
Sole Selling Agency

An Agent is a person entitled to do an act for another or to represent another in dealings with third parties. The person who employs an agent is called the Principal.¹ The Agent is an intermediary who is authorised to create legal relationship between the Principal and the third party. He is like a conduit pipe connecting two parties. He may make the Principal responsible to the third party for his action. An agent is not however a servant of the Principal.

The authority of an agent may be expressed or implied. If a person has authority to act on behalf of another called the Principal and consents to so act then he is called an agent of the Principal. The relationship of Principal and agent arises out of a contract.

A sole selling agent is a person who is appointed to sell the goods or products of the Principal in a particular area to the exclusion of all others. The appointment of a sole selling agent by a company registered under the Companies Act is subject to the provisions of section 294-AA of the Companies Act 1956. Under the section the Central Government may prohibit the appointment of the sole selling agents by a company in certain cases mainly in respect of certain goods or products having adequate demand in the market.

A sole selling agent may be appointed by a written document or such agency may come into existence by operations of law or the Principal may ratify the act of the agent. An agency may be inferred from the conduct of the parties and the circumstances surrounding the transactions.

For creation of an agency no consideration is necessary but the fact that a person will act for another to their mutual benefit will itself be a consideration for the validity of the agreement.²

1 Section 182 of the Indian Contract Act 1872.

2 Section 185 of the Indian Contract Act 1872.

An agency may be terminated in accordance with the agreement. If there be any written agreement, the Principal has the right to revoke the authority of the agent at any time subject to compensating the agent where the agency is coupled with some interest.

An agent may be remunerated by a commission on the sale of goods effected by him or on the goods purchased by him from the Principal.

A sole selling agent is given the authority to sell the products of the Principal in a specified geographical area with the understanding that within that area for the same goods the Principal shall not appoint any other agent for selling the goods. Whether the unsold goods will be taken back or not will be governed by the agreement.

The main object of appointing a sole selling agent is that the Principal will be assured that the agreed quantity of goods would be sold and/or paid for by the agent. The agent is also benefited inasmuch as he gets the goods at a competitive price and has practically a monopoly right to sell the goods within the agreed geographical area. Such agreement is beneficial to both the Principal and the agent to expand business. The Principal is not required to carry huge stock or take on rent godowns or warehouses or set up selling outlets and its capital is not thereby blocked.

FORMS

Sole Selling Agency Agreement

THIS SOLE SELLING AGENCY Agreement is made on this day of
 BETWEEN X Co. Ltd. a company registered under the English Companies Act and carrying on business at, England hereinafter referred to as the PRINCIPAL (which term shall unless excluded by or repugnant to the context shall include its successors and assigns) of the one part and S. Co. Ltd. a company registered under the Companies Act 1956 and having its registered office at, Calcutta hereinafter referred to as the AGENT (which term shall unless excluded by or repugnant to the context include its successors and permitted nominees and assigns) of the other part.

WHEREAS the PRINCIPAL is carrying on business as the manufacturer of and dealer in and exporter of Telecommunications and Computers and Hardwares and Softwares thereof.

AND WHEREAS the AGENT is carrying on business in diverse products of various manufacturers as selling agent and has acquired experience and obtained the infrastructure for dealing with these goods.

AND WHEREAS the AGENT has extra capacity for carrying on the business as the selling agent and has approached the PRINCIPAL for marketing the Principal's products in the backward areas of India and also in the foreign countries where the markets have not yet been fully exploited.

AND WHEREAS the PRINCIPAL has agreed to the proposal of the AGENT and intends to appoint the AGENT as the Sole Selling Agent in respect of certain areas in domestic markets as also in certain areas of the foreign markets.

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

1. The AGENT is appointed as the Sole Selling Agent of the Principal's products in the domestic market and also in the foreign market particulars whereof are given in the Schedule hereunder.
2. The AGENT shall advertise and make popular the Principal's products in the scheduled areas by advertisement in newspapers, journals and through representatives who would visit the Consumers' offices and/or residences to popularise the quality and utility of the products of the PRINCIPAL.
3. The PRINCIPAL shall provide the AGENT literature and other documents explaining the products and would also supply certain samples for demonstration wherever possible.
4. The PRINCIPAL shall pay to the AGENT a commission of 30% on the published sale price of the products that would be supplied through the AGENT.
5. All expenses for transport upto the agent's godown shall be borne by the PRINCIPAL and further expenses for handling and selling the products and for advertisement and publicity shall be borne by the AGENT.
6. The AGENT shall maintain an efficient team of personnel for properly running the after-sales-service in respect of the Principal's products and for these services the PRINCIPAL would pay an additional 2% as service charges on the published price of the commodities sold by the AGENT.
7. The AGENT shall ensure that the after-sales-service is rendered promptly and no customer should have any grievance that the customer is not being properly attended to or the customer's instrument has not been properly repaired.
8. The AGENT shall ensure proper customer satisfaction by rendering the after-sales-service as also immediately returning the genuine manufacturing defective instrument to the PRINCIPAL for replacement.
9. The AGENT shall on receipt of any complaint inspect the machinery concerned at the customer's place and remedy the defect or replace the part

if required and immediately inform the PRINCIPAL with a report about the defects and the repairs done.

10. The AGENT shall submit a statement of receipts of the products and the sale thereof as also the number and nature of customers attended to by way of after-sales-service.

11. The AGENT shall keep a deposit of Rs. 2 lakhs free from interest with the PRINCIPAL by way of Security Money.

12. The AGENT shall render proper accounts every quarter and remit the sale proceeds less the commission and service charges along with a statement of accounts.

13. The AGENT will not be entitled to any commission but only its out-of-pocket expenses in attending a customer who has ultimately rejected the product of the PRINCIPAL on some ground or the other.

14. The AGENT undertakes and covenants not to sell in the scheduled areas any other products of any other manufacturer similar to or competitive with the products of the PRINCIPAL.

15. The AGENT shall keep all the products delivered to it insured against risks of fire, burglary, civil commotion rioting and loss by any other insurable risks in the joint names of the PRINCIPAL and the AGENT at the cost of the PRINCIPAL.

16. The AGENT shall inform the PRINCIPAL and take immediate action for any infringement of the Principal's Trade Mark or Patent Rights or passing off other manufacturer's products as those of the PRINCIPAL.

17. The AGENT hereby agrees and undertakes to take all possible steps and to execute and sign all plaint, petition, affidavit and other documents that may be necessary for successfully prosecuting any party for infringement of the said Trade Mark, Patent Rights or for passing off or committing other wrongful acts done to the Principal's products by any person and to protect the right, title and interest of the PRINCIPAL.

18. This Agreement is subject to obtaining the necessary permission or approvals of the authorities concerned.

19. This Agreement is terminable by giving three months' notice by either party on any breach of any of the terms mentioned hereinabove.

20. All disputes and differences arising out of this agreement or in relation to any transactions covered by the agreement or otherwise affecting the relationship of the PRINCIPAL with its AGENT shall be referred to Mr. MN, Advocate of Old Post Office Street, Calcutta for adjudication of such disputes in accordance with the provisions of the Arbitration and Conciliation Act 1996 or any statutory modifications thereof for the time being in force.

The Schedule

(Particulars of the commodities and areas given to the Sole Selling Agent under this agreement).

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

Signed, sealed and delivered by

Mr.

pursuant to the Board Resolution

dated of the PRINCIPAL

in Calcutta in the presence of:

Signed, sealed and delivered by

Mr.

pursuant to Board Resolution

dated of the AGENT in

Calcutta in the presence of:

Appointment of Selling Agent for a District or Town

THIS AGREEMENT IS MADE on this 15th day of September 2000 BETWEEN AB Co. Ltd., a company registered under the Companies Act 1956 and carrying on business at (hereinafter called the PRINCIPAL) of the One Part and CD, a proprietorship concern of AP of (hereinafter called the AGENT) of the Other Part.

WHEREAS the PRINCIPAL is a manufacturer and dealer in Computers and is willing to appoint a suitable concern as the sole selling agent for the town of Chennai for its products.

AND WHEREAS the AGENT has approached the PRINCIPAL and has expressed his consent to act as the sole selling agent of the PRINCIPAL to which the principal has agreed.

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

1. The PRINCIPAL hereby appoints the AGENT as the sole agent of the principal for the town of Chennai (hereinafter called the TERRITORY) for the purpose of making sales of the principal's goods for the term of 5 years from the date hereof on the terms and conditions herein contained.

2. The AGENT shall not while selling the principal's goods make any representation in the trade or give any warranty other than those contained in the principal's printed current price list.

3. The AGENT shall be entitled to deduct and retain with himself 20 per cent from the list price of all goods sold by him on behalf of the PRINCIPAL as his commission. The AGENT shall keep a record of all sales and shall remit to the PRINCIPAL regularly each week/each Monday all moneys/sale proceeds received by him in respect of such sale. All sales shall be made for cash against delivery of goods unless the principal's consent first obtained in writing to give credit to any particular purchaser and in case of such credit sales the PRINCIPAL may direct the agent to charge 20% more than the principal's price list.

4. The AGENT shall not make any purchase on behalf of nor in any manner pledge the credit of the PRINCIPAL without prior written consent of the principal.

5. The AGENT shall at his expense take on rent and occupy for the purpose of the agency suitable premises with prior approval of the PRINCIPAL and shall keep insured for the full value against all risks of all the goods entrusted to him under this agreement and on request by the PRINCIPAL shall produce to the PRINCIPAL receipts for the rent, rates and taxes of the said premises and for the premiums on insurance policies showing that the same have been paid on due dates.

6. The AGENT shall not sell nor allow anybody else in the trade to sell the principal's products outside the agency territory nor sell to the public below the listed price for the time being.

7. The AGENT shall in all his commercial dealings, documents, on name-plates or letter-heads describe himself as selling agent for the PRINCIPAL.

8. It is agreed that any breach of any term or condition of this agreement by the AGENT shall entitle the PRINCIPAL to put an end to this agreement forthwith and also to recover from the AGENT in addition to the listed price by way of liquidated damages 30% of the listed price for each such article sold in breach of such clause. The agent undertakes that all the purchasers to whom he may sell the principal's goods shall be duly entered into the books of the agent.

9. The PRINCIPAL shall keep with the agent a stock of its goods worth Rs. 50 lakhs at the principal's current price and the PRINCIPAL shall replenish such stock on the close of each month subject to availability of stock and exigencies such as delay in transit, accidents, strikes or other unavoidable occurrences.

10. The PRINCIPAL shall have the right to check the stock of the said goods and on any shortage or deficiency found on such stock-taking the agent shall on demand pay to the PRINCIPAL the listed price thereof less commission.

11. The AGENT shall not alter, remove or tamper with the marks or numbers on the principal's goods. He shall not sell the goods of the PRINCIPAL

at a price less than the listed price. However, he may allow a discount of 5 per cent on the listed price.

12. If any dispute arises between the AGENT and the PURCHASER of the principal's goods, the AGENT shall immediately inform the PRINCIPAL of the same and shall not without the principal's approval or consent in writing take any legal proceedings in respect of or compromise such dispute or grant a release to the purchaser.

13. This agreement may be terminated by either party at any time after the expiration of 5 years by giving to the other one month's notice in writing.

14. The benefits under this agreement shall not be assignable to any other person.

15. The PRINCIPAL shall redirect all inquiries or orders for principal's goods received by it from persons residing in the agency TERRITORY of the said agent and in the event where the PRINCIPAL supplies such purchasers directly it shall allow the AGENT the same commission or rebate as the agent would have been entitled to retain if he had done the transaction.

16. The agent undertakes to refer to the PRINCIPAL all enquiries or orders for the principal's goods from the persons residing outside the agency territory of the agent and similar enquiries or orders from persons residing in the agency TERRITORY for the purchase for re-sale outside the said TERRITORY and the AGENT shall be entitled to 2% commission in respect of any sale resulting from any such enquiries or orders.

17. The AGENT undertakes to devote his whole business, time and energy for pushing the sale of the principal's goods and shall in all such dealings act honestly and faithfully to the PRINCIPAL and shall carry out principal's orders and instructions and shall not engage himself or be interested either directly or indirectly as AGENT or servant in any other business or trade without the prior consent in writing of the PRINCIPAL.

18. On the termination of this agreement for any reason whatsoever the agent shall not for a period of one year solicit trade or orders from the persons who had been purchasers of the principal's goods any time within 5 years immediately preceding the date of such termination and the agent shall not for a period of one year engage or be interested as agent or servant in any business, firm or company manufacturing, selling or dealing in goods similar to those manufactured and/or dealt with by the PRINCIPAL.

19. Without prejudice to any other remedy the PRINCIPAL may have against the AGENT for any breach or non-performance of any term of this agreement the PRINCIPAL shall have the right summarily to terminate this agreement if the agent is found guilty of misconduct or negligence in discharge of his duties or absenting himself from his business duties for more than 15 days without sufficient cause, or the agent committing any act of bankruptcy.

20. The PRINCIPAL shall be entitled to terminate this agreement by giving one month's notice in writing to the agent in the event the PRINCIPAL ceases to carry on its business.

21. On the termination of this agreement for whatever reason the AGENT shall immediately return to the PRINCIPAL all unsold stock of goods and pay for the shortages in stock at the listed prices less commission. The agent shall deliver to the PRINCIPAL all books of account, document or securities he may have received during the normal course as a result of sales of the principal's goods and shall transfer, assign or negotiate in favour of the PRINCIPAL all such securities on demand.

22. In the event of any dispute arising out of or in relation to or touching the agreement the same shall be decided by arbitration in accordance with the provisions of the Arbitration and Conciliation Act 1996.

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.
pursuant to Board Resolution
dated of AB Co. Ltd. in
the presence of:

Signed and delivered by Mr. AP
the proprietor of CD in the
presence of:

Appointment of Sole Selling Agent

THIS AGREEMENT IS MADE on this 11th day of October 2000 BETWEEN AB Co. Ltd., a company registered under the Companies Act 1956 and carrying business at, Calcutta (hereinafter referred to as the COMPANY) of the One Part and CD Co. Ltd., a company registered under the Companies Act 1956 and carrying business at, Kerala (hereinafter called AGENT) of the Other Part.

WHEREAS the COMPANY is engaged in the manufacture of cotton and textiles polyester fibre yarn suitings and shirtings.

AND WHEREAS the AGENT is the wholesale trader in suitings and shirtings and textile goods and materials in South India with headquarters at Ernakulam and has approached the COMPANY for being appointed as sole selling agent of the COMPANY in South India.

AND WHEREAS the COMPANY in its general meeting held on 15th September 2000 has decided to appoint CD Co. Ltd. as the sole selling agent for Southern

India for whole-sale business of the company's manufactured suitings and shirtings and the Central Government has also approved the appointment of the said sole-selling agent for the said goods.

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

1. The COMPANY appoints CD Co. Ltd., Kerala as the sole selling agent for South India for the suitings and shirtings manufactured by the COMPANY and the said Agent will have the exclusive right and authority to sell whether in cash or on credit and procure the orders for sale of the said products of the COMPANY in any manner in the said territory.

2. The appointment shall take effect from 1st day of November 2000 and shall remain in force for five years from the said date without prejudice to the right of re-appointment but subject to the approval by the COMPANY in general meeting and also subject to the approval by the Central Government as required under section 294 of the Companies Act 1956 and rule 2 of the Companies (Appointment of Sole Agents) Rules 1975.

3. The AGENT shall have the right to operate in the entire territories of South India either directly or through their branch offices, associates or sub-agents for giving effect to this agreement.

4. The AGENT in consideration of its selling and procuring orders for the sale of the company's products shall be paid a commission of 25% on the total sales effected by it but on the amount actually collected by it and paid to the COMPANY.

5. The AGENT hereby covenants that it will exclusively engage in the sale of the company's products to the best of its ability and shall not engage in the sale of similar or identical products of other manufacturers and it will protect, preserve and maintain patents and trade mark of the company's products sold by it in all possible manner at its own cost and will never allow others to use the same unauthorisedly. The AGENT will keep and maintain full and complete accounts of the sale of the company's products, area-wise and region-wise and submit quarterly reports of sale, stock-in-hand, realisation of credit bills and any other information as may be desired by the COMPANY from time to time. It will not create any obligations involving payment either in cash or kind on behalf of the COMPANY and shall not assign any interest, right and obligation arising out of these presents to any third party. The AGENT shall keep the company well informed of the demands of the COMPANY'S products arising in the territories of its operation from time to time.

6. The COMPANY hereby covenants that it shall provide to the AGENT complete catalogues, instruction books, circulars for promoting sales of its products and publish advertisements in local and regional newspapers for promoting sales of the company's products. It shall execute orders placed

by the AGENT with all reasonable despatch and shall not entertain or execute direct orders from the territories assigned to the agent and in case any orders are received by it the same shall be passed on to the AGENT and it will be paid commission at 25% on such orders when executed.

7. The parties hereto hereby agree that nothing contained herein shall prejudice the rights of the COMPANY to appoint another selling agent in the same territory or to open its own retail shop where it is found necessary to promote public distribution system or to execute any special programme of the Government of India. However, the COMPANY shall obtain prior consent in writing of the AGENT in that behalf.

8. The retail price of the product shall always be determined by the COMPANY in consultation with the AGENT.

9. This agreement shall be renewable subject to mutual consent of the parties hereto on the expiry of five years.

10. The agreement may be terminated by either party on giving six months' notice in advance to the other party in writing.

11. Any dispute arising between the parties hereto shall be referred to the sole arbitrator Mr. MN whose decision/award shall be binding upon the parties hereto.

12. The Calcutta Courts will have the jurisdiction to decide the issues in dispute between the parties hereto.

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

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution
dated 30th September 2000 of AB
Co. Ltd. in the presence of:

Signed, sealed and delivered by
Mr.
pursuant to Board Resolution
dated 1st October 2000 of CD Co.
Ltd. in the presence of:

Special Leave Petition to Appeal

According to the rules and forms available a Special Leave Petition to the Hon'ble Supreme Court of India is to be filed in a Paper Book form. The Paper Book will have the cover page an index with documents annexed, office report on limitation, synopsis of facts and circumstances of the case, a List of the relevant dates, a copy of the impugned Judgment decree or order appealed from, the main petition under Art. 136 of the Constitution of India, a Certificate and an affidavit.

Though special leave is granted the discretionary power which vested in the court at the stage of the Special Leave Petition continues to remain with the court even at the stage when the appeal comes up for hearing and when both sides are heard on merits in the appeal. Even when the Supreme Court is dealing with the appeal after grant of special leave, the court is not bound to go into merits and even if the court does so and declares the law or points out the error—still the court may not interfere if the justice of the case on facts does not require interference or if the court feels that the relief could be moulded in a different fashion.¹

A form of hypothetical Paper Book is given below for a rough idea which form, however, is subject to changes that may be made from time to time by the Apex Court.

FORMS

Model Form of Special Leave Petition

In the Supreme Court of India

Civil Appellate Jurisdiction

Special Leave Petition (Civil) No. of 1999.

(From the Judgment and Final Order dated passed by the Hon'ble Calcutta High Court consisting of the Hon'ble Mr. Justice

¹ *Taherakhatoon v Salambin* AIR 1999 SC 1106.

and the Hon'ble Mr. Justice in FMA No. of 1999) with interim relief.

Sri son of *Petitioner*

versus

Co-operative Housing Society Ltd. and Ors. *Respondents*

WITH

I.A. No. of 1999

(Paper Book)

(Index kindly see inside)

Advocate for the Petitioner

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Model Form of Special Leave Petition

In the Supreme Court of India
Civil Appellate Jurisdiction

Special Leave Petition (Civil) No. of 1999

(From the Judgment and Final Order dated passed by the Hon'ble Calcutta High Court consisting of the Hon'ble Mr. Justice and the Hon'ble Mr. Justice in FMA No. of 1999).

In the matter of Sri son of *Petitioner*

versus

Co-operative Housing Society Ltd. and Ors. *Respondents*

OFFICE REPORT ON LIMITATION

The above-mentioned matter is in time/time barred.

Dated

Section Officer

Synopsis

AB, owner of a rent-free land at (hereinafter referred to as the VENDOR), entered into an agreement with the CD Housing Society Ltd. for sale thereof on which land the Society intended to construct apartment building. An Indenture was entered into between the said owner and the Society. The price was fixed and Earnest Money was paid by way of part payment of the total price.

Clause 5 of the said agreement provided that the Society will construct multistoried building on the said land and the VENDOR will have the right to purchase 8 flats in the said building in the name of himself or his nominees each flat containing a floor-area of not less than 1200 sq. ft. The purchase price will be at the same rate as might be payable by other purchasers of similar flat in the said building. The society shall not sell those 8 flats without first offering to the vendor by giving at least sixty days' notice in writing. On failure of the vendor to signify his willingness to purchase within the said period of sixty days the Society will be entitled to dispose of the flat to any other person.

By a letter the Society informed the VENDOR that the vendor's application for membership was accepted and a three bedroomed flat No. 2 has been allotted to him at Rs. and for a garage space another Rs. In default of making payment on due dates, the allotment of the flat would be liable to be cancelled, and that the right of the VENDOR in the Society will be governed by West Bengal Co-operative Societies Act, Rules and its Bye-laws.

The Society issued two Share Certificates for Rs. 100 each in favour of the VENDOR and flat No. 2 in the said building allotted to him and demanded payment of the consideration money. The VENDOR had paid a lump sum amount against six flats out of eight flats and intimated that the balance amount would be paid within two months.

The VENDOR surrendered two flats out of the three allotted to him in the first instance and requested the Society to adjust the amount paid on account of those two flats against the flats booked by his two daughters. The shortfall would be paid within a specified date.

Due to certain litigations involving the Society the Hon'ble High Court at Calcutta appointed Special Officer in which the VENDOR was not a party.

The VENDOR being the allottee of flat No. 2 and the two Share Certificates of the Society died. During his lifetime the Society did not make any demand in regard to any liability of the VENDOR in respect of the said flat No. 2. The vendor's son wrote to the Special Officer that he was taking steps under the West Bengal Co-operative Societies Act to get his father's flat and two shares of the Society transferred to one of the heirs of the VENDOR.

The Special Officer replied that the claim for transfer of interest was not made within the stipulated period and as such the flat had been allotted to somebody else.

Vendor's son filed a case under sections 95 and 96 of the West Bengal Co-operative Societies Act 1983 before the Registrar of Co-operative Societies praying for possession of flat No. 2, a declaration as null and void the allotment made by Special Officer and for other reliefs.

The son also filed a writ petition under Art. 226 of the Constitution of India praying for a writ of mandamus commanding the Special Officer to cancel the allotment of flat No. 2, delivery of possession of flat No. 2 to the petitioner and for other reliefs. The son stated in the writ petition that he was ready and willing to pay the balance amount, if any, in respect of the said flat.

Ultimately the matter came before the Division Bench which gave directions in respect of other flats and in respect of the flat No. 2 the Division Bench did decide the issue but observed that this was the subject-matter of a pending writ petition.

The said writ petition was disposed of by a Single Judge directing the transfer of flat No. 2 to the writ petitioner, the son of the VENDOR, on payment of arrears. Against this order of the Single Judge the Society preferred an appeal. This appeal was heard and disposed of by the Division Bench which allowed the appeal and held against the son, the writ-petitioner.

Being aggrieved by and dissatisfied with the Judgement and order passed by the Hon'ble Division Bench of the Hon'ble High Court at Calcutta on

..... in First Miscellaneous Appeal No. of your petitioner begs to move the instant Special Leave Petition.

LIST OF DATES

..... Agreement BETWEEN the VENDOR and CD HOUSING SOCIETY LTD. for the sale of land at, Calcutta. A copy of the agreement is annexed hereto marked 'P-1'.

..... The Deputy Registrar, Co-operative Societies (Housing) Calcutta Metropolitan Area granted permission to the CD HOUSING SOCIETY to admit eight persons as members. The SOCIETY mentioned the names of the VENDOR and his five daughters in the list of members.

..... The society applied to the Registrar, Co-operative Societies (Housing), Calcutta Metropolitan Area seeking permission to admit eight persons as members which permission was granted by letter a copy whereof is annexed hereto marked 'P-2'.

..... The VENDOR executed conveyance in favour of the SOCIETY, and advance payment was made for three flats to be given by the SOCIETY to the VENDOR. A copy of the Sale Deed is annexed hereto marked 'P-3'.

..... The SOCIETY allotted flat No. 2 and two shares to the VENDOR (owner).

..... The Share Certificates and allotment of flat was communicated to the owner and the owner was informed that the specified sum was outstanding in respect of allotment of the said flat.

..... The owner retained one flat in his own name and surrendered two flats which the SOCIETY accepted. A copy of the letter is annexed hereto marked 'P-4'.

..... Special Officer was appointed by the Hon'ble High Court at Calcutta in FMA No. of to complete the construction and to consider allotment of available flats. A copy of the order is annexed hereto marked 'P-5'.

..... VENDOR died leaving behind five married daughters and a married son.

..... The Deputy Registrar of the Co-operative Societies was informed of death of the VENDOR and that the legal heirs were considering about the allotment of his interest. A copy of the letter is annexed hereto marked 'P-6'.

..... Son of the VENDOR informed the society that they could not decide in whose favour the flat will be transferred and wanted some more time. A copy of the letter is annexed hereto marked 'P-7'.

..... SOCIETY informed the son that as no information as to transfer of interest was given within the stipulated period the flat was re-allotted to an outsider. A copy of the said letter is annexed hereto marked 'P-8'.

..... The moneys lying with the SOCIETY was not refunded. The legal heirs finally decided to transfer the interest of the VENDOR in flat No. 2 to his son.

..... The son filed a dispute case under sections 95 and 96 of the West Bengal Co-operative Societies Act, 1983 against the Society and Special Officer before the Registrar, Co-operative Society, West Bengal.

..... The son filed a writ petition against the SOCIETY and Special Officer.

..... The writ petition was allowed and the allotment of flat No. 2 to some other person was cancelled and it was directed that the flat be transferred in the name of the son and to hand over the possession on payment of the balance amount. A copy of the Judgement is annexed hereto marked 'P-9'.

..... The society preferred an appeal before the Division Bench of the Hon'ble High Court at Calcutta against the said Judgement and Order of the Single Judge.

..... The said appeal from the Order of the Single Judge was heard by the Hon'ble Division Bench and by a Judgment and Order the Hon'ble Division Bench has been pleased to hold that the writ petition was not maintainable and

directed the society to refund the moneys lying with it to the legal heirs of the VENDOR with 12% interest from the date of filing of the writ application till payment.

..... Special Leave Petition is filed today.

In the High Court at Calcutta
Appellate/Revisional Civil Jurisdiction

Present:

The Hon'ble Mr. Justice

And

The Hon'ble Mr. Justice

FMA No. of 1999

Co-operative Housing Society Ltd.

versus

The son and others

For Appellant/Petitioner

For Respondent/Opposite Party

Heard on

Judgment on

....., J

.....

Sd/- J

Sd/- J

**Special Leave Petition seeking Stay Order
from Operation of Impounded Judgement**

In the Supreme Court of India

[Order XVI Rule 4(1)(a)]

Civil Appellate Jurisdiction

Petition for Special Leave to Appeal (Civil) No. of 1999 (under Article 136 of the Constitution of India).

BETWEEN

Position of the parties

In the Calcutta
High Court

In this Court

Shri son of Respondent No. 1 Petitioner

AND

- | | | |
|---|------------------|------------------|
| 1. Cooperative Housing Society Ltd.
of Calcutta | Appellant | Respondent No. 1 |
| 2. Calcutta | Respondent No. 2 | Respondent No. 2 |
| 3. State of West Bengal Service
through | Respondent No. 3 | Respondent No. 3 |
| 4. Registrar of Cooperative Societies,
West Bengal, Calcutta | Respondent No. 4 | Respondent No. 4 |

To

The Hon'ble the Chief Justice of India,
and His Companion Justices of the
Hon'ble Supreme Court of India

The Special Leave Petition of the Petitioner above-named

MOST RESPECTFULLY SHEWETH:

1. That your petitioner desires to move the instant Special Leave petition before the Hon'ble Supreme Court of India against the judgment and order passed by the Hon'ble Division Bench of the Hon'ble Calcutta High Court dated in FMA No. of

2. *Questions of Law*

- (a) Whether the right of the Ownership of an apartment in the multistoried building under the West Bengal Co-operative Societies Act 1983 is heritable and transferable?
- (b) Whether in the event of death of a member the legal heirs of such deceased member are entitled to inherit and get allotment of the apartment which the deceased member was entitled to?
- (c) Whether in the event of the member dies without nominating any person to inherit the apartment interest of the deceased member for such apartment could it be inherited by all the legal heirs or by one of the legal heirs or by one of the legal heirs in the event other legal heirs give up their rights in favour of such single legal heir?
- (d) Whether the right and interest of the legal heirs of the deceased member could be forfeited in the event of time taken in nominating particular legal heir for the same exceeded 3 months from the date of the death of the member because of certain unavoidable circumstances as the legal heirs were not available immediately in giving their consent and giving up their rights in favour of the single legal heir in whose favour the property desired

by all the legal heirs to be transferred. More so when the Co-operative Society was intimated well in advance seeking extension of time in providing particular name in whose favour the property the legal heirs desired to be transferred?

- (e) Whether on the issue of transfer of share of the deceased member any consideration in respect of admission of a member is relevant?
- (f) Whether the valid membership in favour of the deceased member could be cancelled only because the name of the nominee in whose favour the property was to be transferred had taken some time for selecting such nominee by all the legal heirs?
- (g) Whether the Cooperative Society is competent to re-allot a valid allotment in favour of the deceased member even when all financial obligations are complied with and the allottee was not a defaulter?
- (h) Whether the Cooperative Society can re-allot the duly allotted apartment of a valid member in the event of death to a stranger ignoring the rights of the legal heirs of such deceased member?
- (i) Whether the question of re-allotment on expiry of 3 months could arise when admittedly the court was moved when allotment was made and in view of specific term of the Hon'ble High Court dated by which the Society was specifically directed not to allot the earmarked apartment being Flat No. 2 and could the Society ignoring such direction reallocate the flat to a stranger?

3. *Declaration in terms of rule 4(2).* The Petitioner states that no other petition seeking leave to appeal has been filed by him against the impugned judgment and order.

4. *Declaration in terms of rule 6.* The Annexures produced alongwith the Special Leave Petition are true copies of the documents which formed part of the records of the Case in the Court below against whose order the leave to appeal is sought for in this petition.

5. *Grounds*

- (a) For that s. 87 of the West Bengal Co-operative Societies Act 1983 (hereinafter referred to as the said Co-operative Societies Act) deals in member's right of ownership and sub-sec. 3 of the said section which makes it abundantly clear that a plot of land or a house or an apartment in a multistoried building (including the undivided interest in the common areas and facilities) shall constitute a heritable and transferable immovable property within the meaning of any law for the time being in force provided that notwithstanding anything contained in any other law for the time being in force such heritable and transferable immovable property shall not be partitioned or sub-divided for any purpose whatsoever.

In terms of West Bengal Co-operative Societies Act and Rules the heirs of a deceased person are, therefore, entitled to inherit the flat allotted to the deceased, as in the instant case. Admittedly the flat in question was allotted to the said vendor father of petitioner who died thereafter and as a consequence thereof the heirs of the said deceased became and would be entitled to succeed to the estate and as a result thereof to the said flat with proportionate interest in the land.

- (b) For that s. 80 of the said Co-operative Societies Act deals with disposal of the deceased member's share or interest and cl. (b) of sub-sec. (1) speaks that if there is no nominee or if the existence or residence of the nominee cannot be ascertained by the Board or if, for any other cause, the transfer cannot be made without unreasonable delay to the person who (subject to the production by such person of probate or letter of administration or succession certificate) appears to the Board to be entitled, in accordance with rules, possession of such shares or interest as part of the estate of the deceased members, or sub-sec. (c) on the application of the person referred to in cl. (b) within 3 months from the date of death of member to such person as may be specified in the application, which clearly indicate that while disposing of deceased member's share or interest the preferential claim always goes to the heirs and legal representatives of the deceased member in absence of any nominee.
- (c) For that s. 82 of the said Co-operative Societies Act is very specific that notwithstanding anything contained elsewhere in the Act or any other law for the time being in force when the membership of a member of a Co-operative Society referred to in cl. (a) terminates by reason of death or any other cause his possession of, or interest in land held by him under Co-operative Society shall vest in his heirs or in the person, if any, nominated by him under s. 79, if such heir is willing to be admitted as a member of the Co-operative Society.
- (d) For that on a careful reading of the said cl. (c) of s. 80 of the said Co-operative Societies Act, it is clear that on the death of the member of the Co-operative Society his share or interest in the Co-operative Society shall be transferred on the application of the person referred to in cl. (b) within three months from the date of death of the member to such person as may be specified in the application. Therefore transfer of share or interest can be made only by a Co-operative Society. It is an obligation of the Society to transfer the share or interest of the deceased member within the stipulated period referred to in s. 80 of the Act.

- (e) For that while disposing of the appeal the Hon'ble Court of Appeal below gave much stress on sub-sec. (3) of s. 85 of the said Act as also sub-rule (5) of rule 135 taking the present case to be a case for admission of membership which is not in the present case. In the instant case the question of admission of membership becomes absolutely immaterial, the real question is of transfer or devolution of interest of a deceased member. The applicant/petitioner herein being one of the heirs of a deceased member was and still is entitled to succeed to the estate of the deceased member as per the mandatory provision of the statutes and that being so the right, title and interest of the deceased member in the apartment of the Co-operative Society devolves upon the heirs and in that background the aforesaid s. 85(3) and rules 135(5) neither have nor can have any application in the instant case because there cannot be any manner of doubt that on the death of a member of a Co-operative Society his share of interest in the Co-operative Society shall in the absence of a nominee be transferred to a person who appears to the Board to be entitled to in accordance with rules, possession of such interest as part of the estate of the deceased member and herein in the instant case the son who himself is admittedly not a member of the society in question or any other housing society became entitled to be considered for such allotment immediately he gave notice to the appropriate authority which too long before the alleged re-allotment was said to have been made.
- (f) For that it was not only improper but also highly illegal, arbitrary, motivated and unconstitutional for the Special Officer to re-allot the flat to a stranger even after he had received letter regarding transfer of ownership in favour of legal heirs in long long before such alleged re-allotment, claimed to have been made in i.e. more than 16 months from receipt thereof, without giving any opportunity of being heard and without deciding the question as to who was entitled to the said flat in accordance with law.
- (g) For that on proper construction of the statute that a member of a Co-operative Society shall cease to be such member if he dies and upon his death his share or interest, in absence of any nomination to that effect, may be transferred by the Board of the Society in favour of any person who presents in writing his or her claim for the said share or interest and in this background the alleged re-allotment of the apartment of the deceased member to a stranger not being the legal heirs of the deceased member is without jurisdiction, unconstitutional, and not maintainable in law and as such is liable to be set aside due to the reason that the Special

Officer in the instant case had taken the decision to re-allot the said apartment without considering the case of the legal heirs of the deceased member and without giving them any opportunity of hearing which decision manifestly appears to be contrary to the principle of natural justice.

- (h) For that the Hon'ble Division Bench was wrong in dismissing the writ application holding *inter alia* that the petitioner thus having failed to show that any of the mandatory provisions of statute has been violated by the appellat society, the writ petition was not maintainable because the ground taken hereinabove show that most of the mandatory provisions of the statute had been violated by the said society and as such in that view of the matter the impugned judgement deserved to be set aside.
- (i) For that the learned court below erred in law in dismissing the writ petition holding *inter alia*: In fact, the writ petition ought to have been dismissed also on the ground that the special officer rightly or wrongly had re-allotted the flat as far back as in the year in favour of a 3rd party. By reason of allowing the writ petition the right of the 3rd party would be affected but despite the same he had not been impleaded as a party therein.

In this view of the matter also the writ petition was not maintainable for non-impleading a necessary party.

It is not a case where the question of ownership was required to be considered *vis-a-vis* the right of a 3rd party without considering that on the date of filing of the said writ petition *i.e.* the writ petitioner was not aware of allotment of the flat in question to any 3rd party not a heir of the deceased member. The society revealed for the first time in their letter dated that they would submit to the Division Bench of their Lordships the Hon'ble Mr. Justice and the Hon'ble Mr. Justice (as their Lordships then were), a proposal for allotment of flat No. 2 that is the flat already allotted to late vendor on to Mr. Z. This letter was written to on a respondent in FMA No. Moreover by their order dated Their Lordships gave the Special Officer of the Society liberty to deliver all other flats on the terms and conditions except the said flat No. 2. Therefore, the dismissal of the writ petition by the Division Bench on the ground of non-impleading the said allottee in the writ petition could not be held to be justified or made in accordance with law.

6. Ground for interim relief

- (i) That the respondent No. 1 Society has informed that the allotment in favour of the deceased allottee stood cancelled because no appropriate person could be named as the legal heir of the deceased allottee in whose favour the respondent No. 1

Society was to make the allotment and as such the Society has been threatening of re-allotting flat No. 2 of the deceased allottee to a stranger ignoring the rights of the legal heirs. The petitioner understands till date no such allotment has been made and even if the some steps have been taken by the Society it will be wholly against the direction given by the Calcutta High Court as early as on by which the society was specifically directed not to allot the earmarked apartment No. 2 to any stranger and in such a position it is extremely essential for your petitioner to obtain appropriate order from this Hon'ble Court restraining the respondent No. 1 to make such irregular and illegal allotment.

- (ii) Your petitioner submits that not only by the impugned judgement and order dated passed in FMA No. the fundamental right of the heirs and legal representatives of the vendor since deceased, the erstwhile owner in respect of the flat No. 2 in the 5th floor of premises No. has been seriously prejudiced but also there has been grave miscarriage of justice because of the fact that the said right to property is right *in rem* as guaranteed under the Constitution of India and the said right to property has been denied by the impugned judgement for which the petitioner has been constrained to prefer the instant Special Leave Petition and petitioner prays that the Society respondent No. 1 should be restrained from taking any steps to reallocate the earmarked apartment till the disposal of the petitioner's present appeal otherwise the petitioner will suffer irreparable loss and injury.

7. *Main Prayers.* Under the circumstances stated hereinabove your petitioner most humbly and respectfully prays that Your Lordships would graciously be pleased to grant Special Leave to your petitioner to Appeal under Art. 136 of the Constitution of India against the judgement and order passed by the Hon'ble Division Bench of Calcutta High Court in FMA No. of and/or to pass such other or further orders as to this Hon'ble Court may deem fit and proper.

8. *Interim Relief*

- (a) Under the circumstances set forth above, it is therefore prayed that Your Lordships may graciously be pleased to pass an order staying operation of the impugned judgement and order dated in FMA No. thereby restraining the Co-operative Housing Society Ltd., respondent No. 1 herein, from making allotment of the Flat No. 2 to any stranger till the disposal of the petitioner's present appeal before this Hon'ble Court.
- (b) pass such other order or orders as Your Lordships may deem fit and proper.

AND FOR THIS YOUR PETITIONER SHALL EVER PRAY.

Drawn by

Filed by
Advocate for the Petitioner

REQUISITE CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents, or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the true copies of the documents have been annexured and/or attached to the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner whose affidavit is filed in support of the Special Leave Petition.

Filed on:

Filed by
Advocate for the Petitioner

In the Supreme Court of India
Civil Appellate Jurisdiction

Special Leave Petition (Civil) No. of 1999

Sri son of *Petitioner*

..... Co-operative Housing Society Ltd. *Respondents & Ors.*

AFFIDAVIT

I, Sri son of aged about years residing at presently in New Delhi do hereby solemnly affirm and say as follows:

1. That I am the petitioner in the present Special Leave Petition and am fully conversant with the facts and circumstances of the present case and am fully competent to swear the present affidavit.

2. That the facts stated in the Synopsis, List of Dates and the petition for Special Leave are all true to my knowledge and the rest are all submissions before the Hon'ble Supreme Court of India.

3. That the Annexures filed with the Special Leave Petition are all true copies of their Originals and the same formed part of the records in the court below.

4. That the contents of this affidavit are true to my knowledge.

DEPONENT

Verified at New Delhi, this the
..... day of 1999

Surrender

A lease of immovable property may be determined by surrender, by yielding up the interest of the lessee under the lease to the lessor by mutual agreement.¹ The surrender of lease or tenancy takes effect like a contract by mutual consent, by surrender by tenant of the tenancy and acceptance of the surrender by the owner/lessor. The surrender must be to a person who is the immediate owner of the premises. If there are several lessees, one of them can surrender his interest in favour of the lessor. A Deed of Surrender without more is not compulsorily registrable. Registration is optional. Stamp Duty is payable generally under Art. 61 of the Stamp Act. If the intention to surrender is sufficiently expressed, no particular form is required. The surrender takes effect in the present. It is not made to take effect in future. However an agreement to surrender can be enforced by specific performance. In surrender delivery of possession is essential.

A Deed of Surrender of Lease or tenancy may be on market value of the property but that is not decisive or conclusive as the rights of surrender cannot be equated to the market value of the property. A Deed of Surrender of Lease is liable to Stamp Duty under Art. 61 of the Indian Stamp Act 1899. If surrender of tenancy is coupled with the transfer of any assets, then the stamp duty will be payable on the document as a Deed of Surrender as also as transfer of the assets.

FORMS

Deed of Surrender of Tenancy

THIS DEED OF SURRENDER of tenancy is made on this 10th day of June 2000 BETWEEN the X Co. Ltd., a company registered under the Companies Act

1 Section 111 of the Transfer of Property Act 1882.

1956 and having its Registered Office at and carrying on business, *inter alia*, at (hereinafter referred to as the TENANT) of the one part and Mr. residing at (hereinafter referred to as the OWNER) of the OTHER PART.

AND WHEREAS on 7th April 2000 an agreement was entered into by and between the TENANT and the OWNER whereby and whereunder the OWNER let out to the TENANT one ground-floor flat comprising of four rooms, one kitchen, two bathrooms, one car parking space, common use of servant-latrines and common passage around the flat with 5 ceiling fans and one Geyser at at a monthly rental of Rs. from 9th April 1998.

AND WHEREAS all rates, taxes, cesses and levies or impositions were agreed to be paid by the OWNER and that the TENANT would have no responsibility in respect thereof.

AND WHEREAS under the said agreement and pursuance thereof, the said OWNER gave occupation of the said flat to the TENANT and the Tenant has been in occupation thereof since then.

AND WHEREAS the OWNER approached the TENANT for vacating the said flat on various grounds including hardship to him and the TENANT then duly considered the same and with a view to avoid any possible litigation and expenses has agreed to surrender the said tenancy of the said flat.

NOW THEREFORE THIS DEED witnesseth and the parties agree as follows:

1. The said OWNER hereby admits confirms and acknowledges that on this day he has received peaceful vacant possession of the said ground floor flat comprising of four rooms, one kitchen, two bath rooms, one car parking space, common servant latrine and common passage around the flat with all fittings and furniture, water, drainage, sanitary fittings and electrical installations in the same good order and conditions as they were when the said flat was let out to the TENANT less normal wear and tear.
2. The TENANT declares that it has not created any encumbrance over the said flat and the same is free from all encumbrances.
3. The OWNER agrees and declares that the TENANT has paid all dues, including rent in respect of the said flat up to this day and nothing is due or payable by the TENANT to the OWNER in respect of the said flat.
4. The parties hereby agree that neither party has paid any money to the other by way of inducement for surrender of the tenancy.
5. The OWNER hereby agrees confirms and declares that he has received peaceful and vacant possession of the said flat from the TENANT free from all encumbrances and the OWNER has accepted the delivery of vacant possession of the said flat with all fittings and furniture and also the keys and he has no claim whatsoever against the tenant in relation to the said flat or otherwise.
6. The OWNER hereby confirms and declares that nothing is due from and payable by the TENANT in respect of the said rent or municipal charges,

water charges, electricity bills or any other charges or claims in respect of the said flat.

7. The OWNER hereby agrees and declares that he would keep the TENANT fully indemnified against and harmless from all proceedings, claims, actions, expenses, charges and costs thereof whatsoever in relation to the said flat for giving peaceful vacant possession of the said flat to the said OWNER.

8. It is recorded that neither party has any claim against the other in relation to the said flat or otherwise whatsoever.

9. It is recorded that the Security Deposit of Rs. has already been refunded on receiving peaceful vacant possession of the said flat the receipt thereof the tenant hereby admits.

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

Signed, sealed and delivered by
Mr. duly authorised
by and holder of Power of Attorney
from X. Co. Ltd. on this 10th day
of June 2000 in the presence of:

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

Surrender of Lease

THIS DEED OF SURRENDER of lease is made on this 10th day of June 2000 BETWEEN X. Co. Ltd. having its Registered Office at and carrying on business, *inter alia*, at (hereinafter called the TENANT) of the one part and Smt. AB residing at (hereinafter called the OWNER) of the OTHER PART.

WHEREAS by registered lease dated Mr. CD demised unto the Tenant Flat No. 3 on the 5th Floor of the building at for 5 years commencing from at the rent of Rs. per month, the owner paying all the rates, taxes and assessments payable or that might be imposed or assessed on the said premises by the Government or the Municipality or any other bodies and keep the Tenant indemnified therefrom and from all proceedings, costs, claims and demands in respect thereof and keep the tenanted premises in good repair.

AND WHEREAS the said premises was transferred by Mr. CD on to Smt. AB and the lease was extended from time to time and the last increase in rent was on to Rs. per month.

AND WHEREAS the OWNER approached the TENANT for vacating the said Flat No. 3 on the 5th Floor of on various grounds.

AND WHEREAS the TENANT has duly considered the request of the OWNER and has agreed to the request of the OWNER to avoid future complications and litigations.

NOW THEREFORE THIS deed witnesseth and the parties hereto agree as follows:

1. The said Smt. AB the owner hereby declares that she is the full owner of the said Flat No. 3 on the 5th floor, premises No. and is entitled to receive on surrender of the said flat by the TENANT possession thereof and give complete discharge to the TENANT from all obligations whatsoever in respect of the said flat.
2. The OWNER declares that there is no arrears of rent, electricity bills, or any other claim in respect of the said flat and all dues payable by the TENANT upto and including the have been received.
3. The OWNER hereby confirms and records that she has received quiet, peaceful and vacant possession of the said flat free from all encumbrances with all furniture and fixtures in the same good order and condition in which the same demised flat was let out to the TENANT.
4. The OWNER hereby records confirms and declares that neither party has paid to the other any money by way of compensation or otherwise and this is being executed on consideration of avoiding any future litigation and avoidable expenses.
5. The parties agree and declare that in consideration of the aforesaid, the TENANT has delivered peaceful and vacant possession of the said flat with all fittings and furniture and the OWNER has received delivery thereof including the keys of the said flat and taken vacant possession of the said flat together with all fittings and furniture in the same condition in which the said flat was demised to the TENANT after having removed all the articles and things belonging to the TENANT.
6. It is declared that neither party has any claim against the other in respect of the said flat No. 3 on the 5th Floor at the premises No. of
7. Each party hereby releases the other from all obligations arising under the said tenancy agreement including any security deposit.
8. The OWNER hereby declares and undertakes to keep the TENANT fully indemnified against and harmless from any action, proceedings, expenses, charges, costs and claims of whatsoever nature in relation to the said flat No. 3 on the 5th floor of premises No. of for delivering peaceful and vacant possession of the said flat to the OWNER for whatsoever reason or cause of action.

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

Signed, sealed and delivered by Mr. duly authorised by and the Power of Attorney Holder of X Co. Ltd. on this 10th day of June 2000 in the presence of:

Signed and delivered by Smt. AB whom the contents and effects hereof have been explained by her Advocate on this 10th day of June 2000 at Calcutta in the presence of:

Surrender of Tenanted Flat

THIS DEED OF SURRENDER of tenancy is made on this 10th day of June 2000 BETWEEN X. Co. Ltd. having its registered office at, Mumbai and carrying on business, *inter alia*, at, Calcutta (hereinafter called the TENANT) of the ONE PART and Mr. JK, residing at (hereinafter called the OWNER) of the OTHER PART.

WHEREAS by an agreement dated the OWNER demised unto the TENANT a self-contained flat having carpet area of 1200 sq. ft. comprising of three bedrooms, one drawing room, one kitchen, two baths, balcony, corridor, garage space, meter room being flat No. of commencing from as a monthly tenant at the rent of Rs. 3,850 per month and security deposit of Rs. 7,850 the owner paying all the rates, taxes and assessments payable or that might be imposed or assessed on the said premises by the Government or the Municipality or any other bodies and keep the tenant indemnified therefrom and from all proceedings, costs, claims and demands in respect thereof and keep the tenanted premises in good repair.

AND WHEREAS the OWNER approached the TENANT for vacating the said flat on various grounds and a Writ Petition for vacation of the said flat on reasonable requirements is pending.

AND WHEREAS the TENANT has fully considered the request of the OWNER and has agreed to the request of the OWNER to avoid further complications and litigations.

NOW THEREFORE THIS DEED witnesseth and the parties hereby agree as follows:

1. The said OWNER hereby declares that he is still the full OWNER of the said flat and is entitled to receive on surrender of the said flat by the TENANT possession thereof and give complete discharge to the tenant from all obligations whatsoever in respect of the said flat.

2. The OWNER declares that there is no arrears of rent, electricity bills or any other claims in respect of the said flat and all dues payable by the tenant up to and including the have been received and the security deposit has been refunded and adjusted.

3. The OWNER hereby confirms and records that he has received quiet, peaceful and vacant possession of the said flat free from all encumbrances with all furniture and fixtures in the same good order and condition in which the same demised flat was let out to the said TENANT.

4. The OWNER hereby records confirms and declares that neither party has paid to the other any money by way of compensation or otherwise and this is being executed in consideration of avoiding any further litigations and expenses.

5. The parties agree and declare that in consideration of the aforesaid the tenant has delivered peaceful and vacant possession of the said flat with all fittings and furnitures and the OWNER has received delivery thereof including the keys of the said flat and taken vacant possession of the said flat together with all fittings and furniture in the same good condition in which the said flat was demised to the tenant after having removed all the articles and things belonging to the TENANT.

6. It is declared that neither party has any claim against the other in respect of the said flat and the owner undertakes to withdraw the Writ Petition being Matter No. of pending in the Hon'ble High Court at Calcutta.

7. The OWNER hereby releases in favour of the TENANT the entire security deposit of Rs. 7,850 by a Demand Draft being No. etc. the receipt of which the TENANT hereby acknowledges.

8. Each party hereby releases the other from all obligations arising under the said tenancy agreement and any extension and/or modifications thereof and/or in relation to the said flat.

9. The OWNER hereby declares and undertakes to keep the TENANT fully indemnified against and harmless from any action, proceedings, expenses, charges, costs and claims of whatsoever nature in relation to the said flat first above described for delivering peaceful and vacant possession of the said flat to the owner for whatsoever reason or cause of action.

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

Signed, sealed and delivered by
Mr. duly authorised by
X Co. Ltd. on this 10th day of June
2000 in the presence of:

Signed and delivered by Mr. JK on
this 10th day of June 2000 in the
presence of: