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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.96 OF 2017

IN

COMMERCIAL SUIT NO.608 OF 2017

WITH

NOTICE OF MOTION NO.448 OF 2018

IN

SUMMONS FOR JUDGMENT NO.96 OF 2017

IN

COMMERCIAL SUIT NO.608 OF 2017

Babusha Champshi Shah

...Plaintiff

vs

Kanchi Manish Shah And Manish Harjivandas Shah

...Defendants

.....

Ms. Leena Shah, i/b. Shah And Furia Associates, for the Plaintiff/Applicant.

Mr. Ankit Lohia, i/b. Neeta Parikh, for Defendant Nos. 1 and 2.

.....

CORAM : S.C. GUPTE, J.

DATED : 22 MARCH, 2018

P.C. :

. This summons for judgment is taken out in a commercial suit filed under Order 37 of the Code of Civil Procedure seeking a decree in the sum of Rs.1.40 crores as per particulars of claim annexed as Exhibit 'O' to the plaint. After I have heard the parties, it is agreed between learned Counsel for both parties that the summons for judgment may be disposed of without stating any reasons. It is, accordingly, ordered as follows:

(i) On and subject to the Defendants furnishing a security in the form of an undertaking by Rajesh Jayantilal Parikh, uncle of Defendant No.1, to deposit title deeds in respect of a shop owned by him, namely, Shop No.2 at 69, Tardeo Road, Girnar Building, Mumbai 400 034, with the Prothonotary & Senior Master of this Court with a view to secure the suit claim within a period of three weeks from today, the Defendants are granted leave to defend the suit.

(ii) Written statement within a period of four weeks after creating the security in accordance with clause (i) above.

(iii) Place the suit for directions after eight weeks.

(iv) The summons for judgment is disposed of.

2. In view of the security created as above in respect of the suit claim, the Plaintiff does not press her notice of motion under Order 38 Rule 5 of the Code of Civil Procedure. Accordingly, Notice of Motion No.448 of 2018 is dismissed, as not pressed. No order as to costs.

3. In view of the disposal of the motion, the Plaintiff shall write to Sri Vivekananda Nagar Co-Op. Housing Society Ltd., Borivali, about the flat referred to in paragraph 7 of the plaint being free of any restriction for securing the present suit claim.

4. The Plaintiff agrees not to press any injunctive relief in Short Cause Suit No.2163 of 2016 pending before the City Civil Court at

Bombay.

5. As far as the criminal proceedings filed by the Plaintiff against the Defendants in the Court of Ahwa, Dang, Gujarat, namely, Criminal Case No.153 of 2016, are concerned, it will be open to the Defendants to place this order before the criminal Court. It will be for the Court at Ahwa, Dang, Gujarat, to consider whether or not to continue the criminal proceedings. All rights and contentions of the parties on merits of any application made in this behalf in the criminal proceeding, are kept open.

6. The Commercial suit is expedited.

(S.C. GUPTE, J.)