

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 1178 OF 2015****IN****SUIT NO. 847 OF 2010****WITH****NOTICE OF MOTION NO. 840 OF 2010**

DB Realty Ltd.	...Applicant /Orig. Plaintiff
vs.	
Mahal Pictures Pvt.Ltd. & Ors.	...Defendants
and	
Mrs.Shahida Amrohi	...Respondent

Mr.Sanjay Jain with Nishant Sasidharan, Darshan Mehta i/b. Dhruve Liladhar & Co. for Plaintiff.

Mr.Sunil Gangan with Jayesh Mistry i/b. RMG Law Associates for Defendant No.1.

Mr.Yadunath Bhargavan i/b. R. Bhargavan & Associates for Defendant Nos.3, 4 and 7.

Mr.Rishi Jha i/b. RKM Legal Services for Defendant No.2.

Mr.Ajit Hon i/b. Pramod Patil for Defendant Nos.5 and 6.

CORAM : S.C. GUPTE, J.**18 NOVEMBER 2015****P.C. :**

This chamber summons seeks amendment of the plaint by substituting the name of the Applicant as the original Plaintiff and also to incorporate averments in connection with, and place on record, a Share Purchase Agreement and Power of Attorney in relation to the suit shares executed by the original Plaintiff in favour of the Applicant. The original Plaintiff has died and the Applicant seeks to be impleaded in his place under Order 22 Rule 10 of the Code of Civil Procedure, 1908.

2 The present suit is filed by the original Plaintiff seeking various reliefs concerning 3600 fully paid up shares of Defendant no.1 company. These shares,

which belonged to the original Plaintiff, were purportedly transferred by a Share Transfer Deed dated 18 February 2010. This Deed was in pursuance of an Addendum to the Agreement for Sale of Shares dated 7 February 2010 and an Agreement for Sale of Shares dated 7 February 2008. It is the Plaintiff's case that the Agreement as well as the Addendum were terminated by the Plaintiff and that the purported Share Transfer Deed dated 18 February 2010 was forged and fabricated, and not binding on the Plaintiff. The Plaintiff also seeks various consequential reliefs as a result.

3 It is the case of the Applicant in the present chamber summons that as a result of the Share Purchase Agreement and Power of Attorney executed by the original Plaintiff in favour of the Applicant herein and the Applicant having paid to the original Plaintiff the entire consideration thereunder for purchase of the suit shares, the Applicant has become a beneficial owner of the suit shares though the shares still stand in the name of the original Plaintiff. Since the original Plaintiff died during the pendency of the suit on 21 August 2011, and since pending the suit, but before his death, he had already assigned and transferred the suit shares to the Applicant, the Applicant claims to be entitled to be arraigned in place of the original Plaintiff and continue the suit.

4 The application is opposed by Defendant Nos.3, 4 and 7. It is the case of these Defendants that the will and trust deed of one Kamal Amrohi (since deceased), the predecessor in title of the original Plaintiff, dis-entitled the original Plaintiff from entering into any alleged Share Purchase Agreement and / or the alleged Power of Attorney. It is also submitted that having regard to the Share Transfer Deed between the original Plaintiff and Defendant Nos.5 and 6 herein, the suit shares were already transferred and there was no title left in the original Plaintiff to convey to the Applicant.

5 By the very nature of the defence offered to the present chamber summons, it is clear that what is sought to be challenged in effect is the purported assignment or creation or devolution of interest by the original Plaintiff in favour of the Applicant. At this stage, when the court is considering an application for

bringing on record an assignee or successor-in-interest of the original Plaintiff, who had died during the pendency of the suit, the Court is not expected to carry out a full-fledged inquiry into the legality and validity of the purported assignment or creation or devolution of interest. That is a matter of trial, to be decided after the purported assignee or successor is brought on record and parties are allowed to lead evidence on the matter. At this stage, what the Court is expected to see is whether there is an arguable case of an assignment or creation or devolution of interest in favour of the Applicant and whether the application is within time and if not, whether there is any sufficient cause for condoning the delay. The original Plaintiff executed the purported Share Purchase Agreement and Power of Attorney in favour of the Applicant during his life time, but after the filing of the present suit. The original Plaintiff expired during the pendency of the suit on 21 August 2011. Within the statutory limitation period for bringing the representatives of the deceased Plaintiff on record, the Plaintiff, on 18 November 2011, applied by way of a chamber order, being Chamber Order No.1090 of 2011, for bringing itself on record in place of the deceased Plaintiff. The Applicant has placed on record the various steps it took for service of that chamber order and the affidavit in support thereof on all Defendants including Defendant Nos.3, 4 and 7. It is submitted that whereas the service was accepted by the Advocates of Defendant Nos.1, 2, 5, 6 and 8, the Advocates of Defendant Nos.3, 4 and 7 refused service on the ground that they had been discharged by the Defendants. Thereafter, there was an attempt of personal service on Defendant Nos.3, 4 and 7. The packet of service was, however, returned to the Applicant with the remark "person out of station". Meanwhile, on 8 December 2011, the Advocates of the Plaintiff, under a misconception, informed the office of the Additional Prothonotary & Senior Master of this Court that the chamber order was duly served on all parties. The Additional Prothonotary was, thereupon, pleased to dispose of the chamber order, allowing the amendments sought by the Applicant. Since the chamber order was not, as a matter of fact, served upon Defendant Nos.3, 4 and 7, the Defendants took out a notice of motion, being Notice of Motion No.2285 of 2012, for setting aside the chamber order passed by the Additional Prothonotary. Whilst that notice of motion was pending before this Court, the Applicant herein took out the present chamber summons, seeking amendments. (The Defendant's notice of

motion was eventually, during the pendency of the present chamber summons, allowed by this Court and the chamber order passed by the Additional Prothonotary was set aside.) The Applicant submits that the original chamber order was obtained from the Additional Prothonotary under a misconception that the chamber order was duly served on all the parties and that after realizing that it was not so served, the Applicant has duly moved the present chamber summons and that in the interests of justice, delay, if any, in moving the present chambers summons, be condoned and the Applicant be permitted to amend the plaint in terms of the schedule annexed to the chamber summons.

6 It is submitted by learned Counsel for the contesting Defendants that the chamber order obtained earlier from the Additional Prothonotary was by suppressing facts and was a malafide exercise.

7 There is nothing on record to indicate that there was any deliberate attempt on the part of the Advocates to mislead the Court or to bring an order from the Additional Prothonotary malafide or by suppressing any fact. The Applicant's case that originally the Advocates were under a misconception as to the service and accordingly, made a statement before the Additional Prothonotary about the chamber order having been duly served on all parties, including the opposing defendants, is believable and deserves to be accepted.

8 As far as the assignment itself is concerned, as indicated above, it is not necessary to decide the merits of the assignment at this stage. That can be conveniently left to the trial court to be decided in the course of the trial and after allowing the parties to lead their respective evidence on the issue.

9 In the premises, the chamber summons is allowed in terms of prayer clauses (a) and (a-1). The amendment to be carried out within a period of two weeks from today. It is made clear that all rights and contentions of the parties in respect of the purported transfer and assignment of shares in accordance with the Share Purchase Agreement and Power of Attorney, which form the subject matter of the present amendment, are kept open, to be adjudicated before the

court in the course of the trial.

10 It is needless to add that the substantive suit filed by Defendant Nos.3, 4 and 7 challenging the various transactions executed by the original Plaintiff, including the Share Purchase Agreement and Power of Attorney herein, shall not in any way be prejudiced by the present order. It is also clarified that the application, if any, made by the Defendants for trial of any preliminary issue under Order 14 Rule 2 of the CPC shall not be prejudiced by any observations made by this Court in the present order.

11 The Advocates of the newly substituted Plaintiff shall hand over a copy of the amended plaint to the Advocates of Defendant Nos.3, 4 and 7. Defendants No.3, 4 and 7 waive service. The Advocates of the Plaintiff are also directed to hand over copies of the amended plaint to the Advocates of Defendant Nos.2, 5 and 6. Even these Defendants waive service. The Defendants are permitted to file additional written statements dealing with the amended plaint. Such written statements to be filed within a period of six weeks from today. The accompanying notice of motion, namely, Notice of Motion No.840 of 2010, to come up in due course.

12 The Chamber Summons is disposed of accordingly.

(S.C. Gupte, J.)