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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.994 OF 2015

IN

SUIT NO.2028 OF 2015

Kishandas Bhagwandas Nagpal

...Applicant/Plaintiff No.1

In the matter of

Kishandas Bhagwandas Nagpal & Anr.

...Plaintiffs

vs

M/s. Karamchand Thadaram And Ors.

...Defendants.

.....

Mr. P.N. Modi, Senior Advocate, a/w. Mr. Neville Laskari, i/b. Rumi Mirza, for the Plaintiffs.

Mr. Sanjay Jain, i/b. IC Legal, for Defendant/Respondent Nos.1 and 3.

Mr. Farhan Dubash, a/w. Harshal Manik and Ms. Saloni Shah, i/b. M/s. Rustamji And Ginwala, for Defendant/Respondent No.4.

Mr. Denzil D'mello, for Defendant/Respondent Nos. 8 and 9.

Ms. Akshita Mehta, i/b. M/s. Kishore Thakordas & Co., for Defendant /Respondent No.13.

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CORAM : S.C. GUPTE, J.

DATED : NOVEMBER, 17, 2015

P.C. :

. The Chamber Summons seeks amendment of the plaint by deleting the name of Plaintiff No.2, who is deceased and also deleting the names of Defendant Nos. 3 and 7, who have also since deceased, and impleading their legal heirs in their place.

2. The suit is between family members and concerns a property tenanted by Defendant Nos. 1 and 2. Defendant Nos. 1 and 2 are partnership firms, of which Defendant Nos. 3 to 9 are partners along with the Plaintiffs. It is the Plaintiffs' case that the Defendants have unauthorizedly and without the consent of the Plaintiffs surrendered the suit property to the landlords, namely, Defendant Nos. 10 to 12. Defendant No.13 claims to be a builder and developer in respect of the property claiming through Defendant Nos. 10 to 12.

3. Plaintiff No.2 died on 13 July 2007. Since Plaintiff No.1 is the only heir and legal representative of the deceased Plaintiff No.2, there is no question of bringing any legal heirs on record. The name of Plaintiff No.2 simply needs to be deleted. There can possibly be no objection to the deletion of the name of Plaintiff No.2 from the cause title and making consequential amendments in the body of the plaint.

4. The other amendments sought concern deletion of Defendant Nos. 3 and 7 and impleadment of their heirs as party Defendants. Defendant No.3 died on 19 July 2010, whereas Defendant No.7 died on 30 November 2008. The Respondents object to the impleadment on the ground that there is a substantial delay in making this application for bringing legal heirs on record; that the suit has already abated as against the deceased Defendants; and that there is no explanation for this gross delay.

5. The Plaintiffs' explanation for the delay in applying for impleadment of legal heirs after some delay is that, around the year 2008,

Plaintiff No.1, who was effectively in charge of the legal proceedings, had undergone a bypass surgery and that his routine activities and movements were restricted under medical advice. It is submitted that, subsequently, even in January 2009, Plaintiff No.1 was once again admitted to hospital for a surgery and that considering the medical history, including a major heart ailment, the movements of Plaintiff No.1 were severally restricted. Secondly, it is also submitted that the firm of Advocates engaged by the Plaintiffs also had certain difficulties in attending to work and, as a result, around the year 2011, the firm had discontinued its legal practice and stopped rendering services to its clients, including the Plaintiffs. It is submitted that the Plaintiffs had to make enquiries for appointment of a new Advocate. It is submitted that even after the new Advocate was engaged and filed vakalatnama, in a few months, the widowed sister of Plaintiff No.1 suffered a paralytic stroke losing her mobility and strength, and Plaintiff No.1 had to look after his sister, who was residing with him. It is submitted that around April/May 2013, the sister once again suffered a paralytic stroke and had to be hospitalised. In these circumstances, it is claimed that by reason of the indisposition of Plaintiff No.1 himself as well as his sister, who was residing with him, and also the problem faced by the firm of Advocates attending to the Plaintiffs' work, Plaintiff No.1 was unable to diligently prosecute his many matters pending before different Courts.

6. On the other hand, it is submitted by Mr. Jain appearing for Respondent Nos. 1 and 3 that, Plaintiff No.1, being a close family member, was well aware of the deaths of Defendant Nos. 3 and 7. It is submitted that around the time of his indisposition mentioned by Plaintiff No.1 and also in the face of difficulties faced by the Advocates, there have been quite a few matters, which have been duly prosecuted by Plaintiff No.1 before

different Courts. It is submitted that, in the premises, neither indisposition of Plaintiff No.1 nor the difficulties faced by his Advocates constitute a valid excuse for non-prosecution of the application for impleadment of legal heirs of the deceased Defendants in the present suit. Learned Counsel relies upon judgments of a Division Bench of our Court in the case of **Pestonji D. Zilla vs. Jamshed N. Guzdar**¹ and also judgments of the Supreme Court in the cases of **Union of India vs. Tata Yodogawa Limited**² and **Balwant Singh vs. Jagdish Singh**³ in support of his submissions.

7. Whilst there can be no hard and fast rule on the meaning and content of the term 'sufficient cause' used in the context of condonation of delays, it is clear that the expression pre-supposes a lack of culpable negligence or inaction on the part of the Applicant. Having regard to the averments made by Plaintiff No.1 in his affidavit in support of the Chamber Summons, it does appear that there is a genuine explanation for non-prosecution of all his litigations by Plaintiff No.1 generally during the years 2008 and 2014. These facts do not suggest that there is any culpable negligence or inaction on the part of the Plaintiffs. Even if there is no established case of sufficient cause but some reasonable explanation for the delay, depending on the facts of an individual case and taking an overall view of the matter, the Court would be within its rights to condone the delay. Aggrieved parties in such cases can always be compensated in terms of costs. The present case is one such case, where this Court is of the view that in the facts of the case, the delay should be condoned, while compensating the Respondents with costs.

1 CHS/546-10 dated 27 April, 2010, Coram: D.K. Deshmukh & R.V. More, JJ.

2 (2015) 9 Supreme Court Cases 102

3 (2010) 8 Supreme Court Cases 685

8. In the premises, the Chamber Summons is made absolute in terms of prayer clauses (a) , (b) and (c). The Applicant shall pay the costs of Rs.20,000/- each to Respondent Nos. 1, 3 and 4. Payment of costs shall be condition precedent. The amendments to be carried out and also the costs to be paid within a period of four weeks from today.

9. The Plaintiffs are also permitted to amend the cause title of the Chamber Summons and the Schedule of the Chamber Summons by incorporating the full address of Respondent No.2.

(S.C. GUPTE, J.)