

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 724 OF 2015
IN
EXECUTION APPLICATION NO. 154 OF 2002
IN
HIMACHAL PRADESH SUIT NO. 46 OF 1998**

Mohan Meakins Ltd	...Applicant
<i>Versus</i>	
S Somesh & Co & Ors	...Respondents

Mr Cyrus Ardeshir, *with Shushrut Desai, i/b Legal Associates, for the Applicant.*

Mr Rahul Raut, *i/b M/s. NN Vaishnava & Co., for Respondents Nos. 1 and 5.*

Mr Kevic Setalvad, *Senior Advocate, i/b Som S Sinha, for Respondents Nos. 6 and 7.*

CORAM: G.S. PATEL, J
DATED: 22nd January 2018

PC:-

1. The original Plaintiff, Mohan Meakins Ltd, obtained a decree dated 8th July 1999 against the Defendants. The Applicant, Kavita Kapahi, is the daughter of the original 5th Defendant. She has obtained an assignment of the decree together with the decretal

claim from Mohan Meakins Ltd. She, therefore, seeks to be substituted as the Plaintiff.

2. The contesting Defendant No. 7 has opposed the Chamber Summons. Mr Setalvad on his behalf questions the legality of the deed of assignment and says it is not an arms' length transaction, and, specifically that it is in violation of, if not the letter, then definitely the spirit of an order of 11th March 2015 at pages 84-85, one that required the 7th Defendant's consent for any settlement, composition or arrangement.

3. I do not see how it is possible to refuse the application for substitution if there is in fact a deed of assignment, as is evident from page 28 onwards. However, this will necessarily have to be without prejudice to all the rights and contentions raised by the contesting Defendant No. 7 and which will include all the points taken in the Affidavit in Reply and in any filings made on behalf of the 7th Defendant including any interim application he may have filed. Specifically Defendant No. 7 will be at liberty to contend in any execution proceedings that the Applicant may initiate as the substituted Plaintiff that what she holds is a decree that is incapable of execution at least against the 7th Defendant. All contentions in this behalf must be kept open, and they are.

4. I make it clear that this order moulds the relief sought in prayer clauses (b) and (c). I have not expressly either accepted or rejected these reliefs as framed. An application in those terms may

be made again by the substituted Plaintiff, and will be decided on merits, with all contentions kept open.

5. The Chamber Summons is disposed of in these terms with no order as to costs.

(G. S. PATEL, J)