

CNR No. MHSCA20005382018

IN THE COURT OF SMALL CAUSES AT MUMBAI

ORDER BELOW EXHIBIT – 25

IN

OBSTRUCTIONIST NOTICE NO. 130 OF 2018

IN

T.E.&R. SUIT NO.583/615 OF 2001

- 1) Mr. Fardoon Maneckji Dalal (since deceased)
- 2) Dr. Eddie Phiroze Bharucha (since deceased)
- 3) Mr. Rusi Nusserwanji Sethna (since deceased)
- 4) Fali Phirozshaw Sarkari & Ors. ... Plaintiffs

V/s

M/s. Incab Industries Limited ... Defendants

And

1) Mr. Jaykumar Kahar & Ors. ... Obstructionists

**Coram : R. U. Shaikh,
Judge C. R. No.16
Date : 14/03/2024**

ORDER :

This matter is kept for cross-examination of the applicants/plaintiffs. It appears that during cross-examination conducted on 11.12.2023 then Ld. Advocate for obstructionist made statement that obstructionist is ready to hand over possession of suit premises. Then, matter was adjourned for filing consent terms. However on next date some other advocate appears and disputed statement made by earlier advocate for the obstructionist. Then again, matter was kept for cross-examination. However, it is apparent that thereafter despite granting couple of opportunities, the Ld. Advocate for the obstructionist could not remain present for cross-examination.

Therefore on last occasion, a detailed order was passed below Exhibit 36 and as per said order, if there is further adjournment, defendant will pay cost of Rs.100/- per day. Despite such direction, today Ld. Advocate for the defendant is not before the Court. It is informed that in another matter, he is appointed as commissioner and he is required to attend the said proceeding. However, this cannot be ground for adjournment of the case as per the Order XVII of the Code of Civil Procedure, 1908 (CPC). Considering opportunities granted and the nature of proceedings, it is sufficient to infer that obstructionist is not willing to prosecute the suit. Therefore, right of obstructionist to conduct further cross-examination stands forfeited. The matter be kept for further evidence of plaintiff if any.

Date : 14/03/2024

**[R. U. Shaikh]
Judge, C. R. No.16**