

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
REVIEW PETITION NO. 26 OF 2018
IN
APPEAL FROM ORDER NO.66 OF 2018
IN
CHAMBER SUMMONS NO. 2008 OF 2016
IN
B.C.C.C. SUIT NO. 6217 OF 2007
(H.C. SUIT NO. 3507 OF 2007)

Kuresh S/o. Rustom Kushesh and anr. .. Petitioners
Vs.
Farokh Khodadad Irani @ (Yazdegardi) and ors. .. Respondents

Ms.Manorama Mohanty I/b Ms.Gayatri Sharma I/b S.K.
Srivastava & Co., for the Petitioners.
Mr.Kishor Jain a/w Ms.Priyal Chheda I/b Divya Jain & Priyal
Chheda, for Respondent No.1.

CORAM : M.S.KARNIK, J.

DATE : 21st JUNE, 2019

P.C. :

- . Heard learned Counsel for the parties.
2. It is the submission of the learned Counsel for the petitioners that already Chamber Summons No. 251 of 2012 was filed by the petitioners before the Trial Court for bringing

legal heirs of defendants No.3 & 4 on record. She would further submit that the defendants No. 1, 2, 5, 6, & 7 are legal heirs of defendant No.4 and they are already on record. There are 2 more legal heirs of defendant No.4 which could not be brought on record. Insofar as defendant No.3 is concerned, there is one legal heir.

3. Learned Counsel for the petitioners in this Review Petition seeks review of the order dated 13/07/2018 passed by this Court. In the Appeal from Order 66 of 2018 what was under challenge was an order dated 18/09/2017 passed in Chamber Summons No. 2008 of 2016. The Chamber Summons was dismissed. The Chamber Summons was dismissed by the Trial Court on the ground that there is inordinate delay in bringing the legal representatives of defendants No.3 & 4 on record. The Chambers Summons is also dismissed on the ground that there is another Suit pending filed by another partner wherein decision of that Suit will cover the controversy in present Suit also, therefore no prejudice will be caused to the

petitioners. Review is sought of this order.

4. Be that as it may, it is now pointed out by learned Counsel for the petitioners that the petitioners had already filed Chamber Summons No. 251 of 2012 for bringing legal heirs of defendants No. 3 & 4 on record. However, this was not noticed by learned Counsel for the petitioners and inadvertently, the Chamber Summons No. 2008 of 2016 was filed. According to learned Counsel this is a good ground for reviewing the order passed by this Court. In my opinion, there is no error apparent on the face of the record in the order dated 13/07/2018 passed by this Court. Admittedly, the Chamber Summons dated 251 of 2012 is not yet decided. When the Chamber Summons No. 2008 of 2016 was filed, there was obviously an inordinate delay in filing the Chamber Summons and therefore the trial Court proceeded to dismiss the same on the ground of delay as well as on the ground which is stated hereinbefore.

5. As the petitioners had already filed Chamber

Summons No. 251 of 2012 for the same relief and which is not yet decided, it would be expedient and in the interest of justice that having regard to over all facts and circumstances, if the same is decided on its own merits without being influenced by the order dated 18/09/2017 in Chamber Summons No. 2008 of 2016 or the order dated 13/07/2018 passed by this Court.

6. In any case, learned Counsel for the petitioners now states that she would withdraw Chamber Summons No. 2008 of 2016. Petitioners are permitted to withdraw Chamber Summons No. 2008 of 2016. Consequently, orders passed therein are rendered ineffective. This in the interest of justice as the said suit not fail on a technical ground of not bringing the legal heirs on record more so when Chamber Summons No. 251 of 2012 was already filed & is not yet decided.

7. Learned Counsel for the petitioners submits that the petitioners have already filed Notice of Motion for setting aside abatement. The same obviously will be decided on its own

merits. In this view of the matter, the Review Petition is disposed of.

(M.S.KARNIK, J.)