

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

NOTICE OF MOTION NO.152 OF 2016

IN

SUIT NO.3102 OF 1986

Anil Kumar Soni

....Applicant
(Org.Defendant no.7)

IN THE MATTER BETWEEN :

Kabir Real Estate Pvt. Ltd.

....Plaintiff

V/s.

M/s.Kabir Woolen Mills & Ors.

....Defendants

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

Mr.Jay Vakil i/by MDP and Partners for plaintiff in Suit 2807/1986.

Mr.Medhavin Bhatt i/by MV Law Partners for defendant nos.6B and for defendant no.8 in Suit 2807/1990.

Ms.Deepti Panda a/w Mr.Ganesh Ambekar i/by M/s.Thakore Jariwala and Associates for defendant no.7 in Suit 3102/1986. Applicant in NMS 152/2016 and for defendant no.8 in Suit 2807/86 and for applicant in NMS 164/2016.

**CORAM : K.R.SHRIRAM,J
DATE : 3.7.2017**

P.C.:-

1 Today the suit is for admission/denial of documents. The plaintiff's 1st witness was to step into the witness box for taking his evidence which is already filed on record and also mark the documents relied upon by the plaintiff. Mr.Mehta appearing for the plaintiff tenders a certificate from a Doctor stating that the witness is under going dialysis and the dialysis takes place on Monday,

Wednesday and Friday. Mr.Mehta therefore, requests that some other date be given preferably Tuesday or Thursday.

2 At this stage, Ms.Panda appearing for defendant no.7 states that defendant no.7 has taken out a Notice of Motion under Order 7 Rule 10 for return of the plaint on the ground that this Court does not have jurisdiction. It has to be noted that this Court had granted leave to the plaintiff to prosecute the suit under clause-12 of the Letters Patent. That leave was granted in 1986. Defendant has filed written statement, issues have been framed of which 1st issue is on the jurisdiction and plaintiff's evidence is also on record with compilation of documents. After 31 years for a defendant to take out such a Notice of Motion smacks of dishonesty. It is quite obvious that the attempt is only to delay the trial of the suit.

Notice of Motion therefore, dismissed.

3 Stand over to 18.7.2017 at 3.00 P.M. at which time the witness shall remain present in Court.

NOTICE OF MOTION NO.164 OF 2016

1 An identical Notice of Motion No.164 of 2016 has been taken out by defendant no.6 in Suit No.2807 of 1990. Defendant

no.6/applicant was the applicant in Notice of Motion No.152 of 2016.

2 Though this Notice of Motion is not listed, by consent of parties, is taken up for hearing.

3 For the same reasons for which the Notice of Motion No.152 of 2016 is dismissed, this Notice of Motion also stands dismissed.

(K.R.SHRIRAM,J)