

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

SUIT NO.7 OF 2017

Tarinibahen Desai and Anr.Plaintiffs

Vs.

Kilkilraj Bhansali and Ors.Defendants

Mr. Swaraj S. Jadhav for plaintiffs.

Mr. Sameer Singh a/w. Ms. Abha Patel I/b. ALMT Legal for defendant nos.1 to 4 and 7.

Mr. Nilesh Parte for defendant no.5.

CORAM : K.R.SHRIRAM, J.

DATE : 8th FEBRUARY 2019

P.C.:

1 Mr. Jadhav, counsel for plaintiffs states that plaintiff no.2 has taken out a notice of motion bearing lodging no.368 of 2019 praying for recall of the order dated 23rd January 2019 and further grant leave to plaintiffs to comply with the directions given in paragraph 2 of the order dated 30th November 2018.

2 Mr. Parte, counsel for defendant no.5, at the outset, states that he has not even been served a copy of this notice of motion. Mr. Jadhav gave a copy in Court. Mr. Singh, counsel for defendant nos.1 to 4 and 7 states that he was served a copy only at 5.30 p.m. yesterday. At the same time, both counsel considering the nature of the relief sought consented to taking up the notice of motion for hearing and left it to the Court to decide. The counsel, at the same time, also pointed out that the explanation given in the affidavit in support is not convincing.

3 On the submissions of defendants that the explanation in the affidavit in support is not convincing, I am in agreement with the counsel for defendants. At the same time, considering the fact that plaintiffs are two ladies of 83 years and 50 years, respectively, purely by way of indulgence, I am granting one more opportunity to plaintiffs to comply with the directions given in paragraph 2 of the order dated 30th November 2018. I must mention that on 21st December 2018 time was extended and even as on 23rd January 2019 plaintiffs had not complied with the directions. The counsel for defendants insist that plaintiffs should be put to terms and they are justified.

4 Therefore, in the facts and circumstances of the case, the following order is passed :

(a) notice of motion is allowed and accordingly disposed in terms of prayer clause – (a);

(b) time to comply with each of the directions given in paragraph 2(a) to 2(c) of the order dated 30th November 2018 is extended by two weeks each.

5 It is made clear that if affidavits of documents are not filed and inspection given, parties will not be permitted to rely upon any documents, copies whereof are not annexed to the plaint and/or written statement or mentioned in the list of documents annexed to the plaint/written statement. This, however, shall not prevent a party from confronting the witness of the other party with any document. If statements of admission and denial are

not given within the time prescribed, parties shall be deemed to have admitted the existence of all the documents relied upon by the other side. It is also made clear that no further extension on any ground whatsoever will be granted to plaintiffs.

6 Plaintiffs to pay a sum of Rs.10,000/- as donation to Bombay SPCA – The Bombay Society for the prevention of Cruelty to Animals, Beneficiary Name : BSPCAINCL.BSDPHA, Beneficiary Account No.0064002100030631, Account Type : Current, Beneficiary Bank Name : Punjab National Bank, IFSC Code : PUNB0006400, MICR Code : 400024021 and this amount shall be paid within two weeks from today.

7 Stand over to 27th March 2019 for marking of documents/ recording of evidence on which date plaintiffs' first witness shall remain present in Court.

(K.R. SHRIRAM, J.)