

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

**SUIT NO. 3102 OF 1986
ALONG WITH
SUIT NO. 2807 OF 1990**

Kabir Real Estate Pvt. Ltd. .. Plaintiff
Vs.
Kabir Woolen Mills and Ors. Defendants

Mr.S. Nagvadaria i/b M/s. Mehta and Co. for plaintiff in S/3102/1986
and for defendant No.7 in S/2807/1990.

Mr. Vishal Mehta I/b. M/s. MV Law Partners for defendant Nos.6B in
S/3102/1986 and for defendant No.8 in S/2807/1990.

**CORAM : N.J. JAMADAR, J.
DATE : 28th JANUARY 2021**

P.C.

1. Heard the learned counsels for the parties.
2. The learned counsel for the plaintiff submits that the plaintiff had initially filed affidavit in lieu of examination in chief of its first witness Suresh Vallabhji Vora, who passed away before his cross examination commenced. The plaintiff has also filed compilation of documents, which have already been marked. After the demise of Suresh Vora, the plaintiff has filed affidavit in lieu of examination in chief of Mr. Sundeep Jugalkishore Gupta.
3. The documents have already been marked.
4. In the circumstances, further examination in chief of the plaintiff's first witness is not warranted.

5. The cross examination of Mr. Sundeep Jugalkishore Gupta be recorded on commission.

6. Mr. Mayank Bagla, an Advocate practicing in this Court is appointed as Commissioner and is requested to record the cross-examination of the plaintiff's witness within a period six weeks.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

(b) All cross-examination shall be conducted strictly in question and answer form.

(c) The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the Court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.

(d) Liberty to the parties as also to the Commissioner to apply in case of difficulty.

(e) All re-examination will be conducted only in Court.

(f) Costs of the commission shall be borne equally by the parties.

(g) Parties shall also pay costs of Rs.500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since

these clerks attend the commission in addition to their duties and outside their normal working hours.

(h) The Commissioner shall not permit any application for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavailability.

7. Stand over to 11th March 2021.

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8. The learned counsel for the defendants submits that the suit has been stayed by the Appeal Court by order passed in Appeal No.102 of 2017 on 3rd September 2018. The suit shall not be listed till further orders.

[N.J. JAMADAR, J.]