

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

CHAMBER SUMMONS NO.108 OF 2018

IN

CAVEAT LOD.NO.178 OF 2018

IN

PETITION NO.590 OF 2018

Sharon Cedric Pereira (Nee Fernandes) .. Applicant

In the matter between:

Mr. Raintaine Gonsalves .. Petitioner

Sharon Cedric Pereira (Nee Fernandes) .. Caveator

Mr. Royston Pereira with Rinika Jain for petitioner
Ms. Nelly Mehta I/b. NMA Legal for applicant

CORAM : R.D.DHANUKA, J.

DATE : 21st November 2018.

P.C.

By this chamber summons, the applicant (original caveator) seeks condonation of delay of three days in filing affidavit in support of caveat and for taking the said affidavit in support on record.

2] The citation was served upon the applicant on 28th June 2018. It is not in dispute that the caveat was already filed within time under the O.S. Rules. However, there was delay of 3 days in filing the affidavit in support of caveat.

3] Learned Counsel for the applicant invited my attention to the reasons recorded in the affidavit in support of the chamber summons and more particularly para 3 thereof. He submitted that for the reasons recorded in the said para, the applicant was unable to attend this Court for affirmation of affidavit in support of caveat and thus the delay of 3 days in filing the same be condoned.

4] Learned Counsel for the original petitioner, opposes this chamber summons on the ground that the delay has not been sufficiently explained. He submits that while considering the application for condonation of delay, it is not the length of delay which is immaterial for filing the affidavit in support of caveat but whether explanation can be accepted or not. In support of this submission, the learned Counsel placed reliance upon a judgement of Delhi High Court in cases of uttarakhand Transport Corporation

Vs. Ram Sakal Mahto & Anr. Reported in ILR (2012) V Delhi 555 and in particular para 6 thereof.

5] Another submission of the learned Counsel for original petitioner is that in the chamber summons, the applicant had not mentioned the number of days of delay.

6] Learned Counsel for the applicant in rejoinder submits that number of days of delay was not mentioned in the prayer clause (a) of the chamber summons. However in view of the office objection raised by the office of Prothonotary & Senior Master, the prayer clause (a) was amended and delay of three days in filing the affidavit in support of caveat was mentioned and was sought to be condoned. It is submitted that the applicant has sufficiently explained the delay in filing affidavit in support of chamber summons.

7] A perusal of the affidavit in support of the chamber summons would make it clear that the applicant has sufficiently explained the delay of 3 days in filing affidavit in support of the

caveat. I am inclined to accept the explanation given in para 3 of the affidavit in support of chamber summons, explaining the delay in filing the affidavit in support of caveat.

8] Insofar as the submission of learned Counsel for the petitioner that there was an amendment to the chamber summons, which was not informed to the petitioner is concerned, a perusal of record and proceedings indicates that in view of the office objection raised by the office of Prothonotary & Senior Master, the applicant was required to mention the number of days delay in filing the affidavit in support of caveat which was not mentioned originally. The applicant, therefore, carried out the amendment in prayer clause of the chamber summons which is duly initialled. There is thus no substance in the said submission of learned Counsel.

9] Insofar as Delhi High Court judgement (supra) which is relied upon by the petitioner is concerned, there is no dispute about the proposition laid down by the Delhi High Court. However, since, in this case the applicant has sufficiently explained the delay of three days in filing affidavit in support of caveat, I am inclined to

allow the chamber summons in terms of prayer clauses (a) and (b).

10] Learned Prothonotary & Senior Master is directed to take the said affidavit in support of caveat along with caveat on record and to convert the petition in suit. No order as to costs. Applicant is permitted to file affidavit in support of caveat within one week from today. Prothonotary & Senior Master to act on an authenticated copy of this order.

(R.D.DHANUKA, J.)