

HARSHADA H. SAWANT
(P.A.)

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

INTERIM APPLICATION NO. 4128 OF 2025
IN
NOTICE OF MOTION NO.1439 OF 2018
IN
SUIT NO. 4913 OF 2000

Afzal Sattar Oomerbhoy	.. Applicant
<u>IN THE MATTER BETWEEN</u>	
Nadeem Majid Oomerbhoy	.. Plaintiff
Versus	
Riyad Rashid Oomerbhoy & Ors.	Defendants

-
- Mr. Ganesh Amberkar i/b Jariwala and Associates, Advocates for Plaintiff
 - Mr. Malcolm Siganporia a/w. Mr. Dev Tejnani, Advocates for Applicant / Original Defendant No.2
 - Mr. Neil Dutta a/w. Mr. Ayan Roy, Advocates i/b Wadia Ghandy and Co. for Defendant Nos.4(b)(i) to (iv)
 - Ms. Nandini Deshpande, 1st Assistant to Court Receiver.

.....

CORAM : MILIND N. JADHAV, J.
DATE : FEBRUARY 20, 2026

P.C.:

- 1.** Heard Mr. Amberkar, learned Advocate for Plaintiff; Mr Siganporia, learned Advocate for Applicant / Original Defendant No.2 and Mr. Dutta, learned Advocate for Defendant No.4(b)(i) to (iv).
- 2.** Interim Application is filed for seeking modification, alteration and amendment of order dated 02.11.2023 passed by this Court while disposing of Notice of Motion No. 1439 of 2018. The Notice of Motion was filed in Suit No. 4913 of 2000 for seeking

investigation and status of the subject properties listed therein. Original Suit No. 4913 of 2000 is filed by Plaintiff seeking declaration of shares of the Plaintiff and Defendants in the partnership firm namely M/s. Ahmed Oomerbhoy Firm known as Ahmed Mills. Plaintiffs and Defendants are relatives. Suit is pending since long. Defendant Nos. 2,3 and 4(a) after a hiatus of 18 years unearthed certain properties namely immovable properties belonging to the firm and or which were in the custody and possession of some of the family members situated in Mumbai as well as outside Mumbai. The addresses of the said properties were insufficient. This Court by order dated 02.11.2023 disposed of the Motion by directing appointment of Court Receiver and gave various directions to Court Receiver for ascertaining the present status of the properties disclosed by Defendant Nos. 2,3, 4(a) who were the Applicants in the Notice of Motion.

3. Mr. Siganporia, learned Advocate for Applicant – Defendant No.2 only has filed present Interim Application seeking modification of the order to the extent of it directing deposit of the initial amount by the Applicants for meeting the charges of the Court Receiver initially. He would submit that directions given by Court to Original Applicants - Defendant Nos. 2, 3 and 4(a) to deposit the initial amount of charges be revisited and modified by this Court and fresh directions be given to all parties to the suit proceedings to deposit the said charges equally or according to their shares / proportion claimed at this stage on the

following grounds:- (i) that admittedly the subject properties belong to / are owned by the suit partnership firm hence they ensue to the benefit of all parties; (ii) that Plaintiff, Defendant No. 1(a), 1(b), 2, 3, 4(a), 49(b)(i) to (iv), 4(c) and 6 are undisputedly entitled to a proportionate share in the suit firm and thus share in the said properties; (iii) that Plaintiff being *dominus litus* infact infact should be directed to provide further and better details of the said properties and only if he fails, Court Receiver should then be directed to proceed with investigation and incur any expenses; (iv) that as directed the expenses incurred by Court Receiver to investigate and ascertain the status of the disclosed properties be recovered from all parties to the suit proceedings; (v) that directing only the original Applicants (Defendant No. 2, 3 and 4(a) to deposit the charges is prejudicial to their rights since the said properties belong to the suit firm in which all parties are stake holders and; (vi) that substantial amounts are held by the Court Receiver as per Exhibit "F" to the Interim Application in the suit account from which the Court Receiver can be reimbursed. He would submit that Court Receiver be directed to recover the expenses from the suit account than directing the Applicants to deposit the expenses to the Court Receiver for further investigation and ascertaining the status of the disclosed properties.

4. He would on the basis of the aforesaid submissions persuade the Court to modify the directions for deposit as contained in the order

dated 02.11.2023 accordingly.

5. Plaintiff has opposed the Interim Application by filing Affidavit in Reply dated 21.07.2025. Mr. Ambekar appears for the Plaintiff and would contend that the Application seeking review of the order dated 02.11.2023 is hopelessly time barred. He would submit that it is filed after a delay of 508 days by explaining the delay due to a fire which broke out in the residence of the Applicant i.e. Defendant No.2 in December 2023 which prevented the Applicant from filing the Interim Application earlier. He would submit that the said reason is as vague and insufficient as it can be, that it does not bear any substantiation and no particulars to justify the same save and except to make a bald averment in the Interim Application. He would submit that Applicant i.e. Defendant No.2 is infact seeking to recall the order under the garb of seeking its modification which is impermissible because he himself has given his consent to the passing of the order which was succeeded by his own readiness and willingness to pay the expenses to the Court Receiver in writing by Advocate's letter dated 30.01.2024 after passing of the said Order. He has drawn my attention to the letter dated 30.01.2024 addressed by Advocate for Defendant Nos. 2, 3 and 4(a) to the Court Receiver in this regard which records the consent, readiness and willingness of the Applicant to deposit the said amount, therefore he would submit that this Interim Application is an abuse of the due process of law and deserves to be

dismissed with exemplary costs.

6. In rejoinder Mr. Siganporia has drawn my attention to the Affidavit in Rejoinder dated 06.08.2025 and Additional Affidavit dated 13.08.2025 and vehemently contended that the parties to the suit proceedings have different shareholdings in the share and Profit and Loss of the suit firm which have been revised over time. He would contend that Plaintiffs' legal heirs have a 45% shareholding whereas all Defendants are entitled to 55% shareholding in different proportions and denominations (table) pursuant to demise of the original partners of the suit firm and therefore it is incumbent upon all parties to the suit proceedings to be called upon to deposit the said amount as directed in the order dated 02.11.2023 according to their existing proportionate share in the partnership firm rather than directing only the Applicants [Defendant Nos. 2, 3 and 4(a)] only to deposit the expenses with the Court Receiver.

7. I have perused the record of the case and the pleadings. It is *prima facie* seen that on the date of passing of the order dated 02.11.2023 Defendant No.2 namely Applicant did not object to the said Order being passed since it was passed after hearing all the parties. That apart the ground on which present Interim Application is filed and agitated was open to the Defendant No.2 to be argued at the time of passing of the said Order but it was not availed of by him. The

Order was passed on 02.11.2023, however immediately thereafter on 30.01.2024 Advocate for Defendant Nos. 2, 3, 4(a) addressed a letter to the Court Receiver ascertaining and stating that the Court Receiver proceed to investigate and file necessary report as directed and they are always ready and willing to make the payment of deposit for carrying out the investigation as directed by the Court. What is intriguing and shocking is that there is substantial delay in filing the present Interim Application and the reason for the delay is an incident of fire which took place at 14.10 hours on 23.12.2023 in the residence of Defendant No.2. That is the reason attributable to the delay of more than 508 days in filing the application which is *prima facie* unbelievable in view of the letter dated 30.01.2024 addressed by Advocate Rahul R. Singh on behalf of original applicants i.e. Defendant Nos. 2, 3, 4(a) expressing readiness and willingness to deposit the requisite amount for carrying out investigation and survey of the properties, which was addressed to the Court Receiver. That apart there is vehement opposition by the Plaintiff and equally Defendant No. 4b(i) to 4b(iv) with respect to the proportion of their shares as alleged by the Applicant i.e. Defendant No. 2 in the Additional Affidavit which is filed. They strongly oppose and object to the same Advocate for Defendant No. 4b(i) to 4b(iv) has argued that the shares of the parties are to be determined in the Partition Suit and Applicant has no right to estimate the said shares at an interim stage without

adjudication.

8. In view of the above admitted facts that Defendant No.2, 3 and 4 (a) i.e. the Original Applicants having confirmed and consented and shown their readiness and willingness to deposit the initial amount as directed by the Court, in my opinion the Order dated 02.11.2023 does not call for any interference whatsoever much less that it should be recalled or modified. It is seen that the order was passed after hearing Mr. Chavan learned Advocate Defendant Nos. 2, 3, 4(a) to (c) and now it is found that review of the said order is preferred by one of the 4 original Applicants through a different Advocate altogether. Mr. Siganporia *prima facie* is not aware about the hearing which took place in the court leading to passing of Order dated 02.11.2023. If the original Applicants had to object to the said Order as it was passed they could have approached the Court forthwith but they did not choose to do so, rather they accepted the said Order and showed their readiness and willingness to abide by the said order and addressed letter dated 30.01.2024 to the Court Receiver. Therefore there is no cogent reason coming forth from Defendant No.2 who was one of the original Applicant out of the 3 Applicants to consider the case of revisiting the said Order. Hence no *prima facie* case for modification and review much less for recall is made out by the Applicant – Defendant No. 2.

9. What has resulted in filing of this Application is the delay. The Court Receiver Report No.106 of 2025 dated 28.02.2025 reported non compliance of the order passed by this Court. The present Interim Application in my opinion is nothing but a clear after thought by the Defendant No.2 in deliberately and willfully avoiding compliance of the Order passed by this Court to which the Applicant along with other co - Defendants had consented to. That apart the original Application was at the behest of the original 3 Defendants and therefore after hearing all parties and more specifically Mr. Chavan appearing for the original Applicants the order dated 02.03.2023 was passed by this Court.

10. For all the above reasons the Interim Application No. 4128 of 2025 fails and is dismissed.

11. Interim Application is disposed of.