

SHAILAJA

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2908 OF 2016**

IN

SUIT NO. 124 OF 1989

David Francis Ismael Manuel Vincent Desa	... Plaintiff
<i>Versus</i>	
Joseph Francis D'Assisi Desa and 7 others.	... Defendants

Mr. Floyd Gracias, *for Edith D'Souza for the Plaintiff.*
Mr. U.J. Makhija, *with Mr. Sujit S. Suryanshi i/b Vigil Juris for the Defendant No.7.*

CORAM: G.S. PATEL, J
DATED: 14th December 2016

PC:-

1. This is a Notice of Motion filed by Mr. Floyd Gracias on behalf of Ms. Edith D'Souza, daughter of the original Plaintiff. As I have noted in previous orders, Ms. D'Souza has maintained that she was never formerly served with notice of these proceedings. Mr. Makhija appearing for Defendant No. 7 points out that Ms. D'Souza admits to have been "aware" that her father was contesting these proceedings and prosecuting the Suit. That, however, is not the same thing. After the original Plaintiff's demise, notice had to have been issued to Ms. D'Souza at the place where she ordinarily resides, so that she could then decide for herself whether to continue with the Suit or not. She has previously pointed out that all

such notices were addressed to her at the Plaintiff's residence and not at her matrimonial home, though that has been her address for several decades. She was thus deprived of proper opportunity of prosecuting the Suit.

2. The present Notice of Motion seeks that the order of dismissal of 23rd June 2006 be set aside and that the Suit be restored to file. There is a separate Chamber Summons 1798 of 2016 in the Suit seeking impleadment of Ms. D'Souza.

3. The present Notice of Motion is made absolute in terms of prayer clauses (a) and (b). The order of dismissal of the suit dated 23rd June 2006 is recalled and set aside. Suit No. 124 of 1989 is restored to file.

CHAMBER SUMMONS NO. 1798 OF 2016

4. For the reasons set out earlier, this Chamber Summons will have to be allowed. I will only note that, in fairness, Mr. Floyd Gracias has been careful enough to add a prayer that the Applicant's brother Mr. Victor Mario Desa, the original Plaintiff's son, be joined as a Defendant to this Suit. That is only correct and appropriate. I will note that every attempt made even till 2016 to give notice to Mr. Victor Mario Desa has failed. I will also, therefore, be passing appropriate directions for service on Mr. Victor Mario Desa. Mr. Gracias confirms that he has served Notice of Motion and Chamber Summons and he will file Affidavit by Monday, the 19th December 2016.

5. In any case, Mr. Gracias can have no objection to his impleadment as his rights are adequately protected.
6. Chamber Summons is made absolute in terms of prayer clauses (a), (b) and (c).
7. Amendments to be carried out on or before 20th December 2016. The copy of the amended Complaint will be served on all the Defendants including newly added Defendant No. 9, Mr. Victor Mario Desa.
8. As regards service on Mr. Victor Mario Desa, this is to be effected in the future either by hand delivery, Courier or Registered Post A/D at Flat No. T/4, Sea Beach View Co-Operative Housing Society Ltd., Kadeshwari Mandir Marg, Bandra, Mumbai 400 050.
9. Mr. Makhija points out that Defendants Nos. 1 to 4 have died. Mr. Gracias will take necessary instructions regarding impleading their heirs, now that Ms. Edith D'Souza is the Plaintiff.
10. As regards the Court Receiver's report, for the present, it will have to be kept pending.

(G. S. PATEL, J.)