

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

NOTICE OF MOTION (L.) NO.2134 OF 2015
IN
SUIT NO.3102 OF 1986

Kabir Real Estate P. Ltd. ... Plaintiff
Vs.
M/s. Kabir Woollen Mills & Ors. ... Defendants

Kamal Khata, Adv. a/w. Hemant Mehta & Co. for plaintiff.
Mr. Medhavin M Bhatt, Adv. a/w. Mr. Vishal Mehta, Adv. i/b. M/s. M
V Law Partners for defendant No.6B.
Tushar Kadam, Adv. i/b. MDP & Partners for defendant No.6A.
F Bharucha, Adv. i/b. Kanga & Co. for defendant Nos.1, 3, 4a, 4b & 5.

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

P.C. :

1. The suit has been dismissed on 7th March, 2014. The plaintiff had deposited Rs.12.5 lacs in cash and had given a guarantee of Rs.12.5 lacs at the time the appeal from the order in the Notice of Motion taken out in the suit was disposed of. The suit has remained dismissed for 15 months. Defendant Nos.1 to 5 have made an application for withdrawal of the amount deposited on the ground that they have sustained prejudice by the injunction order which is suffered by them since 9th January, 1991.

2. It is seen that the suit remained on board from 1986 and came to be disposed of for want of prosecution and want of appearance of the plaintiff in 2014. The defendants would rightly be entitled to claim damages for the injunction suffered. Defendant Nos.1 to 5 could not dispose of the suit property pending the suit.

Counsel on behalf of defendant Nos.1 to 5 states that they have disposed of the suit property after the suit was dismissed and claim the damages for the injunction suffered.

3. The plaintiff has applied for restoration of the suit in the above Notice of Motion. In the interest of justice the plaintiff is entitled to prosecute the suit but on payment of costs.

4. Hence the following order :

1. Upon the plaintiff paying Rs.20,000/- to defendant Nos.1 to 5 within two weeks from today, the Notice of Motion of the plaintiff shall stand granted in terms of prayers 'a' and 'b'.
2. The suit shall then stand restored to file.
3. If costs are not paid as aforesaid the suit shall stand dismissed.
4. If the suit is restored to file, defendants Nos.1 to 5 shall not withdraw any amount at present. If the suit stands dismissed, defendant Nos.1 to 5 shall be permitted to withdraw all the amounts standing to the credit of this suit with all accrued interest thereon.
5. The plaintiff has not filed affidavit of evidence as also the documents. If the suit is restored to file, the plaintiff shall file affidavit of evidence and documents within two weeks thereafter.
6. The suit would then stand adjourned to 10th September, 2015 for considering admissibility of the documents of the plaintiff.
7. Notice of Motion is disposed of accordingly.

(ROSHAN DALVI, J.)