

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.465 OF 2015
IN
CHAMBER SUMMONS NO.375 OF 2015
IN
SUMMARY SUIT NO.2114 OF 1998

R.K. Garg. .. Appellant

Vs

Shri G.Krishnamurty and Others. .. Respondents

—

Ms. Dipti Panda along with Ms. Radha Kapadia i/b M/s. Thakore Jariwala & Associates for the Appellant.

Ms. Sneha Phene along with Shri Akshay Vora and Shri Amrit Khare i/b Little & Co for the Respondents.

—

CORAM : A.S. OKA & G.S.KULKARNI, JJ

DATED : 15TH MARCH 2016

PC.

. Heard the learned counsel appearing for the Appellant.

The Appellant is the original Defendant. By the impugned order dated 3rd August 2015, the learned Single Judge has allowed the Chamber Summons taken out for amendment of the Plaint. Various contentions are raised by the learned counsel appearing for the Appellant. The main contention is that when the Chamber Summons was taken out in a Suit filed in the year 1998, the proposed amendment was barred by limitation.

2. In Paragraph 6 of the impugned order, the learned Single Judge has observed thus:

“6. In my view, having considered the amendment sought, no prejudice whatsoever will be caused to the defendant if the chamber summons is allowed provided the issues viz. as to whether the amendment sought is barred by limitation or whether the suit has abated qua the erstwhile trustees not being party to the suit are kept open to be decided at the time of trial. By keeping open these issues to be decided at the time of trial, I am inclined to allow the chamber summons. The chamber summons is allowed subject to the aforesaid objections and any further objections raised by the defendant in the affidavit in reply. The plaintiff to amend the plaint to reflect the proposed amendments mentioned in the schedule to the chamber summons and serve a copy of the amended plaint within two weeks from today.”

3. Thus, the learned Single Judge has kept both the issues expressly open. One issue is regarding the bar of limitation and another is regarding the abatement of suit which can be agitated by the Appellant at an appropriate stage. The Appellant has already filed Written Statement to the amended Plaint. Hence, in view of what is observed by the learned Single Judge in Paragraph 6 of the impugned order, no case is made out for interference in this Appeal. The Appeal is accordingly dismissed.

4. The Notice of Motion No.297 of 2016 does not survive and the same is disposed of.