

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.16 OF 2016
IN
NOTICE OF MOTION (L) NO.3301 OF 2015
IN
SUIT NO.76 OF 2012**

Nirmala Mahendra Shah

..... Applicant.
(Original Defendant No.1)

V/s

Smt. Kavits Sandeep Shah

.....Respondent.

Mr. Ajit Karwande for the Appellant.

Mr. Onkar Gupte alongwith Ms Nisha Shah, Mr. Kalpesh Joshi
for Respondent No.1.

**CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.**

DATE: 13th January, 2016

P.C.:-

1. Appellant is challenging the order dated 02/12/2015 passed by the learned Single Judge whereby the learned Single Judge refused to interfere with the order passed by the Prothonotary & Senior Master dated 13/10/2015.

2. Grievance of the Appellant is that the Prothonotary & Senior Master allowed the heirs of the Plaintiff to convert the Chamber Summons into the Chamber Order and

condoned the delay caused in filing the Chamber Order. It is submitted that the Prothonotary & Senior Master does not have power to condone the delay and to allow conversion of Chamber Summons into the Chamber Order.

3. We have perused the said order passed by the Prothonotary & Senior Master. The Plaintiff expired on 12/06/2015 and therefore heirs of the Plaintiff filed a Chamber Summons on 11/09/2015. However, when they realized that the application for bringing the heirs on record was filed in time it was not necessary to file Chamber Summons, they sought leave to convert the Chamber Summons into Chamber Order. The Prothonotary & Senior Master thereafter permitted the heirs of the Plaintiff to be brought on record.

4. The learned Counsel for the Appellant submitted that the date on which the Chamber Summons was converted into the Chamber Order should be treated as a date on which application for bringing the legal heirs on record was made and if the said date is taken into consideration, there is delay of two days. In our view, there is no substance in the said submission made by the learned Counsel for the Appellant. Admittedly, the Chamber Summons was filed on 11/09/2015 and it was filed within time.

5. So far as the second submission made by the learned Counsel for the Appellant is concerned that the Prothonotary & Senior Master had condoned the delay and permitted conversion of Chamber Summons into the Chamber Order contrary to the High Court (Original Side) Rules, the said submission is also without any substance. Firstly, the question of delay does not arise as mentioned hereinabove and, secondly, heirs of the Plaintiff have themselves changed the application from Chamber Summons to Chamber Order.

6. We are therefore not inclined to interfere with the order passed by the Prothonotary & Senior Master. Appeal is therefore dismissed. The order dated 2nd December, 2015 passed by the learned Single Judge is confirmed.

(REVATI MOHITE DERE, J.)

(V.M. KANADE, J.)