

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

CHAMBER SUMMONS NO.526 OF 2015

IN

SUIT NO.343 OF 2013

Hansa Sudhir Asher & Anr.Applicant

IN THE MATTER BETWEEN :

Malti Prakash MerchantPlaintiff

Vs.

Chetan Kulin MerchantDefendant

Mr. Shyam Kapadia a/w. Mr. Darshan Mehta and Mr. Lalan Gupta i/b. M/s. Dhruve Liladhar and Co. for the applicant/plaintiff.

Mr. Vivek Kantawala a/w. Mr. Amey Patil i/b. M/s. Vivek Kantawala and Co. for the defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 7th DECEMBER, 2016

P.C.

1 This chamber summons is taken out by the applicants to be added as plaintiffs to the suit since the original plaintiff died on 3rd November, 2014. The application has been lodged on 19th March, 2015 and there appears to be a marginal delay of 16 days. The applicants are senior citizens.

Therefore, I am inclined to condone the delay.

2 As regards applicant no.2, the counsel for the applicants, on instructions states that they do not insist that applicant no.2 should be joined as party to the suit. The counsel for the applicant states that the

chamber summons therefore is being pressed only so far as adding applicant no.1, who is the sister of the original plaintiff, as plaintiff.

3 It is the case of the applicants that there are no other legal heirs of the deceased plaintiff except the applicants. It is stated that the husband of the plaintiff predeceased her and the plaintiff did not have any children. In the plaint in paragraph 3, the plaintiff has also stated that her husband predeceased her and she had no children.

4 The next point is whether the suit survives. In my view, it does. Mr. Kantawala, counsel appearing for the defendant strongly opposes the chamber summons. It should, however, be noted that no affidavit in reply has been filed by the defendant. The cause of action in the plaint can be found in paragraph 15 of the plaint which reads as under :

“15. The plaintiff further submits that this illegal act of misrepresentation by the defendant, that he is the adopted son of plaintiff's deceased husband and addressing letters to the society in respect thereof, has caused plaintiff a financial loss to the tune of Rs.8,10,00,000/- or thereabout. The plaintiff was to receive this money as consideration amount for transfer of the said property. By issuing his Advocate's letter dated 27th November, 2012, the defendant has caused to the plaintiff a financial loss and damages of Rs.8,10,00,000/-. The plaintiff is entitled to recover from the defendant and the defendant is bound and liable to pay to the plaintiff, the said amount of Rs.8,10,00,000/- from the defendant as and by way of damages. The plaintiff, therefore, submits and prays that this Hon'ble Court may be pleased to order and decree the defendant to pay to the plaintiff the said sum of Rs.8,10,00,000/- together with interest thereon @ 6% per annum from the date of filing of the suit till payment or realisation as per particulars of claim annexed hereto and marked as Exhibit 'J'.”

5 The suit is to claim financial loss that was caused to the plaintiff due to acts of the defendant. Therefore, in my view, the suit survives.

6 The chamber summons is allowed and accordingly disposed in terms of prayer clause – (a) excluding the portion marked in red in the Schedule of the chamber summons.

7 The amendment to be carried out and copy of the amended plaint to be served within three weeks from today. The defendant to file further written statement within three weeks of receiving the copy of the amended plaint.

8 The suit be listed for issues on 27th February, 2017. In the meanwhile, parties to file their respective affidavit of documents, complete discovery and inspection and also file and exchange their statement of admission and denial with reasons for denial.

(K.R. SHRIRAM, J.)