

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

SUIT NO.3102 OF 1986

Kabir Real Estate Pvt. Ltd.

....Plaintiff

V/s.

M/s.Kabir Woolen Mills & Ors.

....Defendants

**WITH
SUIT NO.2807 OF 1990**

Sunil Jugalkishore Gupta

(As the Legal Heirs and representatives
of Mrs.Santosh Jugalkishore Gupta)

....Plaintiff

V/s.

M/s.Kabir Woolen Mills & Ors.

....Defendants

Mr.Hemant Mehta i/b Mehta & Co. for plaintiff and for defendant no.7 in
Suit 2807/1986.

Mr.Jay Vakil i/b MDP and Partners for plaintiff in S/2807/1986 and for
defendant no.6A in S/3102/1986.

Mr.Vishal H. Mehta i/b MV Law Partners for defendant nos.6B in
S/3102/1986 and for defendant no.8 in S/2807/1990.

Ms.Deepti Panda i/b M/s.Thakore Jariwala and Associates for defendant
no.7 in Suit 3102/1986 and for defendant No.7 in 8 in S/2807/1990.

Mr.Atharva Dandekar, Ms.Hiral Thakar and Mr.Ishan Patkar present in
Court.

CORAM : K.R.SHRIRAM, J.

DATED : 18TH JULY, 2017

P.C.

SUIT NO.3102 OF 1986

1 Ms.Panda at the outset, points out that in the order dated 3rd July
2017, in paragraph 2, the Court observed that “....*Defendant has filed*

written statement, issues have been framed of which 1st issue is on the jurisdiction.....” is not correct because no issue of jurisdiction was framed. Ms.Panda states that since the Court has rejected the notice of motion taken out on behalf of defendant no.7, under Order VII, Rule 10 of Code of Civil Procedure, 1908 for rejection of plaint, an issue be also framed on jurisdiction. Ms. Panda states that issue of jurisdiction has also been raised in the written statement.

2 By consent the following additional issue is framed as the 1st issue :

(i) *Whether the plaintiff proves that this Court has jurisdiction to receive, try and dispose of this suit?*

All the issues are, therefore, re-numbered and for sake of convenience reproduced hereinunder :

(i) *Whether the plaintiff proves that this Court has jurisdiction to receive, try and dispose of this suit?*

(ii) *Whether the plaintiffs prove that the Suit Agreements dated 18th February, 1982 and 25th February 1982 are valid, subsisting and binding on the Defendants and that they are entitled to a declaration to that effect ?*

(iii) *Whether the Plaintiffs prove that they are ready and willing to perform their obligations under the suit Agreements dated 18th February 1982 and 25th February 1982 ?*

(iv) *Whether the Plaintiffs are entitled to specific performance of the Suit Agreements dated 18th February 1982 and 25th*

February 1982 ?

(v) *Whether the Plaintiffs prove that they are entitled to a decree against Defendant Nos.6 and 7 to join Defendant Nos.1 to 5 in the transfer, convey and any other suit property in terms of prayer clause (b) ?*

(vi) *Is the issue No.3 is answered in the negative, then :-*

(a) Whether the Plaintiffs prove that they are entitled to compensation in the sum of Rs.1,82,70,748.90 with interest @ 18% p.a. from the date of filing suit till payment and/or realization ?

(b) Whether the Plaintiffs prove that Defendant Nos.1 to 5 are liable to refund/pay the sum of Rs.25,97,696/- as prayed for by them in the Plaint, together with interest on Rs.13,50,000/- @ 18% p.a. from the date of the suit till payment and/or realization ?

(c) Whether the Plaintiffs prove that the suit property described in the Schedule annexed as Exhibit-A to the Plaint is duly and validly charged for the due repayment of amounts claimed by them from the Defendant nos.1 to 5 as stated herein above ?

(d) Whether the Plaintiffs are entitled to enforce the charge referred to in (c) above ?

(vii) Whether the Suit and reliefs claimed therein are barred by the laws of limitation ?

(viii) What reliefs and order ?

3 The counsel for plaintiff Mr.Mehta states that the plaintiff's Director Mr.Suresh Vallabhji Vora is present in Court.

Name : Suresh Vallabhji Vora (PW-1)
Age : 74 years.
Occu. : Business

Office Add.: Unit No.201, “Unique Centre”, Plot No.15,
Waterfiled Road, Bandra (West),
Mumbai – 400 050.

ON S.A.

Further examination in chief of PW-1 by Mr.Mehta for Plaintiff :

Per Witness : I say that I have affirmed an affidavit dated 4th September 2015 and identify my signature.

P.C.: The affidavit is taken on record and marked **Exh.P-1/1**.

The plaintiff has also filed a compilation of 19 documents and the serial number below relate to the index to the compilation of documents :

- 1 : **Exh.P-1/2**
- 2 & 3 : **Exh.P-1/3** and **Exh.P-1/4**, respectively.
- 4 : **Exh.P-1/5**.
- 5 & 6 : **X-1** and **X-2** for identification, respectively.
- 7 : **Exh.P-1/6**, subject to proof of truth of contents.
- 8 to 19 : **Exh.P-1/7** to **Exh.P-1/18**, respectively.

4 Ms.Sara Shaikh, an advocate practicing in this Court is appointed as Commissioner to record evidence in the matter. The fees and administrative expenses of the Commissioner, typing charges, venue expenses, if any, to be shared equally between defendant no.1 and defendant no.7 and the same will be costs in the suit.

5 The Commissioner to complete recording of evidence of PW-1 by 30th September 2017.

The Commissioner to fix minimum two/three dates per session for cross-examining PW-1. If the Advocates do not respond to the Commissioner's communication within 48 hours of receiving the communication suggesting the dates, the Commissioner to go ahead and fix the dates and the Advocates and the witness shall make themselves available on those dates. If the witness or the advocates for the plaintiff do not turn up, then the evidence of the witness should be closed and if the Advocates for the defendants do not turn up, then the cross-examination of PW-1 should be closed as 'no cross'. Once the dates are fixed, the Commissioner not to grant adjournment to any party on any ground whatsoever unless the situation is so grave that it warrants an adjournment and it should be for reasons recorded.

Liberty to apply.

6 As regards Suit No.2807 of 1990, stand over to 21st August 2017 at 3:00 p.m. for marking of documents/receiving evidence on which date, plaintiff's first witness shall remain present in Court.

(K.R. SHRIRAM, J.)