

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1108 OF 2017
IN
SUIT NO. 1488 OF 1980**

Shamlal Tulsidas	...Plaintiff
<i>Versus</i>	
Mayadevi Chetandas Jethwani & Ors	...Defendants
<i>And</i>	
Golden Pebbles CHSL	...Applicant

Mr Anirudh Hariani, *with Nooruddin D, Apurva Gupte, i/b Hariani & Co., for the Plaintiff.*
Mr Pravin Samdani, *Senior Advocate, with Ranbir Singh, Apeksha Murray, Rashmin Jain, i/b Kanga & Co., for the Applicants.*

CORAM: G.S. PATEL, J
DATED: 9th March 2018

PC:-

1. On 18th February 2018, I took up the Chamber Summons No. 1108 of 2017 filed by the Golden Pebbles Cooperative Housing Society Limited seeking impleadment in this Suit of 1980. I noted that the Suit had considerably progressed and that even the evidence of the Plaintiff was complete. I further noted that there was delay of at least 6 years and I directed the Applicants to deposit (not paid) an

amount of Rs.20,00,000/- as a condition precedent to hearing the impleadment application. I am told that the amount has been deposited. I will, therefore, turned to the merits of the applications. The basis of the Chamber Summons is that the Applicant-Society has obtained a deemed conveyance on 27th August 2013 under Section 5A of the Maharashtra Ownership Flats Act 1963 (“MOFA”). This deemed conveyance is registered. It is in respect of an area of about 6179.35 sq mtrs on which the Applicant Society's building stands. The property in question is located at Santacruz, Mumbai. There are over 109 flats in the building all in occupation.

2. The question is whether the Society is a necessary and proper party to the Suit. To assess this, one must have regard to the frame of the present Suit. This Suit is a regular Suit for dissolution and accounts of a Partnership Firm called Trimurti Corporation. That Partnership Firm owned several properties. There were transactions in respect of various lands or portions of lands. The Suit itself does not seek to impeach or set aside any of those property transactions. It appears that in this Suit a Court Receiver was appointed pursuant to an order dated 5th February 1981. There is subsidiary issue as to whether Court Receiver then proceeded to take physical possession of the Applicant-Society plot or not, but I am not raising that. The Court Receiver was directed to file independent Suits and which he has done. These are Suit Nos. 2860 and 2861 of 1996. In these two Suits, there is no question of accounts and dissolution because that is the subject matter of the present Suit. The two 1996 Suits impeaches various property transactions to which the Partnership Firm was a party.

3. Mr Samadani urges that the Applicant-Society becomes necessary party to this Suit of 1980 only if it is held that the present Suit is or must be deemed to be a Suit impeaching those property transactions. I do not see how this Suit could possibly be viewed in that perspective. There are two reasons. First, there is no prayer in the present Suit to impeach those property transactions; and this prayer or set of prayers impeaching the property transactions is/are the subject matter of the two 1996 Suits. Thus, even if the present Suit is decreed the Applicant Society's claim to title will remain entirely unaffected. Those property transactions are not the subject matter of this Suit. The only subject matter of the present Suit is the Partnership Firm, its dissolution and the drawing up of its accounts.

4. The consequence is that the present Chamber Summons for impleadment is unnecessary and the Applicant is not the necessary or proper party to the Suit. However, it may well be both a necessary and a proper party to the 1996 Suits. Mr Samadani states that Applicant-Society has already filed Chamber Summons No. 1071 of 2017 in Suit No. 2860 of 1996 and Chamber Summons No. 458 of 2017 in Suit No. 2861 of 1996 seeking impleadment have already been filed. Those Chamber Summonses for impleadment in the 1996 Suits will be heard on their merits. All contentions will be left open on all sides including specifically as to the any question of delay or limitation.

5. The present Chamber Summons is dismissed as withdrawn with no order as to costs. The amount of deposit will be returned by the Prothonotary and Senior Master at the earliest and, if so requested by the Applicants by an RTGS transfer to their designated

account. The Prothonotary will act on an authenticated copy of this order. The Applicants contentions that it is entitled to an order or to seek an order for discharge of the Receiver in respect of the Applicant's portion are also kept open for appropriate proceedings.

(G. S. PATEL, J)