IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1234 OF 2019
IN
SUIT NO.3 OF 2010

Mumtaz daughter of Riyazuddin and wife of
Suleman Khan and another … Applicants

In the matter between:

Mumtaz daughter of Riyazuddin and wife of
Suleman Khan and another … Plaintiffs

Vs.

Jamaluddin Riyazuddin Sheikh and others … Defendants

Mr. Omar Khaiyam Shaikh for Plaintiffs.

Ms. Aparna Devkar i/b M/s. M. P. Vashi for Defendants.

CORAM : MANISH PITALE, J.
DATE : FEBRUARY 05, 2024

P.C. :

. By this application, the applicants / plaintiffs are seeking striking off the defence of the defendants under Order XXXIX Rule 11 of the Code of Civil Procedure, 1908 for having flouted an express direction given by this Court in the order dated 14.07.2016.

2. It is submitted that in terms of clause (c) of the said order, the defendants were supposed to deposit with the Prothonotary and Senior Master of this Court, 2/7th of the licence fees that would be received in respect of the premises specified in the said clause.

MINAL SANDIP PARAB Digitally signed by MINAL SANDIP PARAB Date: 2024.02.06 14:19:37 +0530

3. The defendants conceded to the fact that there has been some default in depositing the amounts, but, it is contended that in August, 2023 itself, the defendants were ready with the amount towards arrears. Even today, the defendants are ready to deposit the amount so as to

indicate that this Court may not consider issuing the drastic directions of striking off the defence of the defendants. The learned counsel for the applicants submits that the amount being indicated on behalf of the defendants is not in terms of the 2/7th of the licence fees and it is a lesser amount.

4. At this stage, the learned counsel for the defendants submits that an application bearing Interim Application No.1360 of 2020 is already filed and pending whereby the defendants contend that at the most, they are liable to deposit an amount to the extent of 1/6th of the licence fees and not 2/7th.

5. This Court is of the opinion that by merely filing such an application in the year 2020, the defendants cannot claim that they did not flout the specific direction issued by this Court. The said application can also be taken up for consideration, but before that this Court would call upon the applicants to give the figure towards arrears to be deposited by the defendants upto February 2024. Let the aforesaid figure and the calculation pertaining to the same be communicated to the defendants within a week from today.

6. List the Interim Application Nos.1234 of 2019 and 1360 of 2020 for further consideration on 28.02.2024.

(MANISH PITALE, J.)

Minal Parab