

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.465 OF 2015
IN
SUMMARY SUIT NO.2452 OF 2012

Vinod Gurbux Motwani Applicant
(Ori. Deft. no.4)

In the matter between

The State Trading Corporation of India Ltd. Plaintiff

Vs.

Indo Bonito Multinational Ltd. & Ors. Defendants

Mr. Jamshed Ansari, Advocate for the applicant (Original defendant no.4).

Ms. S.I. Shah, Advocate for the defendant (original plaintiff).

Coram : **Smt. R.P. SondurBaldota, J.**

Date : 26th August, 2015

P.C. :

1 This Chamber Summons is taken out by defendant no.4 for condonation of delay of 236 days in filing Vakalatnama in the summary suit and for permission to file the same to enable him to defend the suit. In the affidavit-in-support of the

Chamber Summons, defendant no.4 has taken a specific stand that the Writ of Summons was never served upon him and that he learnt about the pendency of the suit on 15th November, 2014, when his advocate, who is representing him in various other proceedings informed him about the pendency of this suit. Thereafter he claims to have given instructions to the advocate to take appropriate steps for defending the suit. Defendant no.4 also mentions in the affidavit that the suit had been dismissed for default on 9th September, 2014 and was restored to file on 3rd November, 2014. In his affidavit however, defendant no.4 states no particular whatsoever of his claim of knowledge, neither the name of his advocate, nor the manner in which the advocate learnt about the proceedings, nor the date of knowledge of the advocate and nor the date of knowledge of defendant no.4.

2 The plaintiff alleges on the other hand that the writ of summons was served upon defendant no.4 in the year 2012 by registered post A/D. The acknowledgement of receipt of the registered post A/D was received by the plaintiff and produced in the court by way of evidence of service. The writ of summons in the suit was addressed to defendant no.4 at Bungalow No.39, Mysore Colony, 1st Flor, Behind RCF Colony, Chembur, Mumbai – 400 014.

3 Defendant no.4 in his additional affidavit claims that at the relevant time, he was not residing at Mysore Colony and

he was given details of his change of addresses and evidence of his residences. Defendant no.4 states that the premises of Bungalow No.39, Mysore Colony, 1st Floor, Behind RCF Colony, Chembur, Mumbai – 400 074 belongs to his mother where he was residing until the year 2007. He shifted from bungalow to the premises at Bandra in the year 2007 and resided there till the year 2010. As evidence of his residence at Bandra, he relies upon photocopy of his passport. Then from 2010 to 2012, he resided at Dhriya Residency, 10th Floor, at Khar (West), Mumbai in the premises belonging to his wife. In support of the residence at Khar, he relies upon again the photocopy of his passport, bank passbook and insurance policies. Defendant no.4 again claims to have shifted to his residence in the year 2012 to the premises at Bandra where he is residing till date and relies upon photocopy of the third passport.

4 The first passport relied upon by defendant no.4 showing the Bandra address was issued on 29th May, 2007 at Dubai and the passport is valid till 28th May, 2017. The second passport relied upon by defendant no.4 for the address at Khar was issued on 12th June, 2014 with date of validity as 11th June, 2024. The second passport is issued at Mumbai. There is no explanation anywhere for obtaining of second passport during validity of the first passport.

5 The plaintiff has produced copy of Criminal Revision Application No.533 of 2013 filed by defendant no.4 in the Sessions Court at Mumbai on 15th May, 2013 wherein he discloses the same address as of Mysore Colony as his address as the cause title of the revision application. This would mean that either defendant no.4 continues to reside at Mysore Colony address or he has arrangements to receive the correspondence sent at that address. Further the demand notice dtd.29th June, 2010 was addressed by the plaintiff to defendant no.4 at the very address of Bungalow in Mysore colony, which was received by him and acknowledgement of receipt produced. These facts are not disputed by defendant no.4.

6 The only inference that can be drawn from the circumstance mentioned above is that the claim of defendant no.4 that he did not receive the writ of summons is false. Hence, the Chamber Summons is dismissed.

(Smt. R.P. SondurBaldota, J.)

CERTIFICATE

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