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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2348 OF 1990

Ardeshir Cursetjee and Sons Ltd. ...Plaintiff

vs

Mackinnon and McKenzie and Co. Ltd and Ors. ...Defendants.

....

Mr. Chirag Balsara, a/w. Mr. Dhiraj Mehetre, i/b. M/s. Desai & Diwanji,
for the Plaintiff.

Ms. Sanidha Vedpathak, i/b. Maneksha Sethna, for Defendant No.1.

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CORAM : S.C. GUPTE, J.

DATED: 15 APRIL, 2015

P.C. :

1. The present suit is filed by the Plaintiff for recovery of an amount aggregating to Rs.686,30,73,897 under various loan agreements as detailed in the particulars of claim exhibited at **Exhibit Nos. X-1, X-2, X-3, X-4, X-5, X-6 and X-7** to the plaint. Defendant No.1 had secured the claim amount of the Plaintiff by way of mortgage in respect of immovable properties set out in **Exhibits A to E** to the plaint. During the pendency of the suit, the properties set out in **Exhibit B**, flat number 33 in **Exhibit C, Exhibit D and Exhibit E** to the plaint have been disposed of and the Defendants have been given a credit for the same.

2. A preliminary decree was passed on 16 February 2015, *inter alia*, directing Defendant No.1 to submit a detailed account of the

amount payable by them to the Plaintiff on or before 17 March 2015 and pay the same on or before 21st September, 2015. On 17 March 2015, Defendant No.1 filed an affidavit and annexed a detailed statement of accounts, *inter alia*, giving details of the amounts payable to the Plaintiff by them. In the said affidavit, Defendant No.1 also expressed its inability to make payment to the Plaintiff and acknowledged the charge of the Plaintiff on the immovable properties set out in **Exhibit A** to the plaint and flat numbers 35 and 36 situated at Hill Properties, Alexander Graham Bell Marg, Mumbai - 400026 as described in **Exhibit C** to the plaint. Learned Counsel for Defendant No.1 submits to the orders of the Court. Both parties agree that no reasons be given for the final order and decree.

3. In the circumstances, the following order is passed;
- (a) Suit is decreed in terms of prayer clauses (a) to (h) and (l) of the plaint.
 - (b) The Plaintiff is allowed to dispose of/sell the mortgaged immovable properties set out in **Exhibit A** to the plaint and flat numbers 35 and 36 situated at Hill Properties, Alexander Graham Bell Marg, Mumbai - 400026 as described in **Exhibit C** to the plaint, to recover the dues from Defendant No.1.
 - (c) In so far as **Exhibit F** to the plaint is concerned, the Plaintiff's claim is shown as a debt in the books of accounts of Defendant No.1 and no orders are passed in respect thereof.

- (d) No reasons are given for the present order, as the parties do not desire any.
- (e) The decree is allowed to be executed before sealing in terms of Rule 314 of the Bombay High Court (Original Side) Rules.

(S.C. GUPTE, J.)