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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1659 OF 2016
IN
SUIT NO. 2531 OF 2004
WITH
CHAMBER SUMMONS NO. 425 OF 2015**

Sushilarani Baburao Patel	...Plaintiff
<i>Versus</i>	
Chandru J Punjabee & Ors	...Defendants
<i>And</i>	
Geeta Patel D'Souza	...Applicant

Mr A Khare, *with Bindu Bhatia, i/b Khare Legal Chamber, for the Applicant in NMS/1659/2016.*
Mr Vijay B Dhingreja, *for Defendant No. 13 in NMS/1659/2016 & Applicant in CHS/ 425/2015.*
Mr Dadasaheb Shingade, *for Defendant-MCGM.*

CORAM: G.S. PATEL, J
DATED: 3rd December 2018

PC:-

NOTICE OF MOTION NO. 1659 OF 2016

1. The application is to allow the Applicant, Geeta Patel D'Souza to be substituted with the deceased original Plaintiff, to

condone a delay of 134 days and to set aside an order of 23rd September 2015 of abatement. There is also a prayer for a *status quo* which I am not inclined to grant.

2. The opposition is that this very Applicant earlier sought impleadment as a Defendant to the Suit during the lifetime of the Plaintiff. That application for impleadment by Geeta Patel D'Souza as a Defendant was rejected by KR Shriram J by his order dated 21st July 2014. I do not see how that can possibly come in the way of the present Notice of Motion. If the Plaintiff's cause of action survived her death and was available to those who would be entitled in law to represent her estate, then certainly the Applicant who claims to be her heir and legal representative is entitled to continue that cause of action.

3. The other submission made in opposition is that on 21st July 2014 a statement was made by the counsel for the original Plaintiff that prayer clause (b) of the suit for specific performance would not survive and the Plaintiff would be press that relief.

4. I have no manner of doubt that at this stage the Applicant is bound by all acts done and statements made by the original Plaintiff. The Applicant cannot simply by virtue of being impleaded in place and in stead of the original Plaintiff be relieved of the consequences of statements made on behalf of the original Plaintiff.

5. Subject to these observations, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b).

6. Amendment to be carried out within two weeks from today.

CHAMBER SUMMONS NO. 425 OF 2015

7. Not on board. By consent, taken up for hearing and final disposal.

8. For the aforesaid reasons, the Chamber Summons is made absolute.

9. Amendment to be carried out within two weeks from today. Ms Geeta Patel D'Souza will be shown as the Plaintiff and Respondent Nos. 1 to 7 in the Schedule to the Chamber Summons will be added as formal Defendants.

10. A copy of the amended Suit to be filed and served on the Advocates for all other parties and on the newly added formal Defendants within four weeks thereafter.

11. The Chamber Summons is disposed of in these terms.

12. It is for the newly added/substituted Plaintiff, Geeta Patel D'Souza to file, if so advised, a fresh Notice of Motion for any interim reliefs. All contentions in that behalf are expressly kept open.

(G. S. PATEL, J)