

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.737 OF 2015

IN

SUIT NO.443 OF 2013

...

Mr.Rajdai Nandlal Shah

...Plaintiff

v/s.

Mahendra Mangruram Gupta & ors.

...Defendants
(Applicants)

...

Mr.V.Y.Sanglikar for the Plaintiff.

Mr.S.M.Railkar for Defendants Nos.1 &2/Applicants.

...

CORAM : A.A. SAYED, J.**DATED : 16 JUNE 2015****P.C.**

This Chamber Summons is taken out by Defendants Nos. 1 & 2 to recall the conditional order dated 24 July 2014 passed by the Prothonotary & Sr.Master and to take the Written Statement on record by condoning delay of one year & 84 days.

2. I have perused the affidavit-in-support of the Chamber Summons. The explanation for the delay is found in paras 1 & 2 thereof. Defendants Nos. 1 & 2 have, interalia, also averred that due to oversight their Advocate did not remain present before the Prothonotary & Sr.Master. The Plaintiffs have filed a reply to the Chamber Summons interalia contending that no sufficient cause has been made out to condone the delay.

3. It is not in dispute that Defendants Nos. 1 & 2 had participated in the proceedings at the interlocutory stage and had filed an appeal in this Court and also an SLP in the Supreme Court against the order of this Court. Considering the facts and circumstances, I am satisfied that Defendants Nos.1 & 2 ought to be granted an opportunity to defend the suit. The Defendants Nos. 1 & 2 cannot be said to have been completely negligent in the matter, as they were prosecuting the proceedings at the interlocutory stage right upto Supreme Court.

4. In the circumstances and in the interest of justice, the following order is passed:

- (i) The Chamber Summons is allowed in terms of prayer clauses (a), (b) & (c), subject to costs of Rs.15,000/- to be paid by the Defendants Nos.1 & 2 to the Plaintiff within a period of three weeks from today.
- (ii) Written Statement to be filed within four weeks, subject to payment of costs as stipulated above.

5. The Chamber Summons is disposed of accordingly.

(A.A. SAYED, J.)