secured by the said mortgage of the ..... day of ..... 1999 and observance and performance of all the covenants and conditions thereunder provided.

AND THE said CD for himself, his heirs, executors and administrators hereby covenants with the said AB, his heirs, executors and administrators that he, the said CD, his heirs, executors, administrators, representatives or assigns shall pay or cause to be paid to the said XY, his heirs, executors, administrators or assigns the entire debt payable under the said mortgage of the ..... day of ..... 1999 and observe and perform all the covenants and conditions thereunder contained on the part of the said AB and shall at

all times indemnify and keep indemnified the said AB, his heirs, executors and administrators against all claims or demands, loss or damages, costs, charges and expenses, suits, proceedings, arising out of payment or non-payment of the said mortgage debt or performance or non-performance of the covenants and conditions to be observed and performed on the part of the said AB under the said deed of mortgage.

*The Schedule*

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

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

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

MEMO OF CONSIDERATION

RECEIVED of and from the within-mentioned Purchaser the sum of Rs. .... being the full consideration payable by bank draft No. 10 dated ..... issued by X Bank Ltd. payable in Calcutta.

WITNESS

Received

Signature of VENDOR

Sale by an Administrator under an Order of Court

THIS DEED OF SALE made this ..... day of ..... 2000 BETWEEN AB son of..... Administrator to the estate of ..... deceased (hereinafter called the VENDOR which expression shall where the subject or context ..... be deemed to include his successor or successors in office of the one part and CD son of ..... of ..... hereinafter called the PURCHASER which expression shall where the subject or context allows ..... of the other part:

WHEREAS one W son of ..... of ..... died on ..... leaving a will dated ..... but without appointing any executor AND WHEREAS the said will was duly proved in the court of ..... on the ..... day of ..... in Probate Case No. .... of ..... and Letters of Administration with a copy thereof in respect of the properties and credits of the deceased was granted to the said AB on the ..... day of ..... AND WHEREAS the said grant is still in full force and virtue and the said AB is still now administering the estate AND

WHEREBY by an order dated ..... made by the said ..... in Misc. Case No. .... of ..... the said AB was authorised to sell the property fully mentioned and described in the Schedule hereto subject to the terms contained therein AND WHEREAS the said AB has pursuant to the said order agreed to sell and CD, the PURCHASER, hereto has agreed to purchase the said property at and for the sum of Rs. ....

Now this deed of sale witnesses that in pursuance of the said agreement and in consideration of the sum of Rs. .... paid by the purchaser to the VENDOR the receipt whereof the vendor doth hereby admit, acknowledge and confirm and in exercise of the powers, authorities and liberties conferred upon, under and by virtue of the hereinbefore recited order and all other powers enabling him in that behalf he the said AB, viz., the VENDOR as Administrator and in due course of administration doth hereby and hereunder grant, convey, sell, transfer, assign and assure the said property and every part thereof unto and to use of the said CD PURCHASER, hereto his heirs, executors, administrators, representatives and assigns to have and to hold the same as an absolute owner thereof forever. And that the said AB doth hereby covenant with the said CD that the said property is free from encumbrances to the best of his knowledge and further that he as administrator has not done, executed and performed or suffered to the contrary any act, deed or thing whereby or by reason or means whereof the said property or any part thereof may be in any way affected or prejudicial in title or estate or he as administrator may be prevented from granting, conveying, selling, transferring, assigning or assuring the same in the manner hereinbefore indicated. And furthermore that the said AB has not at any time heretofore given or made any assent or conveyance or conveyances affecting the said property or any part thereof in favour of any person or persons whatsoever.

IN WITNESS WHEREOF the VENDOR and purchaser above-mentioned have hereunto set and subscribed their hands and seal the day, month and year first above-written:

*The Schedule above referred to*

Signed, sealed and delivered etc.

AB

CD

MEMO OF CONSIDERATION

### Sale of a Property by the Heirs of a Mohamedan

THIS DEED OF SALE made on this ..... day of ..... 1999 by AB, CD, EF sons of MN and KL, daughter of MN, all residing at ..... (hereinafter called the VENDORS (which expression shall unless the context

otherwise requires include their respective heirs, executors, administrators and representatives of the ONE PART and OP, son of XY, residing at ..... hereinafter called the PURCHASER (which term shall where the subject or context allows or admits include his heirs, successors and assigns) of the other part:

WHEREAS the said MN who was a Mohamedan governed by ..... School of Mohamedan Law died intestate on ..... possessed of *inter alia* a building known as ..... in the town of ..... fully mentioned and described in the schedule hereto and hereinafter referred to as the said property.

AND WHEREAS by an agreement dated ..... made between the parties, the VENDORS have for the consideration mentioned therein agreed to sell and the purchasers agreed to purchase the said property at and for the consideration mentioned therein on terms thereunder contained.

AND WHEREAS VENDORS have assured the PURCHASER that all expenditure incurred in respect of funeral and other expenses and death-bed charges as well as salaries and wages due to servants and others for services rendered to the deceased have been duly paid off out of other assets left by the deceased and further that the deceased left no will nor made any gift or wakf in respect of the aforesaid building nor was the same encumbered or charged in any way by the deceased during his lifetime or by the VENDORS after his death and furthermore that the VENDORS aforesaid are the only heirs of the deceased and as such are entitled to the proprietary as well as possessory interests in the said property.

NOW THIS DEED OF sale witnesses as follows:

In consideration of the sum of Rs. .... paid by the PURCHASER to the VENDORS on ..... (the date of the agreement for sale mentioned above) and in consideration of a further payment of Rs. .... as the balance of price of Rs. .... (the receipt whereof the VENDORS hereby admit, acknowledge and confirm), the said VENDORS hereby grant, convey, sell, transfer, assign and assure unto and to the use of the said PURCHASER absolutely and forever all that building more particularly described in the Schedule hereto to have and to hold the same and forever enjoy without any claim, demand, interruption from the VENDORS or any other person or persons claiming under any one of them together further with all rights, interest, which the VENDORS heretofore enjoyed in respect of the said premises and with further covenants and indemnities which are hereby agreed to and/or assured unto the said PURCHASER.

AND THAT the VENDORS do hereby assure the purchaser and covenant as follows:

- (i) That the VENDORS are the absolute owners of the said property and are lawfully entitled to convey the same unto the PURCHASER in the manner hereinbefore indicated:

- (ii) that no right of easements of any kind is available to any other person or persons in respect of the use and enjoyment of the said property;
- (iii) that the said property is free from all encumbrances, attachments and other charges and all rates and taxes due in respect thereof have been paid up to the date of sale and in the event of any encumbrance or public charges aforesaid are or is hereafter found to be due in respect of the same vendors shall forthwith pay the same to the appropriate authorities;
- (iv) that the PURCHASER shall at all times, hereafter have peaceful and quiet possession and enjoyment of the said property free from any claim, demand, interference and disturbance whatsoever by the VENDORS or their heirs, executors, administrators and representatives or person or persons claiming under or in trust for them or any of them;
- (v) that in the event the entirety of the property or any part or any share in the said property being lost to the PURCHASER on account of any claim made thereto by any other person or persons, the VENDORS and their heirs shall indemnify and keep indemnified the PURCHASER or his heirs against such loss together with all costs, charges and expenses which he or they may or shall incur to protect his or their title to the property or to defend the same;
- (vi) that the VENDORS shall execute any further deed or assurance that may be necessary in order to perfect the title of the PURCHASER in respect of the said property or any portion thereof.

*The Schedule above referred to*

IN WITNESS WHEREOF the parties have set and subscribed their respective hands and seals the day, month and year first above-written.

Signed, sealed and delivered  
by the said VENDORS AB, CD, EF  
and KL in the presence of:

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

MEMO OF CONSIDERATION

RECEIVED of and from the within-named Purchaser the sum of Rs. ....  
(Rupees ..... ) being the full consideration within-named was to be paid  
by the Purchaser to us.

WITNESSES

We say received  
AB, CD, EF, KL

**Deed of Boundary Demarcation**

THIS DEED OF BOUNDARY demarcation is made on this ..... day of ..... 1999 BETWEEN Mr. XY of ..... (hereinafter referred to as the FIRST PARTY which expression shall unless the context otherwise requires include his heirs, legal representatives and successors) of the first part and Mr. MN of ..... (hereinafter referred to as the SECOND PARTY which expression shall unless the context otherwise requires include his heirs, legal representatives and successors) of the other part.

WHEREAS Mr. Z was the owner of Premises No. .... of .....

AND WHEREAS by a Deed of Sale dated 5th August 1999 Registration No. 124 in the year 1999 and recorded in Book No. 2, volume 3, pages 50 to 65, the FIRST PARTY purchased the eastern portion of the premises No. .... of ..... and the same has been mutated in the records of the Municipal Corporation of Calcutta numbered as .....

AND WHEREAS the western portion of the said premises No. .... of ..... has been purchased by the SECOND PARTY by a Deed dated ..... 1999 and bearing Registration No. 15 in the year 1999 recorded in Book No. 4, volume 2, pages 1 to 5 and the same was mutated in the records of the Calcutta Municipal Corporation and has been numbered as .....

AND WHEREAS there is a common wall between the eastern portion and the western portion of the said premises now known as .....

AND WHEREAS the FIRST PARTY commenced construction of additions, alterations within the premises ..... in accordance with the sanctioned plan of the Calcutta Municipal Corporation and such reconstruction work is still going on though it is in the final stage.

AND WHEREAS the second party objected to such reconstruction, additions and alterations in so far as the same affected the premises No. .... of ..... and has also obstructed the natural flow of air and light in the premises No. .... of .....

AND WHEREAS the parties had discussions and negotiations and ultimately have agreed to avoid further escalation of the dispute and amicably settled the disputes for ever in regard to the said premises.

NOW THESE PRESENTS WITNESSETH and the parties agree as follows:

1. On the ground floor only of the premises No. .... of ..... the first party shall demolish a portion of the western side of common wall near Column No. G5 as shown in the drawing annexed hereto in order to facilitate the widening by 2 ft. of the attached shop-room of second party in the premises No. .... of .....

2. A fresh 5 inches thick brick partitions wall will be constructed shifting it towards the west as shown in the drawing enclosed hereto.

3. The parties will maintain the common wall at their own costs and expenses from their respective sides and each party will have the right to fix false ceilings, wall rack or other supports on this wall from their respective sides without putting undue weight on the common wall or structurally damaging the wall.

4. The said shifting of the wall in the premises No. .... of ..... shall be only for the ground floor without affecting the corresponding walls on the 1st, 2nd, 3rd and the 4th floors.

5. By virtue of the such shifting of the above, the 5 inch brick common wall towards the western side of the column G5 of premises No. .... of ..... will now be within the western side line of premises No. .... of .....

6. The second party undertakes and agrees not to do any structural damages by way of chiselling the said column No. G5 or do any other act which will weaken the structural strength and stability of premises No. .... of ..... and if any strengthening of the column G5 is required on the ground floor the second party will allow the first party to do the same from the side of first party and/or the second party and for this purpose allow the workers of the first party to enter the portion occupied by the second party.

7. As a result of shifting of wall towards western side, some structural modifications in the affected portion will be required with a view to protecting the ground floor roof of premises No. .... of ..... which will be done by the second party before demolition of the common wall of premises No. .... of .....

8. On the western side of common wall of the premises No. .... of ..... there are four windows/openings for air and light. As the two premises that is ..... and ..... of ..... are attached all the existing wall openings of premises No. .... of ..... are to be closed by brick work by the first party and it is agreed that in future neither of the parties will make any opening in the common wall on any floor of the buildings.

9. In the courtyard of premises No. .... of ..... on eastern side there is 5 inch thick brick-wall of approximately 16 feet length on the ground floor only. In the said attached/ common wall of premises No. .... of ..... the western side wall is only 5 inches thick on all floors. With a view to prevent percolation or seepage of rain-water through this brick wall a further 5 inches thick brick wall will be constructed from ground floor to the 4th floor in addition to the existing 5 inches thick brick-wall of premises No. .... of ..... Such brick wall to be constructed shall be finished with cement plastering. Such work has to be done from premises No. .... of .....



10. It is recorded that during the negotiation and preparation of these presents and execution thereof, the aforesaid additions/alterations/modifications have been executed by the first party at its own expenses and to the satisfaction of the second party.

11. The said demarcation property line on the common portion of premises Nos. .... and .... of ..... will be treated as final as existing as on 15th September 1999. The eastern side wall of premises No. .... of ..... and the western side wall of the premises No. .... of ..... and as shown in the enclosed drawings and the existing demarcation of the common wall of the two premises shall supersede the demarcation shown in respect of the common wall or attached portion of the two premises in the respective Purchase Deeds and plans of premises Nos. .... and .... of .....

12. The parties hereby agree that neither party will have any right to claim or any cause of action against the other regarding the boundary demarcation of the attached and/or common wall or the said premises Nos. .... and .... of ..... and all disputes in regard thereto are hereby finally settled.

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

Signed and delivered by Mr. XY  
in the presence of:

Signature

Signed and delivered by Mr. MN  
in the presence of:

Signature