

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

**CHAMBER SUMMONS NO. 787 OF 2014
IN
SUIT NO. 494 OF 1989**

The Bombay Dyeing & Manufacturing Co. Ltd. .. Applicant

In the matter between :

The Bombay Dyeing & Manufacturing Co. Ltd. .. Plaintiff

Vs.

M.Shrinivasan .. Defendant

Ms.Tanmayee Rajadhyaksha a/w. Ms.Rujuta Patil i/b Negandhi Shah & Himayatullah for plaintiff.

Mr.Sanjay Jain a/w. Ms.Jesal Shah i/b Ms.Jyoti N. Shah for defendant.

**CORAM : K.R.SHRIRAM, J.
DATE : 15TH OCTOBER, 2016**

P.C.

1 This chamber summons is taken out for restoring the suit which came to be dismissed by a self operative order of 31st October 2007. The plaintiff was granted time to file affidavit of evidence and affidavit of documents on or before 10th December 2007 failing with the suit was to stand dismissed for want of prosecution without further reference to the Court.

2 The counsel for the applicant/plaintiff states that the affidavit of evidence was lodged in the concerned department of the High Court on 10th

December 2007 and the affidavit of documents had already been filed in the year 2003 itself. The affidavit of evidence has not been found in the record and proceedings. The plaintiff relied upon a letter dated 4th March 2010 addressed to the Prothonotary and Senior Master wherein it is stated that the affidavit was lodged in the concerned Department on 10th December 2007 which was a Friday and 11th and 12th December 2007 being holidays on 2nd Saturday and Sunday, therefore, there is a possibility, though it was lodged on 10th December 2007, was taken on file only on 13th December 2007.

3 I see no reason to disbelieve the counsel for the plaintiff particularly in view of a letter dated 11th February 2010 addressed by the defendant's advocate to the plaintiff's advocate in which it is mentioned that certain documents filed with the compilation were incomplete and certain documents filed with the compilation are not reflected in the affidavit in lieu of examination in chief of the plaintiff. The counsel for the plaintiff also placed on record a letter dated 12th October 2016, in which the Advocate for the defendant stated that the defendant (who is since deceased) has, during his lifetime, taken away affirmed copy of the affidavit of evidence along with compilation of documents.

4 In the circumstances, the suit stands restored to file.

5 At the same time, Shri Jain, counsel appearing for the legal heirs of the defendant states that the legal heirs have not been brought on record and the plaintiff should take steps to bring the legal heirs on record.

6 It is entirely open to the defendant to raise all grounds of defence as and when the plaintiff take out an application for bringing the legal heirs of the defendant on record.

7 The chamber summons stands disposed accordingly.

(K.R. SHRIRAM, J.)