

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

**CHAMBER SUMMONS NO.49 OF 2018
IN
SUIT NO.1189 OF 1983**

Ms.Rashna Ratan Surveyor & Anr.)....Applicants

IN THE MATTER OF :

Ratan Dinshaw Surveyor)....Plaintiff
V/s.

Westcoast Builders Pvt. Ltd. & Anr.)....Defendants

Ms.Duraiya S.Retiwala for applicants.

Mr.Gaurav Mehta I/by H.Doctor and Co. for defendant no.1.

CORAM : K.R.SHRIRAM,J

DATE : 11.9.2018

P.C.:-

1. This Chamber summons is to bring on record the applicants as plaintiffs in place of the original plaintiff who expired on 14.2.2015.

2. Mr.Mehta for defendant no.1 strongly opposes the chamber summons stating that the suit had abated long before the applicants took out the application. Mr.Mehta submitted that plaintiff having expired on 14.2.2015, the suit abated on 15.5.2015 and this chamber summons has been lodged only on 18.12.2017. Mr.Mehta further added that even if one accepts the applicants' case as stated in the affidavit in support, still Chamber Order (L) No.173 of 2015 was taken

only on 3.12.2015 and therefore, the suit had already abated. Mr.Mehta also submits that apart from these objections, there is no evidence to show that applicants are legal heirs of plaintiffs.

3 Ms.Retiwala for applicants submitted and also brought to the attention of the court the necessary documents to show that in March-2015 applicants had lodged Chamber summons (L) No.173 of 2015 to bring themselves on record with affidavit in support of the chamber summons affirmed on 17.3.2015. Ms.Retiwala states that the registry directed her to convert the said chamber summons into chamber order because the application was within 90 days period of the demise of plaintiff. It appears that this chamber order came to be dismissed on 19.3.2016. Notice of Motion for setting aside this order dismissing the chamber order was lodged but it is stated that this Notice of Motion is not traceable in the court registry. Copy of the affidavit in support of the said Notice of Motion which is not traceable, has been annexed to the chamber summons, from which it appears that the said affidavit in support was affirmed on 5.5.2016 before the Associate of this court. Therefore, I accept the averments in the affidavit in support that such a Notice of Motion was lodged.

4 This chamber summons has been again taken out because the said Notice of Motion was not traceable.

5 Having heard the counsel and considered the averments in the affidavits, I am inclined to allow the application. The applicants are permitted to be added as plaintiffs in place of original plaintiffs by amending the plaint as per the schedule annexed to the chamber summons. It is made clear that no consequential amendments are permitted and hence item (III) of the schedule is bracketed in red ink.

Amendments to be carried out by 29.9.2018 and amended plaint be served by 29.9.2018.

6 Ms.Retiwala states that she would provide the necessary documents like copy of the death certificate and passport to the defendants to show that original plaintiff was the father of the applicants.

7 Similar amendments can be made in the counter claim and written statement to the counter claim.

8 Issues are yet to be settled. Suit be listed on 1.10.2018 for issues, on which date plaintiff and defendants shall come with agreed

list of issues and a separate list of issues on which they are unable to agree. In the meanwhile, parties shall file their respective affidavit of documents, complete discovery and inspection and exchange statement of admission and denial with reasons for denial. It is made clear that no extension on any grounds whatsoever will be granted for complying with this part of the directions. Parties are put to notice that if these directions are not strictly or meticulously complied with, parties will not be allowed to rely on any documents apart from this document, copies whereof are annexed to the plaint or written statement as mentioned in the list of documents in the plaint.

Stand over to 1.10.2018.

Jahagirdar
Kiran
Ganesh

Digitally signed
by Jahagirdar
Kiran Ganesh
Date:
2018.09.14
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(K.R.SHRIRAM,J)