

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTON
CHAMBER SUMMONS NO.734 OF 2015
WITH
NOTICE OF MOTION NO.775 OF 2012
WITH
NOTICE OF MOTION NO.292 OF 2013
IN
SUIT NO.694 OF 2012**

Prabodh J. KothariApplicant/Plaintiff

V/s.

Vikram J. Kothari and Ors.Defendants

Mr. Ashwin Thakkar i/b. Thakkar and Co. for the applicant/plaintiff.

Mr. Kazan Shroff a/w. Ms. Nupur Desai i/b. M/s. Markand Gandhi and Co. for the defendant nos.1 to 4.

Mr. P.A. Jani a/w. Mr. Niket Jani i/b. M/s. Vigil Juris for the defendant nos.5 to 10.

CORAM : K.R.SHRIRAM,J

DATE : 12th JANUARY, 2017

P.C.:-

1 This chamber summons is taken out to join the respondents as party defendants to the suit. An affidavit of service has been filed by one Ketan Lakum affirmed on 25th July, 2016 in which a solemn statement has been made that all the respondents have been served. Though served the respondents have not entered appearance or filed any affidavit in reply opposing the application or present today in court.

2 The counsel appearing for the defendant nos.1 to 4 states that the relief sought in the chamber summons does not really affect defendant nos.1 to 4. The main opposition came from defendant nos.5 to 10.

3 The reason why this chamber summons had to be taken out is because according to the plaintiff in the affidavit of one Rajesh Premji Shah, who is defendant no.7, affirmed on 2nd May, 2012 to oppose ad-interim relief in notice of motion no.775 of 2012, it was stated that certain assets which the plaintiff claim to be formed part of the estate had already been sold to the respondents. In the affidavit it was also stated that the non-joinder of the respondents, who are necessary parties to the suit, is an issue based on which the plaintiff should be non suited. It is also stated in the said affidavit that any order passed by this court will affect the rights of the respondents.

4 Mr. Jani, counsel appearing for the defendant nos.5 to 10 took two defences, i.e., (i) delay and laches and (ii) respondent no.2 was not necessary party at all and had nothing to do with the dispute inter se between the parties.

5 On delay and latches, Mr. Jani submitted that following the affidavit of defendant no.7 dated 2nd May, 2012 correspondence was received from the plaintiff's advocates asking for details, the last of which was dated 22nd July, 2012. Mr. Jani further stated that the defendant nos.5 to 10, as advised, did not respond to any of those communications but still the plaintiff chose to keep quiet and took out this chamber summons in May, 2015 and therefore, in view of the delay and latches, the chamber summons has to be dismissed.

6 On delay and latches, it is true that the plaintiff has taken three years to take out this application. At the same time, in my view, no prejudice has been caused to defendant nos.5 to 10. Moreover, it is the case of defendant nos.5 to 10 that the respondents (excluding respondent no.2) have to be joined as they are necessary parties to the suit. Whether respondent no.2 has anything to do with the suit or not, it is for the respondent no.2 to come and oppose they being joined as a party to the suit. They have chosen not to respond nor even remain present in court.

7 In the circumstances, I am inclined to allow the chamber summons. The chamber summons is allowed and accordingly disposed

in terms of prayer clauses – (a) and (b).

8 The amendment to be carried out and copy of the amended
plaint to be served on the defendants as well as the respondents, who
are being joined as defendants to the suit within three weeks from
today.

9 Mr. Jani, counsel for the defendant nos.5 to 10 points out
that a preliminary issue under Section 9(A) of the Code of Civil
Procedure on the ground of limitation has been framed. Mr. Jani
further states that on the preliminary issue, the evidence of the
plaintiff is in progress. The plaintiff's examination in chief is over and
cross examination also is over but the plaintiff has not stated no
re-examination because of which the evidence of the second witness
cannot be proceeded with.

Mr. Thakkar, counsel for the plaintiff states that he be
given couple of days to reconsider whether re-examination is really
required or not and requests that the matter be kept for directions on
20th January, 2017 on which date he will inform the court about his
decision.

10 Stand over to 20th January, 2017 for directions. Before the next date the plaintiff also to file his list of witnesses and serve a copy thereof upon the defendants.

(K.R.SHRIRAM,J)