

SHEPHALI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 15 OF 2016**

**IN**

**SUIT NO. 2467 OF 2002**

|                                  |               |
|----------------------------------|---------------|
| Larsen & Toubro Limited          | ...Plaintiffs |
| <i>Versus</i>                    |               |
| Kantilal C. Kothari & Others     | ...Defendants |
| <i>And</i>                       |               |
| PLS Technologies Private Limited | ...Applicant  |

**WITH**

**CHAMBER SUMMONS NO. 638 OF 2014**

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**Mr. Chetan Kapadia**, *with Mr. Sunil Tilokchandani & Mr. Bharatkumar M. Jain, i/b M/s. Manilal Kher Ambalal & Co., for the Plaintiffs.*

**Mr. Pramod Kumar Vora**, *i/b M/s. Pramodkumar & Co., for Defendants Nos. 1 to 5, 13 and 14.*

**Ms. D.G. Wanjara**, *for Defendants Nos. 9 to 11 and 12.*

**Mr. J.P. Sen, Senior Advocate**, *with Ms. Aditi Chauhan, i/b Suneet Tyagi, for the proposed Defendants Nos. 15A to 15D.*

**Ms. S.I. Joshi**, *i/b S.I. Joshi & Co., for the Proposed Defendant & Applicant in Chamber Summons No. 15 of 2016.*

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**CORAM: G.S. PATEL, J**  
**DATED: 23rd September 2016**

**PC:-**

1. Chamber Summons No. 638 of 2014 is not on board. Mentioned. By consent, taken on board and heard.

2. There are two Chamber Summonses. Chamber Summons No. 638 of 2014 is filed by the purported transferee of the deceased 15th Defendant's interest in part of the property that is the subject matter of this Suit for administration and accounts. There is no dispute that the Applicant in Chamber Summons No. 15 of 2016 does claim through, and only through, Defendant No. 15. Defendant No. 15 died on 2nd March 2012. He was survived by his widow, two sons and a married daughter. Thus, there are in law and as contemplated under the Civil Procedure Code, 1908, four persons and an entity who could fit within the definition of 'legal representatives' within the meaning of Order 22 Rule 3 read with Section 2(11) of the Code of Civil Procedure, 1908. This being the case, I see no reason why the purported transferee, PLS Technologies Private Limited, the Applicant in Chamber Summons No. 15 of 2016 should not be joined as a party-Defendant to the Suit.

3. Chamber Summons No. 638 of 2014 is filed by the Plaintiffs. It seeks that an enquiry be held to decide which of the legal representatives of the 15th Defendant be joined (viz., PLS Technologies, the widow and the three children) and, depending on the result of this enquiry, for leave to amend. I will mould that relief and allow the Plaintiffs to join all the legal representatives, i.e., to join the heirs of Defendant No. 15 and the so-called successor in title, PLS Technologies Private Limited. It is therefore not necessary to actually allow both the Chamber Summonses. It is sufficient to allow the Plaintiffs' Chamber Summons in these terms.

4. There is an opposition to this Chamber Summons from Defendant No. 8, who claims that the 15th Defendant had no

interest in the property in question. That is surely a matter for determination at a later stage when the respective shares are decided. Paragraph 2 of the Plaint makes it clear that the 15th Defendant has been described by the Plaintiffs as an erstwhile co-owner with a 7% undivided share, right, title and interest. He is said to have conveyed to this 7% interest to the Plaintiffs.

5. Defendants Nos. 1 to 5 and 8 to 14 have filed Written Statements to the Counter-claim. To the Suit, the 15th Defendant was joined as a party-Defendant and, in my view, correctly.

6. All contentions of the contesting Defendants are expressly kept open. This is adequate protection. No rights are decided by virtue of allowing this Chamber Summons. On the other hand, if the Chamber Summons is refused, the entire Suit might be prejudiced for non-joinder of necessary parties although both the Plaintiffs and the so-called transferee have attempted to have themselves impleaded.

7. As to the submission that there is no prayer to set aside an abatement as against the 15th Defendant, it is well settled that the formality of making such a prayer is not an impediment to the Court granting it. In this view of the matter, the abatement of the Suit as against the 15th Defendant is set aside.

8. The Plaintiffs are directed to implead the four heirs of Defendant No. 15 (his widow, Chandra Amar Munot; his sons Anuj Amar Munot and Ajay Amar Munot, and his married daughter,

Riddhi Tushar Singhvi) as also the so-called successor in title PLS Technologies Private Limited as Defendants to the Suit. It is clarified that the enquiry sought in the Chamber Summons is dispensed with at this stage. An enquiry in that nature, i.e., into whose hands the property in question validly passed, will be made at the final determination of the Suit.

9. In this view of the matter, Chamber Summons No. 15 of 2016 is infructuous. All rights and contentions of the contesting Defendants are expressly kept open, including as to whether the original 15th Defendant had any share, right, title and interest in the property in question or could have validly conveyed the title or any part of that property.

10. Amendment to be carried out on or before 14th October 2016. A copy of the amended Plaint to be served on the Advocates for the contesting Defendants on or before 21st October 2016. Additional Written Statements, if any, to be filed and served on or before 2nd December 2016. Both Chamber Summonses are disposed accordingly in these terms with no order as to costs.

11. List the Suit for framing issues on 16th December 2016.

**(G. S. PATEL, J.)**