

psv

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

**CHAMBER SUMMONS NO.1097 OF 2019  
IN  
EXECUTION APPLICATION NO.443 OF 2005  
IN  
SUMMARY SUIT NO.1846 OF 1994**

|                                 |               |
|---------------------------------|---------------|
| Rollin Regan                    | ....Applicant |
| In the matter between           |               |
| Ramji Nagji Shah                | ....Plaintiff |
| V/s.                            |               |
| Shashikala Machhindranath Kadam | ....Defendant |

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Ms.Chandrika Prajapati for Applicant.

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**CORAM : G.S. KULKARNI, J.**

**DATE : 26<sup>th</sup> NOVEMBER, 2019**

**P.C.:**

The applicant in this chamber summons is one of the legal heirs of the original defendant-Shashikala Machhindranath Kadam who has expired leaving behind the following legal heirs:-

- “1. Son – Sunjjoy Kadam – now deceased
  - a. Wife – Molina Kulkarni (also known as Swati Kadam)
  - b. Daughter – Namrata Kadam.
2. Son – Vinay Kadam (also known as Rollin Regan)
3. Son – Abhay Kadam
4. Daughter – Priya Kadam.”

2. The present chamber summons has been filed by the applicant, one of the legal heirs praying for the following reliefs:-

- “(a) That this Hon’ble Court be pleased to recall the record and proceedings from the GT Hospital to the concerned department in High Court;
- (b) That this Hon’ble Court be pleased to allow to bring on record the legal heirs of the Defendant Late Mrs. Shashikala Machhindranath Kadam, one of them being the Applicant to come on record as per Schedule – I more particularly specified in Exhibit – G herein;
- (c) That this Hon’ble Court be pleased to direct the accounts department of this Hon’ble Court to issue a statement of the amounts lying with the concerned department in order to enable the Applicant to apply to the concerned Department for withdrawal of the excess amount lying with the concerned authorities;
- (d) for cost of this Chamber Summons and the Order to be made thereon be provided for.”

3. The relevant facts are that in or about 1990, the defendant-Shashikala Machhindranath Kadam who was going through a financial crunch, had obtained a loan from the plaintiff-Ramji Nagji Shah. As the defendant was unable to repay the loan, the plaintiff had filed the aforesaid suit against Shashikala Machhindranath Kadam. The suit was decreed. As the decree was not satisfied, the plaintiff had initiated execution proceedings and accordingly the only property of defendant-Shashikala Machhindranath Kadam being the residential flat was put to auction and sold to the auction purchaser. After satisfying the decretal dues, certain amounts in excess had remained deposited with this Court. As the defendant-Shashikala Machhindranath Kadam also expired and the applicant having shifted to Canada and other legal heirs of the defendant also not being fully aware that excess amounts are lying in this Court, the present chamber summons has been filed seeking direction that the Registry be directed to issue a statement of the amounts lying with the concerned department to enable the applicant and other legal heirs of the

defendant to apply to the concerned department for withdrawal of the said excess amounts.

4. On 6 November 2019 after hearing the learned Counsel for the applicant, the Court passed the following order:-

“1. Heard learned counsel for the applicant on this Chamber Summons. Office to place a report on record of this chamber summons as to whether any amount is still available in the office as prayed by the applicant in prayer Clause “C” of this Chamber Summons. Let the report be placed on record before the adjourned date of hearing. Stand over to 20 November 2019 (High on board).”

5. Accordingly the Prothonotary and Senior Master of this Court placed on record a report dated 13 November 2019 stating as under:-

“ I respectfully submit that pursuant to the Orders dated 8<sup>th</sup> September, 2008, Sheriff of Mumbai has deposited a sum of Rs. 55,02,646/- (Rupees Fifty Five Lakhs Two Thousand Six Hundred Forty Six only) on 3<sup>rd</sup> October 2008, in Execution Application No. 443 of 2005 in Summary Suit No. 1846 of 1994, with this Office and said amount had invested with State Bank of India, Churchgate Br., Mumbai.

I further respectfully submit that pursuant to the Order dated 14<sup>th</sup> June 2005, 8<sup>th</sup> September 2008 and 16<sup>th</sup> September 2008, this Office had realized the said Fixed Deposit Receipt and released the amount of Rs.17,49,547.94 (Rupees Seventeen Lakhs Forty Nine Thousand Five Hundred Forty Seven and Paise Ninety Four only) in favour of “Ramji Nagji Shah”, Plaintiff, bearing Cheque No.602622, dated 9<sup>th</sup> January 2009.

I further respectfully submit that the balance amount of Rs. 37,81,341.06 (Rupees Thirty Seven Lakhs Eighty One Thousand Three Hundred Forty One and Paise Six only) has been invested in Fixed Deposit with same Bank, i.e. State Bank of India, Churchgate Br., Mumbai and at present a sum of Rs. 75,96,131/- (Rupees Seventy Five Lakhs Ninety Six Thousand One Hundred Thirty One only) is lying under FDR No. 30620035707, dated 23<sup>rd</sup> December 2018, which is due for maturity on 23<sup>rd</sup> December 2020.

Most Respectfully submitted for appropriate directions.”

6. According to the above report, an amount of Rs. 75,96,131/- is lying under FDR No.30620035707, dated 23<sup>rd</sup> December 2018, which would mature on 23<sup>rd</sup> December 2020.

7. In the above circumstances, the legal heirs of the deceased defendant would be entitled to receive the said amount. Learned Counsel for the applicant states that the amount would be now required to be distributed in equal proportion i.e. 1/4th share to the legal heirs of son Sunjjoy Kadam, 1/4th share in favour of another son Abhay Kadam, 1/4th share in favour of the applicant, and 1/4th share in favour of daughter Priya Kadam. The request as made by the learned Counsel for the applicant in that regard would be reasonable. There are no other claimants/legal representatives who are in any case the legal heirs of the defendant are entitled to receive the amount.

8. Office is directed to take appropriate steps on an application as moved on behalf of the legal heirs so that the amounts can be proportionally distributed in their favour as noted above.

9. Chamber summons is accordingly disposed of with liberty to the applicant and the other legal heirs to move appropriate applications before the Prothonotary & Senior Master of this Court for withdrawal of the entitled amounts which shall be paid however subject to usual undertaking.

10. Disposed of in the above terms. No costs.

[G.S. KULKARNI, J.]