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

APPEAL No. 930 OF 2002
IN
CHAMBER SUMMONS No. 1526 OF 2001
IN
SUIT No. 1838 OF 1997

Mohamed Aquil Modmed Ismail. Qureshi & Ors. ... Appellants
(Orig. Plaintiffs)

Vs.

Abdul H. Mohmamedali Gandhi & Ors. ... Respondents
(Orig. Defendants)

Mr. Nikhil Chandania a/w Ms. Priyanka Desai i/b S. Ashwinikumar & Co., for the Appellants.

Mr. Roshan D'Souza i/b Flavia Legal, for Respondent No. 3.

Ms. Mahek Bookwala – Shetty i/b M/s. Thakore Jariwalla & Associates, for Respondent No. 4.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : JUNE 8, 2015

PC.

1. Heard the learned counsel appearing on behalf of the Appellants and the counsel appearing on behalf of the Respondents. Appellants are aggrieved by the order dated 15.7.2002 passed by the learned Single Judge. By the said order, learned Single Judge was pleased to dismiss the chamber summons taken out by the Appellants for brining legal heirs of Defendant No. 1 on record. There was a delay of about 11 months in taking out the chamber summons. First

chamber summons, which was filed by the Appellants was after 10 months, which was withdrawn, and thereafter second chamber summons was filed after one month. Learned Single Judge has held that delay has not been sufficiently explained.

2. On the other hand, learned counsel appearing on behalf of the Appellants had taken a ground that since settlement talks were going on between the parties, Appellants / original Plaintiffs did not file chamber summons. In our view, the reason which is given in the affidavit in support of the chamber summons is a sufficient ground for condoning the delay of 11 months.

3. The learned counsel appearing on behalf of the Respondents *inter alia* submitted that since one of the partners had died, the entire suit has abated. In our view, the said submission will have to be considered in the main suit.

4. In our view, the reason given by the learned Single Judge in dismissing the chamber summons is based on hyper-technical grounds, and more particularly, after plausible explanation for the delay was given by the Appellants / Plaintiffs in taking out chamber summons. Even otherwise whenever the pleader / advocate appearing for Defendant No. 1 comes to know of the death of Defendant No.1, a duty is cast on the said pleader / advocate to inform the Court about it and the Court is expected to inform the Plaintiffs about death of Defendant No. 1, under Order 22, Rule 10-A of the Civil Procedure Code, 1908. Order 22, Rule 10-A of the C. P. C. reads as under:

“10-A. Duty of pleader to communicate to Court death of a party – whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.”

In our view, there is no material on record to show that advocate appearing on behalf of the Defendant No. 1 had specifically informed the Plaintiff about the death of Defendant No. 1.

5. For all these reasons, the delay caused in taking out chamber summons is condoned and the order of abatement is set aside and Suit No. 1838 of 1977 is restored to the file. The Appellants / Plaintiffs shall bring the heirs of Defendant No. 1 on record within four weeks from today. All other contentions of the Respondents / Defendants are kept open. They are at liberty to file written-submission within 8 weeks from today. Appeal is allowed in the aforesaid terms.

Sd/-
[B. P. COLABAWALLA, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath