

ITEM NO.101

COURT NO.7

SECTION XVII-A

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Civil Appeal No(s). 1708/2023

AKSHAY GUPTA &amp; ANR.

Appellant(s)

VERSUS

ICICI BANK LIMITED &amp; ORS.

Respondent(s)

(IA No. 39509/2023 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 44319/2023 - EXEMPTION FROM FILING O.T., IA No. 44317/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 39504/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 39503/2023 - STAY APPLICATION)

WITH

C.A. No. 1709/2023 (XVII-A)

(IA No. 35725/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 44131/2023 - EXEMPTION FROM FILING O.T., IA No. 44130/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 35727/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 35726/2023 - STAY APPLICATION)

C.A. No. 2828/2023 (XVII-A)

(IA No. 59456/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 59455/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES AND IA No. 59452/2023 - STAY APPLICATION)

C.A. No. 4336/2023 (XVII-A)

(IA No. 101982/2023 - EX-PARTE STAY AND IA No. 101981/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 23-10-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Appellant(s) Mr. Alakh Alok Srivastava, AOR  
 Mr. Rishabh Bafna, Adv.

Mr. Abhishek Malhotra, Adv.  
 Ms. Srishti Gupta, Adv.  
 Ms. Raghavi Shukla, Adv.  
 Ms. Sonali Jain, AOR

For Respondent(s) Mr. Ritin Rai, Sr. Adv.

Mr. Sumit Goel, Adv.  
 Ms. Sreeparna Basak, Adv.  
 Ms. Swati Bhardwaj, Adv.  
 Ms. Pratyusha Priyadarshini, Adv.  
 Ms. Garima Khanna, Adv.  
 Mr. Dayaar Singla, Adv.  
 M/S. Parekh & Co., AOR

Mr. Viraj Kadam, Adv.  
 Mr. Soumya Dutta, AOR

M/S. D.s.k. Legal, AOR

UPON hearing the counsel the Court made the following  
**O R D E R**

1. Learned senior counsel appearing for the ICICI Bank Ltd. (for short, 'the Bank') has submitted a chart showing the outstanding amount payable by the appellants as on 16.10.2024. The details of which are as under:

Case No.	Outstanding Principal (INR)	Total Interest including PEMI (INR)	Outstanding Charges (INR)	Total Receivable (INR) As on 16.10.2024
CA 1708/2023 Akshay & Anr. vs. ICICI Bank Ltd. & Ors.	1,26,35,131.00	57,09,527.00	29,71,443.33	2,13,16,101.33
CA 4336/2023 Muringassril Jacob Kuruvilla & Anr. vs. ICICI Bank Ltd. & Ors	1,85,38,453.00	71,79,478.00	31,44,604.73	2,88,62,535.73
CA 2828/2023 Jignesh Tapiawala & Anr. vs. ICICI Bank Ltd. & Ors.	1,66,55,259.00	64,68,114.00	27,47,829.65	2,58,71,202.65

2. Insofar as the appellants in three appeals mentioned in the table are concerned, the appellants have agreed to settle the outstanding principal amount upfront subject to certain adjustments under which they would be entitled to benefits from the Bank as also the Builder - Rajsanket Realty Ltd. (for short, 'the Builder').

3. Mr. Ritin Rai, learned senior counsel appearing for the Bank, upon instructions, submits that the Bank would completely waive the outstanding charges and will give a discount of 30% on the pre-EMI provided the entire outstanding principal amount is settled upfront and the remaining pre-EMI amount is also paid within any reasonable time granted by this Court.

4. Learned counsel for the appellants submitted that the 30% discount, which the Bank has extended on the pre-EMI amount, should be credited to the benefit of the appellants and as the Builder has agreed to pay 50% of the pre-EMI amount, the same would be paid by the Builder either to the appellants and thereafter the appellants may transfer it to the Bank or the Builder may directly deposit with the Bank subject to directions being

issued to the Bank to accept the same from the Builder in the loan account of the appellants.

5. A further request has been made by the learned counsel appearing for the appellants in Civil Appeal Nos. 2828 of 2024 and 4336 of 2023 that the appellants have paid certain amount towards pre-EMI, after the Builder defaulted in making the said payments, and as such the 5% outstanding amount, which they have to pay to the Builder towards club charges and other balance consideration, the same may be waived or the Builder may be asked to pay the said amount under the head of pre-EMI, which the appellants have paid to the Bank.

6. Learned counsel for the Builder upon instructions has agreed to pay 50% of the outstanding pre-EMI. It is further directed that the learned counsel appearing for the Builder may obtain instructions as to whether the Builder would prefer to waive the 5% outstanding sale consideration or get the amount of pre-EMI paid by the appellants to the Bank adjusted against the said 5% balance sale consideration.

7. In Civil Appeal 1709 of 2023, it is stated

that the appellants have already settled the matter with the Bank and as the Bank has already received its entire settlement amount, it would issue NOC upon closure of the present pending appeal.

8. Two issues which survive in Civil Appeal No.1709 of 2023 is between the Builder and the appellants. As, according to the learned counsel for the appellants, the appellants have also paid certain amount towards pre-EMI against the default of the Builder, and have also paid the outstanding pre-EMI on the date of the settlement after receiving 30% discount from the Bank, and would like an adjustment and/or paid by the Builder of both the amounts of pre-EMI against the balance 5% sale consideration to be paid to the Builder. On this aspect also, learned counsel appearing for the Builder, shall obtain instructions.

9. Learned counsel appearing for the appellants will provide the details to the Builder about the pre-EMI amount paid by the appellants to the Bank, within a week from today, so that the Builder may obtain instructions on the same.

10. Whatever be the outcome of 5% sale consideration and the additional pre-EMI paid by

the appellants, the same will not come in the way of the closure of these appeals and the decision of this Court will be final and binding on the parties.

11. In the meantime, the appellants will continue with the process and start making the payment to the Bank towards the outstanding principal amount as also the outstanding pre-EMI amount, which the Bank, after calculating the interest upto 15.11.2024 and 30.11.2024, intimate to the respective parties within a week from today.

12. List these matters on 06.11.2024 for consideration of-

(i) whether the amounts have been duly communicated or not;

(ii) clarification on the issue of 5% additional pre-EMI payment between the appellants and the builder and payment of pre-EMI of the defaulted amount and the outstanding amount.

(NEETU KHAJURIA)  
ASTT. REGISTRAR-cum-PS

(ANU BHALLA)  
COURT MASTER