

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

**CHAMBER SUMMONS NO. 1390 OF 2018
IN
COMMERCIAL EXECUTION APPLICATION NO. 588 OF 2018**

Suresh Gianchand Kumar	...	Applicant/Claimant
Versus		
Ramnik Mohanlal Chawda & Anr.	...	Respondents
And		
Khushali Ramnik Chawda	...	Proposed Respondent

Mr. Mohan B. Jadhav for the Applicant.

CORAM : R.I. CHAGLA, J.

DATED : 23rd AUGUST, 2019.

P.C. :

1 None appears for Respondent No.2 despite service having been effected by the Applicant on Respondent No.2 and the Advocate for Respondent No.2 having acknowledged service.

2 This Chamber Summons has been filed by the Applicant to add proposed Respondent in place of Original Respondent No.1 who had

expired on 02.07.2018. There is a delay of 30 days in taking out the present Application.

3 It is stated in paragraph 3 of the Application that the Applicant came to know of the death of Original Respondent No.1 upon being served with the Notice of Motion No.1421 of 2018 in Commercial Arbitration Petition No. 371 of 2018 on 01.09.2018. In the Notice of Motion No.1421 of 2018 taken out by the Respondent No.2 herein, this Court had recorded that the Original Respondent No.1 herein had expired and that Respondent No.2, herein who is a widow of Original Respondent No.1 and who is power of attorney of the other legal heir of the deceased viz. his daughter, was permitted to delete the Original Respondent No.1 herein and add the name of the proposed Respondent herein, as legal heir of the deceased along with herself. Thus, the Respondent No.2 herein, was permitted by the said order dated 10.10.2018 to prosecute the Commercial Arbitration Petition not only in her own right but as legal heir of the deceased.

4 Similarly, the Applicant herein has sought for deletion of the Original Respondent No.1 by bringing on record in the Chamber Summons, the proposed Respondent in place of Original Respondent No.1. Further, Respondent No.2 who was Petitioner No.2 in the Commercial Arbitration Petition and who was permitted to join the proposed Respondent herein in

those proceedings, is also legal heir of the deceased. Accordingly, the Applicant seeks to add the other heir of the deceased, the proposed Respondent.

5 Considering that this Court had allowed the proposed Respondent to be brought as a party Petitioner in the Commercial Arbitration Petition No.371 of 2018 and allowed the Respondent No.2 herein to prosecute the Petition not only in her own right but also as legal heirs of the deceased. Similar relief is required to be granted by permitting the Applicant to join the proposed Respondent in place of Original Respondent No.1 and Respondent No.2 who is already on record be also shown as the legal heir of the deceased Original Respondent No.1.

6 I am satisfied with the reasons given in the affidavit of the Applicant in support of the Chamber Summons that the Applicant came to know of the death of Original Respondent No.1 only on 01.09.2018 when the Notice of Motion No.1421 of 2018 in the Commercial Arbitration Petition was served upon the Applicant. Considering that the Chamber Summons has been filed within the period of 90 days from the knowledge of the Applicant of the expiry of the Original Respondent No.1, it would be appropriate to permit the Applicant to add the proposed Respondent in place of Original Respondent No.1 in the Commercial Execution

Application No.588 of 2018 by condoning the delay in taking out the Application.

7 Accordingly, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b). The amendment shall be carried out within a period of two weeks from the date of this order.

(R.I. CHAGLA, J.)