

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

**CHAMBER SUMMONS NO. 755 OF 2014
IN
SUIT NO. 1647 OF 2004**

Maharashtra Industrial Development Corporation .. Applicant

In the matter between :

Maharashtra Industrial Development Corporation .. Plaintiff

Vs.

Dabhol Power Company & Anr. .. Defendants

And

1. Ratnagiri Gas Power Private Ltd. & Anr. .. Respondents

Mr.Gaurav Sinha i/b Little & Co. for applicant/plaintiff.

Mr.Ashish Rao i/b M & M Legal Ventures for defendant no.1.

**CORAM : K.R.SHRIRAM, J.
DATED : 29TH JANUARY, 2015**

P.C.

1 This chamber summons is filed on behalf of the plaintiff to add respondent no.1 as defendant no.1A and respondent no.2 be substituted in place of defendant no.2.

2 It is the plaintiff's case that pursuant to an order dated 22nd September 2005 passed by this Court in Suit No.1116 of 2005, the assets of defendant no.1 was transferred to respondent no.1 and pursuant to the State Government's order dated 18th March 2006, the land and the structure has

been transferred and assigned in favour of respondent no.1. It is also stated that respondent no.1 is a lessee of the applicant. The affidavit in support further states that pursuant to a notification dated 4th June 2005 issued under Section 131(1) of the Electricity Act, 2003, with effect from 4th June 2005, all properties, interest in properties, rights and liabilities of defendant no.2 stood vested in the State Government, i.e., State of Maharashtra and pursuant to another notification dated 4th June 2005, the State Government, with effect from 6th June 2005, re-vested all properties of defendant no.2 which stood vested in the State Government to four Government companies including respondent no.2 in accordance with a Transfer Scheme prepared in that behalf. In accordance with the Maharashtra State Electricity Reforms Transfer Scheme 2005, the distribution undertaking of defendant no.2 were transferred to respondent no.2 and in view thereof, the rights and obligations of all persons were restricted to the transferee. The Scheme also provides that all proceedings of whatever nature by or against the Board pending on the date of transfer would continue to be prosecuted and enforced by or against respondent no.2.

3 The respondent nos.1 and 2, though served, have not filed any affidavit in reply. Nobody is appearing even today for them. In the affidavit in reply filed by defendant no.1, defendant no.1 is opposing the chamber

summons on the ground that pursuant to the consent order, which is referred to in paragraph 1 of the affidavit in support, all the assets, i.e., movable and immovable of defendant no.1 were taken over by respondent no.1. Moreover, all the other parties to the suit had agreed to pay all encumbrances in respect of the said properties of defendant no.1 if found due and payable by a Court of competent jurisdiction. In affidavit in reply it is also stated that the plaintiff was informed about this taking over of the assets by respondent no.1. Therefore, the written statement was filed by defendant no.1 in the year 2008 and therefore, the prayer to add respondent no.1 as a party defendant to the suit is barred by limitation. The other defence taken are on merits of the matter.

4 Though defendant no.1 has taken a stand that the claim against respondent no.1 is barred by limitation, in my view, that is a stand which respondent no.2 should be taking and not defendant no.1. The respondents though served, have not filed any reply. From the acknowledgment card annexed to the affidavit of service, it appears that respondent no.1 was served on 26th November 2014 and defendant no.2 was served on 24th November 2014.

5 Therefore, having considered the affidavit in support, the reply on

behalf of defendant no.1 and after hearing the counsels, I find that this is a fit case to allow the chamber summons. The chamber summons is allowed in terms of prayer clauses (a) and (b). It is clarified that no consequential amendment as mentioned at Sr.No.4 of the schedule is permitted. The amendment to be served upon defendant no.1 and including added and substitute defendants with writ of summons within two weeks thereafter.

6 The suit to come up in due course.

(K.R. SHRIRAM, J.)