

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9436 OF 2013**

Janak Dulari Raghuvir Kumar Giri ..Petitioner

Vs

Dival Devji Wadkar and Ors .. Respondents

Ms. Bhagyashre P. Jakhade, Advocate for Petitioner.
Mr. Rajiv J. Mane, Advocate for Respondents no. 11 and 12.

CORAM : R.G.KETKAR,J.
DATE : 26/06/2015

PC:

1. Heard Ms. Bhagyashre Jakhade, learned counsel for the petitioner and Mr. Raive Mane, learned counsel for respondents no.11 and 12. Office remark shows that rest of the respondents are duly served. However, none appears on their behalf.
2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 10.2.2012 passed by the learned Judge, City Civil Court, Dindoshi, Borivali, Goregaon, Mumbai in Chamber Summons No.951 of 2006 in S.C. Suit No.1589 of 1985. By that order, the learned trial Judge dismissed Chamber Summons taken out by the petitioner, hereinafter referred to as "plaintiff".
3. The learned trial Judge basically rejected Chamber Summons on the ground that in affidavit in support of Chamber Summons, nowhere the plaintiff had given the date of death of

defendant no.4. The affidavit also does not set out whether the Chamber Summons is taken out within limitation or not. As it is not clarified whether the Chamber Summons is taken out within the period of limitation, there is also no explanation for not taking proceedings within time.

4. Ms. Jakhade submits that the plaintiff has taken out the Chamber Summons for deleting the names of defendants no.1,4,7 and 10 and for adding the names of respondents on record as legal heirs of defendant no.4. She states that the Chamber Summons for bringing legal representatives of defendant no.1 is allowed. As far as defendants no. 7 and 10 are concerned, they died leaving behind no heir. The plaintiff, therefore, intends to delete defendants no.7 and 10. She further states that within two weeks from today, she will file fresh affidavit in support of the Chamber Summons giving all details as regards defendant no.4.

5. In view thereof, since the petitioner is now ready and willing to give the details as regards death of defendant no.4, in my opinion, interest of justice would be subserved by setting aside the impugned order thereby restoring the Chamber Summons. Hence, Petition is disposed in the following terms:

(a) The impugned order dated 10.2.2012 is quashed and set aside and Chamber Summons No. No.951 of 2006 in S.C. Suit

No.1589 of 1985 is restored. The plaintiff shall file fresh affidavit in support of the Chamber Summons within two weeks from today. All contentions on merits of the Chamber Summons are expressly kept open. Order accordingly.

(R.G.KETKAR, J.)