

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

CHAMBER ORDER NO.1339 OF 2018

IN

COMMERCIAL SUIT NO.125 OF 2017

Rashmikanth Zaverchand Shah

....Plaintiff

Vs.

Harpreet Singh Onkarsingh Kohli and Ors.

....Defendant

Mr. Bharat Joshi for plaintiff.

Ms. Anuja Bhansali a/w. Ms. Rushsar Shalkbazkar I/b. Mr. Raval Shah for defendant nos.1 to 4 and 6.

Mr. Amit Nikam I/b. Mr. Chirag Sancheti for defendant no.5.

CORAM : K.R.SHRIRAM, J.

DATE : 8th MARCH 2019

P.C.:

1 The counsel for defendant nos.1 to 4 and 6 states that the writ of summons was served sometime in June 2017. The counsel for defendant no.5 states that the writ of summons was served on 15th March 2017.

2 Mr. Joshi, counsel for plaintiff states that all defendants, except defendant no.7, were served sometime in March 2017. As regards defendant no.7, defendant no.7 was added subsequently pursuant to order dated 13th July 2018 on whom the amended copy of the plaint has been served but writ of summons has not been served. Mr. Joshi states that there was a office circular dated 29th September 2008 which provided that if any party has appeared at any interim stage, writ of summons need not be served but in view of the judgment passed by this Court in *Axis Bank Limited V/s.*

Smt. Mira Gehani¹, Mr. Joshi states that within one week from today, he will apply for issuance of writ of summons to be served on defendant no.7.

3 As regards defendant nos.1 to 6, the time prescribed under Order 8 Rule 1 of the Code of Civil Procedure has expired long ago. At this stage, Mr. Nikam, counsel for defendant no.5 states that written statement of defendant no.5 has been lodged in the registry on 28th June 2017 but is under objection but despite that Prothonotary and Senior Master transferred the suit to the list of undefended suits against defendant no.5 and this chamber order is challenging that order. Since written statement of defendant no.5 was filed within the 120 days prescribed under amended Order 8 Rule 1, chamber order is allowed.

4 So far as defendant nos.1,2,3,4 and 6 are concerned, as held in the judgment of the Apex Court in **SCG Contracts India Private Limited V/s. K.C. Chamankar Infrastructure Private Limited**², these defendants have forfeited their right to file written statement.

5 Stand over to 12th April 2019 for case management hearing.

(K.R. SHRIRAM, J.)

1. Commercial Notice of Motion No.196 of 2018 in Commercial Suit No.159 of 2017 pronounced on 27th February 2019 (unreported)

2. 2019 SCC Online SC 226