

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

NOTICE OF MOTION NO.1213 of 2015
ALONGWITH
NOTICE OF MOTION (L) NO.2119 OF 2015
IN
SUIT NO.2807 OF 1990

Sunil Jugalkishore Gupta & Anr.	...	Plaintiffs
Vs.		
M/s. Kabir Woollen Mills & Ors.	...	Defendants

Swapnil Bangar, Adv. a/w. Mr. Medhavin M Bhatt, Adv. a/w. Vishal H Mehta, Adv. i/b. M/s. M V Law Partners for plaintiff No.1b.
Hemant Mehta, Adv. i/b. Mehta & Co. for defendant No.7.
F Bharucha, Adv. i/b. Kanga & Co. for defendant Nos.1, 3, 4a, 4b & 5.
Tushar Kadam, Adv. i/b. MDP & Partners for plaintiff No.1 in NMS No.1213 of 2015.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 7th August, 2015.

P.C. :

1. These Notices of Motion are taken out by plaintiff No.1a and 1b essentially against one another for the transposition of one of the parties, for setting aside order of dismissal and restoration of the suit against the defendants.
2. The suit has been dismissed on 7th March, 2014.
3. Counsel on behalf of defendant Nos.1 to 5 states that the suit property has been disposed of by defendant Nos.1 to 5 after the dismissal of the suit.
4. The plaintiff No.1a and 1b are brothers at dispute with one

another. Plaintiff Nos.1a and 1b are not represented by one advocate. One of the plaintiffs would be required to be made a party defendant in the suit.

5. It is argued that if the other plaintiff would settle the suit without the knowledge and consent of the plaintiff who was transposed as defendant it would cause such plaintiff serious prejudice.

6. Hence following common order is passed in the above Notices of Motion.

1. The order of dismissal of the suit shall be set aside and the suit restored to file upon both plaintiffs paying defendant Nos.1 to 5 Rs.10,000/- each within two weeks from today. If the suit is restored to file the plaintiff No.1b shall be transposed as defendant No.8. It is clarified that if plaintiff No.1a settles the suit with any of the defendants it shall be with notice to defendant No.8.
2. Plaintiffs have not filed their affidavit of evidence as also documents. The plaintiff No.1a who shall be the sole plaintiff shall file his affidavit of evidence as also documents within two weeks of the suit being restored.
3. The suit is adjourned to 10th September, 2015 for considering admissibility of the documents of the plaintiff.

(ROSHAN DALVI, J.)