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

**NOTICE OF MOTION NO. 1338 OF 2018
IN
COMMERCIAL SUMMARY SUIT NO.62 OF 2014**

UCO Bank	... Applicant
<i>In the matter between</i>	
Universal Medicare Private Ltd.	...Plaintiff
Vs.	
UCO Bank	...Defendant

Sameer Pandit, Krina Gandhi, Sarrah K. I/b. Wadia Ghandy & Co.
for the Plaintiff.
Mr. O.A. Das, for the Defendant / Applicant in NMCD.

CORAM:	R. I. CHAGLA, J.
DATE:	20TH SEPTEMBER, 2019

PC:-

1. This Notice of Motion has been taken out in the above Commercial Summary Suit in which certain queries are sought to be introduced as and by way of issues after an admitted delay of 243 days in filing the application. It appears that the written statement was filed some time on 4th October, 2017 and thereafter this Notice of Motion has been taken out.
2. It is stated by the learned Counsel for the Applicant that considering the Plaint in which an averment has been made in paragraph 3.1 that one Mr. Gautam Shukla who is claimed to be an agent of the Defendant offered the Plaintiff an opportunity to open a fixed deposit account with the Defendant at a highly competitive rate of interest. The written statement has dealt with this averment in paragraph 3(d). It has been stated therein that it was in fact not Mr. Gautam Shukla but one Mr. Mohammad

Fasihuddin, who had introduced himself as an agent of the Plaintiff and informed that he would like to have the Plaintiff open a fixed deposit with the Defendant. He has stated that accordingly, the amendment to the written statement was sought to contend that the two named persons viz. Mr. Gautam Shukla who is alleged to be the agent of the Defendant as per the Plaintiffs case and Mr. Mohammad Fasihuddin who is claim to be the agent of the Plaintiff as per the Defendants' case are necessary parties to the Suit in order to have an appropriate adjudication. Further in the amendment, other parties mentioned therein are also stated to be necessary parties to the Suit, in order to have appropriate adjudication. He has accordingly submitted that these issues are required to be framed as the Suit suffers from non-joinder of the necessary and proper parties and these issues would require to be adjudicated upon.

3. He has relied upon the judgment of the Karnataka High Court in case of **Anneppa Channappa Shetkar & Anr Vs. Bandevva (deceased by L.Rs.) & Ors.**¹ to contend that an application under Order 14 Rule 5 can be entertained by this Court although it may suffer on the ground of delay and laches. It is the duty of the Court to frame appropriate issues based on the pleadings and the Appeal Court had in that case directed the Trial Court to recast issues or frame appropriate issues and dispose of the Suit in accordance with law. He has also relied upon the judgment of the Delhi High Court in **Indira Madani Vs. Hala Ram**

1 AIR 2004 Karnataka 276.

(Since deceased)² to contend that for the just and effective adjudication of this controversy and to avoid multiplicity of the proceedings, it would be in the interest of justice if additional issue is cast and the parties go to trial on this issue as well. In addition, he has relied upon judgment of this Court in **State Bank of India Vs. M/s. Javed Textiles and Ors.**³ to contend that the public institutions like banks should not be treated on par with private individuals and that Court should not take a mechanical view of the provisions of the law of limitation and should treat public institutions like banks differently from private individuals in considering matters of condonation of delay in filing proceedings. He has thus submitted that this Court be pleased to condone the delay and frame necessary issues.

4. The Notice of Motion is vehemently opposed by the learned Counsel for the Plaintiff. He has submitted that it is very clear from the Order 1 Rule 13 of the Code of Civil Procedure, 1908 that the objection of non-joinder or mis-joinder of parties shall be taken at the earliest possible opportunity in all cases where issues are settled at or before such settlement unless the ground of objection has subsequently arisen. He has submitted that this objection was always available to the Defendant and could have been raised at the time when the issues were settled. The objection not so taken shall be deemed to have been waived under the said provision. This is apparent from the Plaint as well as in the Written

2 Delhi High Court Civil Appeal No.904 of 2001 decided on 8th April, 2002.

3 AIR 1986 Bombay 246.

Statement and the averments thereof which have been referred to above by the learned Counsel for the Defendant. He has submitted that the Defendant has by choosing not to frame issues on non-joinder or mis-joinder of the parties cannot now seek a reframing of issues by adding these issues. He has further submitted that the trial is well under way and the Plaintiffs evidence has already been closed. Accordingly, the Notice of Motion seeking reframing of issues on non-joinder or mis-joinder of necessary parties should not be entertained by this Court.

5. Having considered the rival submissions, in my view the Defendant cannot be allowed to have the issues reframed by adding additional issues, particularly with regard to the non-joinder or mis-joinder of necessary parties. It is clear from the Plaint, in particular, paragraph 3.1 which is been referred to by the learned Counsel for the Defendant as well as from paragraph 3(d) of the Written Statement that necessary averments were already made in the original pleadings and hence it was for the Defendant to raise these objections as to non-joinder or mis-joinder of the parties under Order 1 Rule 13 of the CPC which shall have to be taken at the earliest possible opportunity and in all cases where issues have been settled at or before such settlement. The exception in that provision that the objection has subsequently arisen is not applicable in the present case and hence such objection not so taken is deemed to have been waived. It is thus clear from the said provision that the Defendant cannot be allowed to raise the objection as to non-joinder or mis-joinder of the parties

at a belated stage particularly when trial is well under way and the Plaintiffs evidence has been closed. The judgments relied upon by the Defendant will not come to aid of the Defendants as these judgments apply in the event that the trial court had not framed the issues in a proper manner and / or that the issues were necessary to avoid multiplicity of proceedings and for which the parties would go on trial on these reframed issues as well. Further the judgment in the case of ***State Bank of India (Supra)*** is on condonation of delay and where public institutions like banks are to be treated differently from individuals while considering matters of condonation of delay. This also will not come to the aid of the Defendant, particularly when it is clear from the Order 1 Rule 13 of the CPC that objections as to non-joinder or mis-joinder of necessary parties were required to be raised at the earliest and at all cases where the issues are settled at or before such settlement.

6. Accordingly, I find no merit in the Notice of Motion and the Notice of Motion is rejected with no order as to costs.

7. Suit shall be placed for marking of Defendants documents on 7th November, 2019.

(R I. CHAGLA, J.)