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

CHAMBER SUMMONS NO. 1246 OF 2015
IN
SUIT NO. 304 OF 2004

SBI Home Finance Ltd. ...Plaintiff
vs
Mr Lalit C. Gandhi & Ors. ...Defendants

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Mr Girish Godbole a/w Anupam Surve & V.S.Vengurlekar i/b Crawford Bayley & Co. for the Applicant
Mr Jai Chinai, Sr. Advocate a/w Dr. Birendra Saraf a/w Ms Nafisa Khandeparkar & Ms Monisha Bhangale i/b ALMT Legal for Respondent No.3.

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CORAM : S.C. GUPTE, J.

DECEMBER 16, 2015

P.C. :

This Chamber Summons is taken out by the Applicant - State Bank of India, as an assignee of the suit debt from the original Plaintiff - SBI Home Finance Limited. The latter is an entity promoted by the former. The Applicant as an assignee seeks to prosecute the present suit under Order 22 Rule 10 of the Code of Civil Procedure, 1908, ('CPC'). The Applicant, accordingly, seeks an amendment in the plaint. Besides, being an application under Section 22 Rule 10 of CPC, the present application also seeks to implead the heirs and legal representatives of deceased Defendant No.1 under Order 22 Rule 4 of CPC.

2 Both these requests, that is, applications under Order 22 Rule 10 and Order 22 Rule 4 of CPC are opposed by Respondent No.3 proposed to be joined as a party Defendant in place of deceased Defendant No.1 in addition to other Respondents. The other Defendants to the suit and also other Respondents, who are sought to be joined as Defendants, do not contest the applications.

3 This suit is filed by the original Plaintiff on 17 October 2003. The suit was on the basis of three separate guarantee deeds executed by the original Defendants in favour of the original Plaintiff guaranteeing a loan made available by the latter to Lok Housing and Constructions Limited. Around the time the suit was filed, the principal borrower was covered by a notification issued under the Bombay Relief Undertakings Act. In the premises, the present suit was filed by the original Plaintiff only against the Defendants – guarantors. Whilst the suit was pending, by a registered Deed of Assignment executed and registered in Calcutta, the original Plaintiff assigned several of its debts including the debt forming the subject matter of the suit to the Applicant herein. Presumably, the Applicant kept prosecuting the present suit in the name of the assignor, namely, the original Plaintiff. On 31 March 2009, the original Plaintiff was ordered to be wound up by an order passed by Calcutta High Court on the application of the Applicant herein. The present suit, however, continued to be prosecuted in the name of the original Plaintiff even thereafter. In the meantime, on 23 March 2010, Defendant No.1 died. The Advocates of Defendant No.1 addressed a letter dated 27 June 2014 to the Advocates of the Plaintiff informing the latter about the death of Defendant No.1, enclosing a copy of the death certificate and also communicating the names and particulars of heirs and legal representatives of deceased Defendant No.1. Within thirty days of this communication, the Applicant has filed the present Chamber Summons seeking firstly, as noted above, leave to prosecute the suit as an assignee under Order 22 Rule 10 of CPC and also for bringing the heirs and legal representatives of deceased Defendant No.1 on record under Order 22 Rule 4 of CPC.

4 The application is opposed by Respondent No.3. Learned counsel appearing for Respondent No.3 makes the following submissions:

(1) In the first place, it is submitted that the Applicant, who bases its rights upon a purported Deed of Assignment and Transfer dated 17 February 2004, has not given a full and complete inspection of the purported Deed of Assignment and Transfer to the contesting Respondent but has given only a limited inspection of the same. It is submitted that, in the premises, the Applicant is not entitled to rely upon the document in support of its Chamber Summons;

(2) It is submitted that the original Plaintiff – company having been wound up by the Calcutta High Court, and the Applicant not having sought any leave under Section 446 of the Companies Act, 1956 or brought on record the Official Liquidator, the present application is not maintainable;

(3) It is submitted that the document on the basis of which the Applicant claims its rights as an assignee, namely, the purported Deed of Assignment and Transfer dated 17 February 2004, is not adequately stamped. It is submitted that upon the deed or its copy being brought within the State, it ought to have been stamped within three months of its first receipt in the State. It is submitted that, in the premises, the purported Deed of Assignment and Transfer can neither be relied upon by the Applicant nor acted upon by this Court under Section 34 of the Maharashtra Stamp Act;

(4) It is submitted that there is an unexplained delay in bringing on record heirs and legal representatives of deceased Defendant No.1. It is submitted that the suit has already abated as against the heirs and legal representatives of deceased Defendant No.1 and such abetment cannot be set aside on an application presented beyond the period of limitation.

5 As far as the Respondent's objection to the Applicant's reliance upon the Deed of Assignment and Transfer on account of want of inspection is concerned, it is explained by the Applicant (paragraph 10 of the affidavit in rejoinder) that the original Plaintiff had executed this Deed of Assignment and Transfer, transferring / assigning altogether 53 accounts including the loan account of Lok Housing and Constructions Limited, i.e. the principal borrower, whose debt is guaranteed by the Defendants. It is submitted that the Deed of

Assignment and Transfer together with the relevant schedules with which the contesting Respondent is concerned, has already been given inspection of by the Applicant to the contesting Respondent. The objection regarding non-inspection of the balance portion of the document and particularly the other schedules with which the contesting Respondents are not *prima facie* concerned, has no merit. If one has regard to the document itself, it is clear that several debts, receivables and sums of money specified in paragraph 1 of the first and second schedules to the document, which were owed to the assignor by several borrowers whose names were set out in paragraph 1 of the first and second schedules, were assigned under this document. So also, all benefits, privileges and advantages arising out of or to be derived from the security documents described in paragraph II of the first, second and third schedules to this Deed of Assignment and Transfer were assigned unto to the Applicant as an assignee. The debt of Lok Housing and Constructions Limited is disclosed in paragraph one of the first schedule to this document. The entire paragraph of the schedule containing entries in respect of the assigned debts is disclosed by the Applicant along with the entire body of the Deed of Assignment and Transfer. So also, admittedly inspection is given of these documents to the contesting Respondent. At any rate, at this stage of an order 22 Rule 10 application, the Court is not finally concluding the question of validity or effect of the assignment. Upon an arguable case being made out that there is an assignment of the property forming the subject matter of the suit within the meaning of order 22 Rule 10 of CPC, the Court is bound to permit the assignee to prosecute the suit. The question, namely, whether or not there is in fact a legal and valid assignment in favour of the assignee is a subject matter of the trial in the suit, which the Court is bound to consider at an appropriate stage in the suit. The Applicant has clearly made out *prima facie* that based on an assignment or evolution of interest during the pendency of the suit, it is entitled, by leave of the Court, to continue the prosecution of the suit.

6 Section 446(1) of the Companies Act, 1956 ('the Act') mandates that a suit or legal proceeding against a company, which is ordered to be wound up or of which the Official Liquidator is appointed as a Provisional Liquidator, cannot be

proceeded with except by leave of the Court and subject to such terms as the Court may impose. This restriction obviously operates in respect of suits or legal proceedings **against** the company. Learned counsel for the contesting Respondent submits that even if that be the position, under sub-section (2) of Section 446, the Court is empowered to entertain and dispose of any suit or proceeding both by or against the company in liquidation. He submits that having regard to this provision, it is imperative that the Company Court ordering winding up of a company is informed about a pending suit filed by the company and the Official Liquidator is either brought on record or at any rate informed about the pending suit. No doubt in an ordinary case the Company Court, which orders winding up of the company, is bound to be communicated the factum of a pending suit by the company (In Liquidation) and then the Official Liquidator is bound to be involved with the prosecution of such suit. But the facts of this case are quite peculiar. Here the suit debt is assigned by the company (In Liquidation) prior to the order of winding up to an assignee and the assignee having an option to prosecute the suit in its own name in pursuance of that assignment, nevertheless prosecuted the suit in the name of the assignor and continued to do so even after the winding up order was passed against the assignor company. We are concerned essentially in the present application with an assignment which is executed by the company (In Liquidation) prior to the winding up order. If the Applicant has acquired an interest under a valid and lawful assignment of the suit debt in its favour prior to the date of winding up order, the question of either entertainment and disposal of the suit by the Company Court or involving the Official Liquidator of the assignor company in prosecution of the present suit, does not arise. Learned Counsel for the contesting Respondent submits that technically the assignor company is entitled to contest the assignment claimed by the assignee. That may be so, but it is only a theoretical possibility. In the facts of the present case, it is unthinkable. Thus, there is absolutely no merit in the submission of the contesting Respondent.

7 Section 18 of the Maharashtra Stamp Act provides for stamping of an instrument chargeable with duty executed out of the State. When it is received in the State, such document needs to be stamped within three months of

its first receipt in the State. It is, however, elementary that Section 18 only deals with instruments which are, in the first place, chargeable with duty in the State. The chargeability provision is contained in Section 3 of the Stamp Act. Section 3 provides for changeability of two types of documents: (1) the documents mentioned in schedule I which are executed in the State on or after the date of commencement of the Act and (2) the instruments mentioned in schedule I which are executed out of the State but which relate to any property situate in the State or to any matter or thing done or to be done in the State and are received in the State. The present suit is in respect of guarantees for a debt, which the Applicant claims is assigned in the Applicant. The guarantee documents are duly stamped. There is no objection to the admissibility of these documents in evidence. What is submitted is that it is the assignment of the debt which relates to a matter or thing done or to be done in the State and the document of assignment is required to be stamped as and when it is received in the State. The instrument of transfer and assignment of the debt is obviously executed outside the State, i.e. in Calcutta, and is adequately stamped according to the applicable law in the State of West Bengal. Both the assignor and assignee have their citus outside the State. What is assigned is a chose in action, which in terms indicates that it was a promise made to the original assignor in Calcutta. The amount under the document is obviously payable in Calcutta (though the Plaintiff has averred in the plaint that the amount is payable in Mumbai). The present suit is maintainable in this Court simply on the basis of the residence and place of business of the Defendants as well as the proposed Defendants within the jurisdiction of this Court. In the premises, *prima facie* it appears that the document may not be chargeable with duty in the State of Maharashtra within the meaning of Section 3 of the Stamp Act. In any event, the document itself is stamped at Calcutta with duty far too in excess of the applicable duty in Maharashtra. There is nothing to show that any differential duty would be payable in Maharashtra on the instrument. Even otherwise, this question need not be finally concluded on this application and can be appropriately left to the trial court to decide. As indicated above, we are simply proceeding on the footing that there is *prima facie* an assignment or devolution of interest in favour of the Applicant during the pendency of the suit and the Applicant must be allowed to prosecute the suit. In the premises, the legality or validity of the assignment from the point of view of claiming rights thereunder, is not something which we are finally determining on this application. In that view of the matter, the application can certainly be allowed subject to a clarification that the questions as to whether or not there is an assignment and whether or not the Applicant is entitled to the reliefs claimed in the suit on the basis of such assignment are kept open, to be agitated in the course of the trial.

8 Lastly, the application is contested on the ground that there is an unexplained delay in filing the present application under Order 22 Rule 4 of CPC for bringing the heirs of deceased Defendant No.1 on record. Learned counsel for the contesting Respondent submits that the Applicant was aware of the death of Defendant No.1. He relies on a letter dated 9 April 2010 addressed by the contesting Respondent to the Applicant offering to settle the debt of deceased Defendant No.1. He submits that even thereafter, there have been communications between the Applicant and the contesting Respondent. It is submitted that, accordingly, it was made known to the Applicant that original Defendant No.1 had expired on 23 March 2010. It is submitted that there is no adequate explanation on record why despite such knowledge, the Applicant has moved the present application under Order 22 Rule 4 of CPC at this belated stage. As far as the letter of 9 April 2010 is concerned, it is the case of the Applicant that the letter has not been traceable with the Applicant. It is submitted that the advocates of deceased Defendant No.1 communicated the fact of death of the deceased along with the particulars of heirs and legal representatives of the deceased only on 27 June 2014 and within thirty days of such communication, the application has been moved. In the case of **Balwant Singh (dead) Vs Jagdish Singh and Ors.**[1], the Supreme Court emphasized that the exercise of judicial discretion vested in the Court under statutory provisions which permit condonation of delay must be on the basis of a sufficient cause. The Court emphasized that the delay should be clearly explained and that such applications cannot be allowed as a matter of right or in a pendantic manner. The applicants for condonation of delay must essentially satisfy the ingredients of a

1 (2010) 8 Supreme Court Cases 685

bona fide and reasonable excuse and only then, would the Court be inclined to condone the delay in filing such applications. It is important to note that even whilst making these observations, the Supreme Court noted with approval earlier dicta of the Court in **Perumon Bhagvathy Devaswom**[2] case. These dicta clearly lay down that the words 'sufficient cause' in Section 5 of the Limitation Act, particularly in the context of an application for bringing legal heirs of deceased Defendant on record, should receive a liberal construction so as to advance substantial justice. What the Court has to see is whether the delay is on account of any dilatory tactics or want of bona fides, deliberate inaction or negligence on the part of the applicant. Merely because despite a communication of the death of the deceased, an application for bringing heirs on record was not preferred by the creditor, it cannot be suggested that there is any dilatory tactic adopted by the creditor or that there is any want of bona fides or any deliberate inaction or negligence on his part. The Supreme Court in the case of **Urban Improvement Trust, Jodhpur Vs Gokul Narain (Dead) by Lrs and Anr.**[3] particularly considered an application for bringing legal representatives of the deceased on record made after the expiry of the limitation period in the context of the requirements of Order 22 Rule 10-A of CPC. The Supreme Court held that under Order 22 Rule 10-A of CPC, whenever a pleader appearing for a party to the suit comes to the knowledge of the death of the party, he has to inform the Court about it and the court thereupon gives notice of such death to the other party and for this purpose the contract between the pleader and the deceased party is deemed to subsist. On the basis of this provision, the Court held that it would be clear that if such information was not given to the Court or to the other party and the Advocate of the Applicant did not have the requisite information, it is permissible to make an application under Order 22 Rule 4 of CPC within thirty days of the knowledge of the death and in that case there is no abetment of the proceedings. In the present case, notice under Order 22 Rule 10(A) of CPC can be said to have been given only on 27 June 2014. In that case, an application under Order 22 Rule 4 of CPC on 14 July 2014 is within time. In any event, as held by the Supreme Court in the case of **Sardar Amarjit Singh Kalra (Dead) by**

2 (2008) 8 SCC 321
3 (1996) 4 Supreme Court Cases 178

Lrs and Ors. Vs Pramod Gupta (Smt) (Dead) by Lrs and Ors.[4], the laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose a fair adjudication on merits of substantial rights. As held by the Supreme Court in that case, a careful reading of the provisions contained in Order 22 CPC would lend credit and support to the view that they were devised to ensure the continuation of the suit and culmination thereof in an effective adjudication and not to retard the further progress of the proceedings. The provisions contained in Order 22 are not to be construed as a rigid matter of principle but must ever be viewed as a flexible tool of convenience in the administration of justice.

9 In that view of the matter, there is no merit in any of the objections. The Chamber Summons is allowed in terms of prayer clauses (a), (aa), (b), b(i) and (c). The amendments to be carried out within a period of three weeks from today.

10 On the application of learned Counsel for Respondent No.3, this order is stayed for a period of four weeks from today. The period granted to the Applicant for carrying out the amendments shall commence after the expiry of four weeks.

(S.C.GUPTE J.)

4 (2003) 3 Supreme Court Cases 272

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/ Order.