

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 3152 OF 1995**

Control Print (India) Ltd	...Plaintiff
<i>Versus</i>	
Cab Machines SA	...Defendant

Mr Cherag Balsara, with DV Deokar, i/b M/s. Parimal K Shroff & Co., for the Plaintiff.

**CORAM: G.S. PATEL, J
DATED: 5th December 2018**

PC:-

1. The suit is undefended. The 1st Defendant is a Swiss company that has since been wound up. The 2nd Defendant is one of its directors. The suit was for a declaration that an agency agreement between the Plaintiff and the 1st Defendant was valid, subsisting and binding and, more significantly for the purposes of present decree, in prayer (c), that the suit be decreed jointly and severally against the Defendants in the amount of Rs.7.24 crores as damages in lieu of specific performance.

2. I notice from the Court record that the Defendants appeared at the hearing of the Notice of Motion. They thus entered appearance in the suit. They never filed a Written Statement and the suit was then transferred to the list of undefended suits. It is listed

today for disposal as undefended suit under Rule 89 of the Bombay High Court (Original Side) Rules.

3. The decree for specific performance of the agency agreement is clearly not possible, although the Plaintiff is entitled to it, in view of the winding up or liquidation of Defendant No. 1 which is fairly stated by Mr Balsara for the Plaintiff. Defendant No. 2 was joined as a director of Defendant No. 1. However, it is clear that but for the liquidation, the Plaintiff would have been entitled to a decree for specific performance. Since that decree cannot, for the aforesaid reasons, be granted, the Plaintiffs are entitled to a decree in damages in lieu of specific performance in terms of prayer clause (c) with further interest on the amount awarded at the rate of 12% per annum from the date of the suit till payment or realization.

4. The suit is decreed with costs. The costs will not carry interest.

5. The Plaintiff had filed an Affidavit in lieu of examination-in-chief of Basant Kabra as also a Compilation of Documents. The Compilation is taken on record and marked **Exhibit "P1"** in evidence. The original documents, if any, are to be returned to the Plaintiffs in accordance with Rule 306 of the Bombay High Court (Original Side) Rules and upon these being substituted with authenticated photocopies.

6. Drawn up decree is expedited.

7. Mr Balsara states that pursuant to an interim order dated 24th June 1987, the Defendants deposited an amount of Rs. 30 lakhs with this Court. Liberty to the Plaintiffs to withdraw the amount deposited with all accrued interest. Upon withdrawal of the amount, the Plaintiffs will get the decree marked satisfied to the extent of the amount withdrawn.

(G. S. PATEL, J)