

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1823 OF 2016
IN
FIRST APPEAL NO.270 OF 2005**

Mr.Raman Alias Ramesh Shankar

Chhobadia & Anr.

..Applicants/Appellants

V/s.

Mr.Mulji Lukhmidas

..Respondent

Mr.V.S. Kapse a/w Mr.S.G. Walam for the Applicant in Civil
Applicatin No.1823 of 2016 and for Original Respondent

Mr.V.T. Lulia for Original Appellant and for Applicant in Civil
Application No.547 of 2005.

CORAM : M. S. SONAK, J.

DATE : 06 MARCH 2017.

P.C.

1. Heard the learned counsel for the parties.

2. In this case, M/s.Mulji Lukhmidas instituted civil suit in respect of the suit property and has obtained the impugned judgment and decree against the appellants i.e. the Chhobadia's. The First Appeal No.270 of 2005 instituted by the Chhobadia's has already been admitted.

3. By this Civil Application, the applicant i.e. M/s.Vibhusahan Estate Pvt. Ltd seeks to be impleaded as a

respondent in this appeal. It is the case of the applicant that the original plaintiff and the present respondent M/s.Mulji Lakhimdas committed certain defaults with financial institutions. As a result, the suit property, was sold in auction and has been acquired by the applicant. To this effect, even a registered document has been placed on record. At this stage, it is too premature to decide upon the rights of the parties. However, it is made clear that based upon the averments in the Civil Application and the documents accompanying the same, the applicant must be made at least a proper party to this proceeding.

4. Mr.Lulia, the learned counsel for the appellant however submits that the present Civil Application is barred under Section 9A of the C.P.C. In any case, he submits that there is unreasonable delay in taking out this application and such delay has never been explained. He relies upon the decision of this Court in the case of ***Gangubai Baban Kadam and Anr. V/s. Vidya Vijay Joshi (Dr.) (2015(6) Bombay case reporter 138)*** to submit that unless the party approaches the Court with due diligence to get the application for impleadment heard, the same is required to be dismissed.

5. The objections in the facts and circumstances of the present case are clearly misconceived. There is no question of applicability of Section 9A at the stage of consideration of the application of this nature. Further, the appeal is pending and the present Civil Application has been moved as matter of abundant caution seeking impleadment. Now that the applicant has acquired suit property from the original plaintiff, the applicant reasonably apprehends that the original plaintiff has lost interest in defending

original impugned judgment and decree. The facts and circumstances in the case of Gangubai (Supra) are entirely different and the decision therefore, cannot be of any assistance to the original appellants. Accordingly, this Civil Application is allowed. The appellant is directed to implead the applicant i.e. M/s.Vibhusahan Estate Pvt. Ltd. as a respondent in this appeal within a period of four weeks from today. If the necessary amendment is not be carried out by the appellant within four weeks from today, then, the Registry shall permit the applicant M/s.Vibhushan Estate Pvt. Ltd. to carry out the necessary amendment in the cause title.

6. In the main appeal, Mr.Kapse, waives notice on behalf of M/s.Vibhushan Estate Pvt. Ltd. Who is now ordered to be impleaded as a party respondent. The Civil Application is disposed of in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)