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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 624 OF 2019
IN
NOTICE OF MOTION NO. 3616 OF 2010
IN
SUIT NO. 2901 OF 2010
WITH
NOTICE OF MOTION NO. 3616 OF 2010
AND
NOTICE OF MOTION NO. 1225 OF 2018

Razia Amirali Shroff & Ors	...Plaintiff
<i>Versus</i>	
Nishuvi Corporation & Ors	...Defendants

Mr Suraj Almeida, *with Chaitali Chaudhari, i/b Omar Khaiyam Shaikh, for the Plaintiff.*
Mr PM Palshikar, *i/b MG Gawde, for the Defendants.*

CORAM: G.S. PATEL, J
DATED: 26th February 2019

PC:-

1. Heard. The application is to recall my order dated 30th January 2019 in which I said this:

1. The Plaintiffs face a preliminary issue under Section 9A of the Code of Civil Procedure 1908 ("**CPC**"). After that section was repealed, the clarification of December 2018 made it clear that where an issue has been earlier framed it must be heard as a preliminary issue as if there was no repeal.
2. I find from the record that for the last three years and perhaps more, the Plaintiffs have done nothing towards filing their Evidence Affidavit. SC Gupte J on 21st December 2015 gave them four weeks to do so and said that if they did not, they would be treated as having no evidence to lead, and the preliminary issue would be heard accordingly.
3. Two years later, on 17th August 2017, the matter came up before KK Tated J. The Plaintiffs had even then done nothing. Tated J, therefore, directed the matter to be placed for hearing the preliminary issue.
4. Today a request is made for time to file that Evidence Affidavit. The application is rejected. There will be no further time granted for this purpose. I see no reason to vary or modify Gupte J's judicial order of 21st December 2015.
5. Parties will understand that orders of this court are to be complied with fully and are not recommendations or suggestions.
6. List the suit for hearing on the preliminary issue on the basis of the record as it stands on 26th February 2019.
7. At the cost of repetition, no Affidavits whatsoever are to be filed after today."

2. There is no cause whatsoever made out for recall. What I am told today would be merely astonishing were it not so completely egregious. On behalf of the Plaintiff it is argued that Section 9A of the Code of Civil Procedure 1908 was repealed in 2018 but that repeal was clarified only in December 2018 and, therefore, the Plaintiff should be excused for non-filing of its evidence from 21st December 2015 onwards. This does not even make sense.

3. The second argument is that the documents that the Plaintiff needs are in some other Court and that the Plaintiff applied for copies but those are not yet received. That is even worse. If the Plaintiff is delayed in complying with orders of this Court then the Plaintiff is entitled to seek an extension and appropriate directions. No party is entitled to assume that it has an indefinite period of time in which it may or may not at its own leisure and convenience comply with an order of this Court. This is, although this may be of somewhat surprise to these Plaintiffs as also their Advocates, a question of an order of the Court. An order of a court is not a recommendation, a suggestion or anything of that kind. Our orders will be obeyed. I am unable to see a single document showing that the Plaintiff did in fact seek an extension of time and that time is not yet over. All that these Plaintiffs seem to have done is take it for granted that orders of the Court can be ignored without fear of consequence. The Plaintiffs are wrong.

4. Notice of Motion No. 624 of 2019 is dismissed. No costs.

5. List Notice of Motion No. 3616 of 2010 and Notice of Motion No. 1225 of 2018 for hearing on 19th March 2019.

(G. S. PATEL, J)