

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO.97 OF 2016
IN
SUIT NO.3015 OF 1996**

Bhupendra C. Jhaveri .. Applicant

IN THE MATTER BETWEEN

Bhupendra C. Jhaveri .. Applicant

vs.

Mrs.Sulochana Yeshwant Jalgaonkar & Anr. .. Defendants

And

Vishakha Vilas Jalgaonkar .. Respondents

Mr.Gauraj Shah a/w Mr.Amogh Singh i/b M/s.Dhanuka Partners for the applicant

Mr.Rajesh Kachare, Mr.Amit S. Potnis @ Mr.Sandeep Suryavanshi i/b M/s.Tamhane & Co. for the legal heirs of defendant no.1

Mr.Vaibhav Sugdare a/w Ms.Rasika Bagkar and Ms.Roshni Naik i/b M/s.Bagkar and Co. for the respondent no.2

**CORAM : K. K. TATED, J.
DATE : NOVEMBER 28, 2017**

PC.:

1. Heard the learned counsel for the parties.
2. By this Chamber Summons, applicant plaintiff is seeking

condonation of delay to bring legal heirs on record of deceased defendant no.1.

3. The learned Counsel for the applicant plaintiff submits that they learnt death of defendant no.1 when they received letter dated 15.12.2014 in another Suit No.3195 of 1991. As soon as the applicant received the said letter, they immediately informed the defendant no.1's advocate by their letter dated 24.11.2014 for providing correct names and address of the legal heirs of deceased defendant no.1. Hence, there is delay on their part to bring the legal heirs on record.

4. The learned Counsel for the applicant submits that though legal heirs of defendant no.1 filed their Affidavit in reply and recorded in letter dated 25.1.2008 and 7.4.2008 about the death of defendant no.1, actually they learnt only in 2014. That also in November. He submits that it remained on their part to inform plaintiff about these two letters. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the applicant's to bring legal heirs on record of deceased defendant no.1. He submits that if present Chamber Summons is not allowed, irreparable loss will be caused to the applicant. He submits that applicant's Suit is for specific performance of M.O.U. between plaintiff and defendant no.1 and also for other reliefs.

5. On the other hand, the learned counsel for the legal heirs of deceased defendant no.1 vehemently opposed the present Chamber Summons. He submits that applicant failed and neglected to disclose sufficient cause for condonation of more than 9 years in preferring the present Chamber Summons. He submits that as soon as the defendant

no.1 expired on 24.10.2007 they immediately through their advocate by letter dated 25.1.2008 and 7.4.2008 informed to the plaintiff's advocate about the names and addresses of deceased defendant no.1. Not only that, applicant failed and neglected to take immediate steps. Hence, there is no question of condoning the delay of more than 9 years in preferring the present Chamber Summons. Chamber Summons be dismissed with costs.

6. The learned counsel for the defendant no.2 submits that he is adopting the arguments made by the learned counsel for the legal heirs of defendant no.1.

7. I have heard both the sides. It is to be noted that because of mistake on the part of advocate, litigant should not suffer, though there is delay on the part of applicant to prefer the present Chamber Summons to bring legal heirs on record of deceased defendant no.1. It is to be noted that the Apex Court in the matter of ***N.Balkrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123*** held that the object of fixing the time limit is not meant to destroy the rights. The law of limitation fixes a lifespan for such legal remedy for the general welfare. Paragraph Nos.11, 12 and 13 of the said judgment read thus :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation

is thus founded on public policy. It is enshrined in the maxim Interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" Under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari, 1969 SC 575 and State of West Bengal v. The Administrator, Howrah Municipality, AIR 1972 SC 749.

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

8. Considering the reason disclosed by the applicant and the affidavit in support of Chamber Summons and the law declared by the Apex Court in the matter of **N.Balkrishnan Vs. M. Krishnamurthy**, I am of the opinion that applicant has made out a case for allowing the Chamber Summons. But at the same time, plaintiff to pay cost of Rs.15,000/-. Hence, following order is passed:

- a) Abatement is set aside.
- b) Delay in preferring Chamber Summons is condoned.
- c) Applicant plaintiff is permitted to bring legal heirs on record of deceased defendant no.1 within four weeks from today, failing which the Chamber Summons shall stand dismissed without further reference to the court.
- d) Applicant plaintiff to serve amended copy of plaint on defendant's within four weeks thereafter.
- e) Applicant to pay cost of Rs.15,000/-.
- f) Cost to be deposited in the office of the Kirtikar Law Library, High Court, Bombay, within four weeks from today, failing which the matter shall stand dismissed without further reference to the court.
- g) The learned counsel for the legal heirs of defendant no.1 waives service in Suit No.3015 of 1996.
- h) Chamber Summons stands disposed of accordingly.

(K.K.TATED, J.)