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

CHAMBER SUMMONS NO.715 OF 2017
WITH
NOTICE OF MOTION NO.826 OF 2017
IN
SUIT NO.2981 OF 1997

Bhartiben Laxmidatta Sakalchand ….Applicant

IN THE MATTER BETWEEN :

Bhartiben Laxmidatta Sakalchand and Ors. ….Plaintiffs

Vs.

Nepolean Nepol Nicolus and Ors. ….Defendants

Mr. Kamalesh Tiwari for applicant/plaintiffs.
Mr. Deepak Chitnis I/b. M/s. Deepak Chitnis-Chiparikar and Co. for defendant nos.2 and 3.

CORAM : K.R.SHRIRAM, J.
DATE : 28th AUGUST, 2018

P.C.:

NOTICE OF MOTION NO.826 OF 2017

1 This notice of motion is for restoration of the suit which came to be dismissed pursuant to an order dated 21st March 2017 for want of prosecution. Applicant has explained in paragraph 3 of the affidavit in support that though plaintiffs had filed Vakalatnama of Mr. Kamalesh R. Tiwari, advocate, the cause list of 21st March 2017 did not indicate the name of the advocate - Mr. Tiwari and hence Mr. Tiwari did not remain present. Mr. Tiwari states that though he had filed Vakalatnama in the suit also, it was not taken on file because NOC from the earlier advocate was missing. Mr. Tiwari states that he could not obtain NOC because the earlier advocate

– Mr. Kanaiyalal A. Bhatt has expired. Mr. Tiwari also tenders print out of the cause title of 21st March 2017 which is taken on record and marked "X" for identification.

2 In view of what is stated in the affidavit in support, notice of motion is allowed and accordingly disposed in terms of prayer clause – (a).

3 Suit is restored to file.

CHAMBER SUMMONS NO.715 OF 2017

1 This chamber summons is to bring on record the legal heirs of defendant no.1, who expired on 13th August 2015.

2 No affidavit in reply has been filed though Mr. Tiwari states that all legal heirs have been served and undertakes to file affidavit of service within one week from today.

3 Mr. Chitnis, counsel for defendant nos.2 and 3 states that the suit as against defendant no.1 had abated because the application to bring on record the legal heirs was not taken within 60 days. Mr. Tiwari states that he was informed by the earlier advocate – Mr. Ashok V. Jain by a letter dated 23rd January 2017 that defendant no.1 had died on 13th August 2015 and gave the name of the legal heirs.

4 This chamber summons to bring on record the legal heirs has been lodged on 28th February 2017. Therefore, it is well within time.

5 Therefore, chamber summons is allowed and accordingly disposed in terms of prayer clause – (a).

6 Amendment to be carried out and copy of the amended plaint to be served within one week from today.

7 Mr. Chitnis states that he will be filing Vakalatnama for legal heirs of deceased defendant no.1. Mr. Chitnis also waives service of writ of summons.

8 Any additional written statement to be filed by the newly added defendants to be filed and copy served within two weeks of receiving the copy of the amended plaint.

(K.R. SHRIRAM, J.)