

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.641 OF 2016
IN
CHAMBER SUMMONS NO.232 of 2016

Anuradha Parkash Kapur w/o
Prakash Kapur and anr .. Appellants
V/s
Bawa Randhir Singh Bhalla
and 27 ors. .. Respondents
...

Mr.Vikram Nankani, Sr. Advocate with Mr.Ishwar Nankani, Huzefa Khokhawala, Janaki Garde i/b M/s.Nankani Associates for the appellants.

Mr.Aspi Chinoy, Sr. Advocate with Ms.Rajani Iyer, Sr. Advocate, Mr.Paresh Shah, Leena Mirashi i/b M/s.Shah & Sanghavi for respondent nos.2 to 6, 7 to 16, 26 to 28.

**CORAM: DR. MANJULA CHELLUR, C.J. &
M.S.SONAK, J.**

DATE : 14 DECEMBER 2016.

PC.

1] Learned senior advocate for the appellants submits that the contesting respondents are present before this Court and even otherwise other relevant parties/respondents have already been served.

2] The controversy raised in this appeal is whether there is justification for the appellants to fight the impugned order, in spite of the reasoning of learned Single Judge that the chamber summons did not give any reasons why there was delay of 14 months to bring on record the legal representative of defendant No.1 one Mr. Bawa Randhir Bhalla. It is not in dispute that the litigation before learned

Single Judge is in respect of property of one Bawa Parduman Singh, who died on 22nd November 1922. Apparently, he left behind three sons namely Gurmukh Singh, Maharaj Singh and Maqsudan Singh. It is not in dispute that Bawa Parduman Singh has three deceased sons. The suit was filed by the alleged daughters of Maqsudan Singh, i.e. Anuradha Kapur and Anajali Kalra. Apparently, at the time of filing the suit, Maharaja Singh and Gurumukh Singh were not alive. The suit came to be filed against the legal representatives of Maharaj Singh, i.e., Randhir Singh Bhalla, legal representatives of Satyapal and daughter of Maharaj Singh namely Sudarshan Sondhi. During the pendency of the suit, Randhir Bhalla, who was defendant No.1 died on 29th May 2014, which was apparently intimated by learned counsel on record appearing for Mr. Randhir Singh Bhalla. The letter is dated 29th July 2014 (at page 58). For the purpose of appreciating the real controversy before us, it would be useful to refer to the contents of this letter, which read as under:

“PJS/PB/LM//11943/2325/2014

29th July, 2014

To,

M/s. Nankani & Associates

Advocates for the Plaintiffs

114, Yusuf Building, 1st floor

V.N. Road, Flora Fountain,

Mumbai 400 001.

Dear Sir,

Re: High Court, Bombay O.O.C.J.

Suit No. 1451 of 2008

Anuradha Parkash Kapur & anr.

..Plaintiffs

vs.

Bawa Randhir Singh Bhalla & ors

... Defendants

1. We are concerned for Defendant No.1 abovenamed. We have to inform you that Shri. Randhir Singh Bhalla Defendant No.1 has passed away at New Delhi on 29th May 2014.

2. As per the family arrangement arrived at during the life time of Late Shri Randhir Singh Bhalla your clients may bring the following persons on record in the above suit if they so desire.

- (a) Mr. Maneesh Bawa son of Late Shri RAndhir S. Bhalla
- (b) Mr. Sumeet Bawa son of Late Shri. Randhir S. Bhalla
- (c) Smt. Archana Bhalla wife of Late Shri. Randhir S. Bhalla all temporarily residing at Devi Dayal Road, Mulund (West), Mumbai-400 018.

Kindly to the needful.

Yours truly,
for M/s. Shah and Sanghavi
sd/-
Partner

C.c.to: Client.”

3] To the aforesaid letter, a reply was sent by the plaintiffs' advocate on 11th August 2014 and the contents of the said letter, read as under:

“11th August 2014

BY HAND DELIVERY/COURIER

M/s. Shah & Sanghavi

Advocates for Defendant Nos.1,10,11,14,16 & 17.

114/115,11th Floor, Mittal Court,

“A” Wing, Nariman Point,

Mumbai 400 021

Dear Sir,

Re: High Court, Bombay O.O.C.J.

Suit No. 1451 of 2008

Anuradha Parkash Kapur & anr. ..Plaintiffs

vs.

Bawa Randhir Singh Bhalla & ors ... Defendants

We refer to your letter dated 29th July 2014 informing us about the death of your client Mr. Bawa Randhir Singh Bhalla, the Defendant No.1 in the above matter and asking our clients to bring the persons named therein as per the Family Arrangement arrived at during lifetime of Defendant No.1 on record.

In that regard, our clients have instructed us to call upon you to furnish to us a copy of the Family Arrangement as mentioned in your above referred letter.

You are also requested to furnish to us a copy of the death certificate of Mr. Bawa Randhir Singh Bhalla and names of all his heirs and legal representatives.

*Very truly yours
For M/s. Nankani & Associates*

*sd/-
(Advocate for Plaintiffs)”*

4] Admittedly, the chamber summons to bring on record the legal representatives is filed in the month of January 2016. So far as the estates of Maharaj Singh apart from Randhir Bhalla, the other legal representatives through Satyapal Singh and the daughter Sudarshan Sondhi are representing. The suit is claiming 1/3rd share of Maqsudan Singh in which the plaintiffs seem to have a share in the property. The other defendants are legal representatives of Maharaj Singh including Randhir Singh and legal representatives of Gurumukh Singh. It was not a situation where the estate of Maharaj Singh is un-represented. Apparently, the death of Randhir Singh Bhalla, defendant No.1 was intimated in the month of July 2014 itself. So far as the reply seeking details of family arrangement referred to in the letter of 29th July 2014 seems to be the reason why there was delay in filing the application for bringing the legal heirs of Randhir Singh Bhalla on record. Though this was the argument addressed before learned Single Judge in the chamber summons, such reason was never indicated as pointed out by learned Single Judge. Learned Single Judge, after referring to several citations relied upon by both the parties, concludes in para 23, the settled proposition from the settled law and one of the propositions is

at clause (d), which reads as under:

“(d) in such type of cases liberal view is required to be taken 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. The Code of Procedure is designed to facilitate justice and further its ends, not a penal enactment for punishment and penalties; not a thing, designed to trip people up.”

5] Having said so, learned Single Judge from para 24 onwards referred to the conduct of the parties with reference to delay in filing the chamber summons to bring the legal heirs of defendant No.1 on record. Along with the chamber summons these two letters, i.e., 29th July 2014 and the reply by the plaintiffs dated 11th August 2014 were never annexed. However, in order to explain the delay why the application could not be filed, these two letters are relied upon by the plaintiffs. There is mentioning of request on the part of the plaintiffs to furnish a copy of the family arrangement as referred to in the letter dated 29th July 2014. Apparently, till this date, copy of the said family arrangement was not furnished to the plaintiffs. It is quite possible for the plaintiffs to bring on record the legal representatives, whose details were already disclosed in the letter dated 29th July 2014, instead of waiting for the copy of the family arrangement. In the perception of the party and his/her advocate why such family settlement was required is better understood by the party and the advocate. The fact remains that there is delay in filing the chamber summons. However, the two letters now brought on record explain, according to the appellants, that they would be waiting for the copy of the family arrangement and, therefore, there is delay. However, this reasoning was not mentioned in the chamber summons. In other words, the present chamber summons was not without a reason as explained by the appellants' counsel, but the same was not mentioned in the chamber summons. To substantiate

the argument, they have placed on record the correspondence referred to above. The suit is for partition by metes and bounds, so far as the property of Bawa Parduman Singh is concerned. The death of Randhir Singh Bhalla has become the issue in this litigation now presented before us. By bringing the legal representatives of Randhir Singh on record, now, would it prejudice the defence raised earlier by Randhir Singh Bhalla or his legal representatives would also be one of the considerations to appreciate the stand of the appellants. If the settled law indicates liberal view which has to be taken is the rule of procedure why not the application, i.e., the chamber summons be not allowed for the reasons now brought on record, since no prejudice of any nature is going to be caused to the respondents herein. However, inaction on the part of the plaintiffs must have caused some hardship to the other side and the same could be compensated by imposing costs on the appellants.

6] Accordingly, we allow the appeal on payment of costs of Rs.1 lakh. The costs to be paid to the legal representatives of defendant No.1 Randhir Singh Bhalla. The impugned order is set aside to the extent it denies in terms of para 29. The plaintiffs are directed to amend the cause title and the plaint, within four weeks from today.

(CHIEF JUSTICE)

(M.S.SONAK, J.)