

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

WRIT PETITION NO.3415 OF 2017

Shri Narottam Sheth & Ors. ... Petitioners

Vs.

Shri Bharat Babulal Makwana & Ors. ... Respondents

Mr.Harihar Bhavé with Rupa Bhavé and H.G. Khambete for
Petitioners

Mr.Bharat Joshi for Respondent Nos.1 & 3

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: APRIL 19, 2017**

P.C. :

1. Rule. Rule made returnable forthwith by consent of the parties.

2. In this petition, a Chamber Summons being Chamber Summons No.18 of 2016 in Suit No.8360 of 1996 the prayers for for bringing on the legal representatives of the deceased defendant No.2 Suresh Babulal Makwan and for condonation of delay were rejected by order dated 2.12.2016 by the learned Ad-hoc Judge, City Civil Court, Mumbai.

3. Both the learned Counsel for the petitioners and the respondents are present and submitted that this petition can be settled as the defendants have no objection for bringing the legal heirs of defendant No.2 on record and also the delay can be condoned. It is further submitted that the learned Counsel for the respondents that the petitioners are to be directed to serve the writ of summons afresh to the proposed defendants, who are the legal heirs of the deceased defendant No.2. He further submitted that after service of the fresh writ of summons, all the defendants be allowed to file written statement. The learned Counsel for the petitioners fairly concedes to this prayer. The learned Counsel for the respondents submitted that he has instructions to appear on behalf of the legal heirs of the late defendant No.2 and, therefore, he waives service on behalf of all the defendants including the proposed defendants.

4. The statements of both the learned Counsel are accepted and the following order is passed:

- i) The order dated 2.12.201 is hereby set aside and the Chamber Summons No.18 of 2016 in Suit No.8360 of 1996

is hereby allowed in terms of prayer clauses (i) and (ii).
Necessary amendments shall be carried out on or before
2.5.2017.

ii) The learned Counsel for the present defendants and
the proposed defendants hereby waives service and all the
defendants are allowed to file their written statement by
15.6.2017.

5. Rule made absolute accordingly.

(MRIDULA BHATKAR, J.)