

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

CHAMBER SUMMONS NO.964 OF 2015

IN

SUIT NO.2260 OF 2011

Lakhmichand K. Kukreja & Ors.Applicants/Plaintiffs

V/s.

Bal Krishan Gupta & Anr.Defendants

And

Sumeet Balrishan GuptaRespondent

Mr. Mahesh Kukreja i/b. M/s. Lilani Shah and Co. for the applicants/plaintiffs.

Mr. Devendra Sharma for the defendants.

CORAM : K.R.SHRIRAM,J

DATE : 16th NOVEMBER, 2016

P.C.:-

1 This chamber summons is taken out to bring on record the legal heirs of defendant no.1, who died on 9th June, 2014. It is stated in the affidavit in support that in August, 2014 the plaintiffs came to know that defendant no.1 had died in June, 2014 and therefore, the plaintiffs' advocate called upon the defendants' advocate to confirm the correct date of the death, for copy of the death certificate and names of legal heirs of defendant no.1 to enable the plaintiffs to take steps to implead the legal heirs of defendant no.1 as party defendants to the suit. The defendants' advocate did not reply to this letter. Only

by a letter dated 8th October, 2014 more than six weeks later the defendants' advocate confirmed the death of defendant no.1 and informed the plaintiffs' advocate that son of defendant no.1, i.e., respondent has filed an appeal being appeal no.470 of 2014 and copy of the death certificate could be found annexed to the appeal. It was also stated that the respondent was the only legal heir of defendant no.1, who is entitled to the estate of the deceased defendant no.1.

2 This application is taken out only on 1st July, 2015, i.e., almost 10 months later. Such an application should in law be taken within three months and the court can give extension for another 60 days. So in effect there has been a delay of five months.

3 The counsel for the applicants/plaintiffs states that by a letter dated 1st July, 2015 the plaintiff's advocate had written to the advocate for the defendants that his information is that defendant no.1 had two daughters as well and called upon the advocate for the defendants to furnish the details of these two daughters. No reply has been sent. Mr. Sharma, counsel for the defendants submitted orally in court that pursuant to a family settlement the two daughters are not entitled to the estate of the deceased defendant no.1.

In my view, that will be a subject matter on the merits of the claim in the suit.

4 In such matters where there is a delay in bringing the legal heirs on record and the suit has abated, while considering the application for condoning the delay and restoring the suit, it is trite that a highly technical and pedantic approach in such matters should be eschewed as ultimately the endeavour should be to see that a party is able to prosecute the remedy available in law on merits. The court should take a lenient approach as regards abatement of a suit. A liberal view is required to be taken and as the rules of procedure are enacted to further the cause of justice and not to create obstacles in their way or to impede it and if the delay is not condoned, it might involve a fresh suit and one more round of litigation, both of which needed to be avoided.

5 These are all matters of procedure and the court should not take very pedantic approach. The fact that in August, 2014 itself the plaintiffs had written to the advocate for the defendants as soon as the plaintiffs came to know about the death of the defendant no.1 shows that the plaintiffs had taken prompt steps. The delay in this case, in my view, should be condoned.

6 The fact that the defendant no.1 had two daughters as well is not disputed. Whether there has been a family settlement between the son of deceased defendant no.1 and his two daughters can be considered later.

7 Therefore, the respondent is directed to furnish the details of the two daughters to the advocate for the plaintiffs within one week from today. The plaintiffs are also at liberty to add the two daughters as defendants to the suit.

8 The chamber summons is, therefore, allowed and accordingly disposed in terms of prayer clause – (a).

9 The amendment to be carried out and copy of the amended plaint to be served within four weeks from today.

10 Suit be listed for directions on 6th January, 2017.

(K.R.SHRIRAM,J)