

BDPPS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**REVIEW PETITION (L) NO. 38 OF 2016
IN
CHAMBER SUMMONS NO.906 OF 2011
AND
CHAMBER SUMMONS (L) NO.645 OF 2016
IN
SUIT NO.470 OF 2009**

Mehrunnisa Dadulakhan Jagirdar
and Others

.....Petitioners.
(Original Defendant Nos.1,
5, 6 and 4)

V/s

Papeyon Developers Pvt. Ltd.

....Original Plaintiff.

And

SBP Realtors Pvt. Ltd.

....Respondents.

Mr. Farhan Dubash a/w Mr. Anash Sequeira, Mr. Shamim Dalvi i/b
Mr. Sigamporia and Dalvi for the Petitioners.

Mr. Chirag Balsara a/w Mr. D.V. Deokar, Mr. Pinakin Modi i/b M/s.
Parimal K. Shroff & Co. for Respondent No.1.

**CORAM: V.M. KANADE &
P. R. BORA, JJ.**

DATE: 17th February, 2017

P.C.:-

1] Heard the learned Counsel appearing on behalf of the Review Petitioners and the learned Counsel appearing on behalf of the Respondents.

2] Petitioners are seeking review of the order dated 23/08/2016 passed by this Court. By the said order, delay which was caused in taking out Chamber Summons (L) No.645 of 2016 was condoned for the reasons stated in the praecipe dated 11/08/2016.

3] Brief facts which are necessary for the purpose of deciding this Review Petition are as under:-

4] Two Chamber Summonses were filed before the learned Single Judge being Chamber Summons No. 906 of 2011 and Chamber Summons (L) No.645 of 2016. The original Plaintiffs wanted to add third party to whom the property was sold during the pendency of the suit for the specific performance. The issue as to whether third party could be added as defendant in the suit was pending before the Full Bench of this Court. The matter finally came up before Division Bench of this Court headed by the then Chief Justice Mohit S. Shah of this Court seeking clarification. Division Bench of this Court permitted the original Plaintiffs to take out Chamber Summons within two weeks. Since this was not done within two weeks, a praecipe was filed before us seeking extension of time and for condonation of delay in

taking out Chamber Summons. When the matter came up before us, we condoned the delay which was caused in taking out Chamber Summons (L) No.645 of 2016 and thereafter proceeded to allow both the Chamber Summonses. We, however, kept all contentions of the Respondents open.

5] It is not possible for us to remember what really transpired on that day. From the order which is passed, it appears that the said order was passed by consent of parties. The third party who was added as defendant and was served with the order, however, has not come before us and is not aggrieved by the said order.

6] However, the Petitioners/original Defendants 1, 5, 6 and 4 have now filed this Review Petition, challenging the said order on the ground that what was condoned was only delay in taking out Chamber Summons (L) No.645 of 2016 and the Chamber Summonses could not have been allowed by this Court since they were pending before the learned Single Judge. This submission is vehemently opposed by the Respondents on various grounds. Firstly, it is submitted that the said order was passed by consent and it is now not open for the Petitioners/Defendants to challenge the said order. Secondly, it is submitted that, at the highest, third party who was added for the first time could have challenged the said order. Several other submissions were also made.

7] We are of the view, however, that since the Chamber Summonses were not before us for hearing, this Court could not have allowed the said Chamber Summonses. We, therefore, modify the order under review. The said order condoning delay caused in taking out Chamber Summons (L) No.645 of 2016 is maintained and is not set aside. However, the order allowing both the Chamber Summonses is set aside and both the said Chamber Summonses shall now be heard by the learned Single Judge on merits and in accordance with law. All contentions of the parties are kept open.

8] Review Petition is partly allowed in the aforesaid terms and disposed of.

(P. R. BORA, J.)

(V. M. KANADE, J.)