

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
***ORDINARY ORIGINAL CIVIL JURISDICTION***

srj

NOTICE OF MOTION NO.1964 OF 2010  
IN  
SUIT NO. 1965 OF 2010

Jasmine S. Shah .. Plaintiff

V/s.

Mallika M. Jhaveri  
& Others .. Defendants

Mr. D.H.Mehta a/w. Ms. Priti Gada i/b. Sudhir Shah & Associates,  
for Plaintiff.

Mr. Venkatesh Dhond with Mr. R.A.Shaikh, for Defendant No.1.

Mr. S. Marathe i/b. Singanporia & Dalvi, for Defendant Nos. 2 & 7.

**CORAM : S.C.DHARMADHIKARI, J.**

**DATE : 7th December, 2010.**

**P.C.**

1 This matter was placed today for ad-interim relief in the light of the apprehension that the order passed on 26<sup>th</sup> October, 2010 has not been complied with by the 1<sup>st</sup> Defendant. The matter is repeatedly placed under this caption at the request of the Plaintiff and bearing in mind the hardship as highlighted before me.

2           My attention is invited to the order dated 1<sup>st</sup> December, 2010 passed in Appeal (L) No.834 of 2010 passed by the Appellate Court.. It is stated that the Division Bench of this Court has extended the time to deposit the amount, but barring extending the time for deposit of Rs.3 crores, the directions issued by this Court have not been set aside. All that has been done by the Appellate Court is stay a part of the order, permitting the Plaintiff to withdraw the said amount.

3           On the earlier occasion and even today, the modality of how the order of the court must be implemented is discussed. Further, affidavit has been filed by the 1<sup>st</sup> Defendant. The matter was kept back in the morning session only to enable the 1<sup>st</sup> Defendant to make a statement with regard to compliance of this Court's order and to deposit Rs.3 crores as directed therein.

4           After some arguments, both sides agreed that there are Fixed Deposit Receipts in the name of 1<sup>st</sup> Defendant with Indian Bank, Nepean Sea Road Branch, Mumbai. The details of these Fixed Deposit Receipts are set out at pages 75 to 78 of the affidavit dated 7<sup>th</sup> December, 2010 filed by 1<sup>st</sup> Defendant.

5           After some arguments, it is agreed that the Fixed Deposit Receipts at Sr. Nos. 19 to 21 and 23 to 25 be encashed so as to enable the 1<sup>st</sup> Defendant to deposit in this Court a sum of Rs.3 crores. The Fixed

Deposit Receipts must be permitted to be encashed by the Indian Bank, Nepean Sea Road, Mumbai, so as to enable the 1<sup>st</sup> Defendant to deposit the sum in this Court. The Indian Bank to permit encashment and deposit by the 1<sup>st</sup> Defendant within the period of two weeks from today and parties to act on an authenticated copy of this order. However, the Fixed Deposit Receipt at Sr. No.22 bearing no.0770785 dated 23<sup>rd</sup> September, 2009 in the sum of Rs.65,00,000/- is directed to be renewed further for a period of one year in the name of the 1<sup>st</sup> Defendant. As far as the business of M/s. Virgin Metallic Chemical Pvt. Ltd. is concerned, it is stated that the salaries have been disbursed in pursuance of the earlier order but up to a particular period. The further salaries have not been paid.

6           The account of this Company was permitted to be operated by 1<sup>st</sup> Defendant to the limited extent, enabling her to disburse salary of the staff whose names were listed in the Schedule-C to the affidavit in support of the Notice of Motion, filed in this Court and taken on record as stated in the order dated 26<sup>th</sup> October, 2010.

7           It is stated that salaries up to September, 2010 have been disbursed to these employees, but salaries for the further months and even statutory dues and outstanding are not disbursed. In such circumstances, a request is made by the 1<sup>st</sup> Defendant to allow her to disburse the salary and to operate the bank account to the limited extent

of payment of statutory dues and to receive the amount from the customers, so also to make payment for raw materials etc.,

8           This request is opposed by Mr. Mehta, learned counsel appearing for the Plaintiff on the ground that the Plaintiff is aware of the business of the said company. The customers and the staff are in touch with her and she is ready and willing to give time for the business of this company. It is stated by Mr. Mehta that M/s. Reliance Industries Ltd. is ready and willing to disburse and pay the amount which is outstanding and payable to M/s. Virgin Metallic Chemical Pvt. Ltd. but the bank accounts are frozen and hence, the payments cannot be received.

9           In my view, the arrangement as recorded in the order dated 26<sup>th</sup> October, 2010, enabling the 1<sup>st</sup> Defendant to pay salary to the employees whose names are listed at schedule-C to the Notice of Motion can continue until further orders of this Court and, therefore, the account with Indian Bank be allowed to be operated by the said company for payment of salaries of the staff. Further, that account will also be allowed to be operated to the extent of payment of statutory dues only. If, 1<sup>st</sup> Defendant has some cheques or amounts in her hands which she has received from her customers, she can make appropriate application to the court, so that the amount received and the cheques collected by her can be permitted to be deposited in the company account provided the 1<sup>st</sup>

Defendant discloses all details of the transaction on oath and documents are shown to the Court. Liberty to apply.

10           Once again both counsel request that the Court should make an attempt at settlement as the dispute is between a daughter and mother. It is not that attempt has not been made by me. In the light of the experience of this Court in this matter, I am of the view that sending them for mediation of any Senior Counsel, or other mediator on the panel of Mediators would not result in anything fruitful, so as to put an end to all their disputes. In such circumstances, I am unable to accept these suggestions coming from both counsel.

11           Post this matter on 22<sup>nd</sup> December, 2010.

12           Needless to state that the parties will have to abide by the order passed by the Appellate Court on 1<sup>st</sup> December, 2010 and particularly the directions, enabling the Plaintiff to withdraw the interest on the amount of Rs.3 crores after investment of the same in the Fixed Deposit with a nationalized bank. Equally the 1<sup>st</sup> Defendant will have to make payment of the license fee / rent, as directed in the Appellate Court's order.

**(S.C. Dharmadhikari, J)**