

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CHAMBER SUMMONS NO.233 OF 2019
IN
WRIT PETITION NO.1734 OF 1986

M/s.Sunil Builders No.1 ... Applicant

In the matter between:

Dhondopant Kondaji Khandke ...Petitioner

v/s.

Nalima Shashikant Vanarase & Ors. ...Respondents

Mr.Nitin Desphande for the Applicant.

Mr.R.J.Mane, AGP for the State.

...
CORAM : A.A. SAYED &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : 06 FEBRUARY 2020

P.C.:

This Chamber Summons is filed by one M/s.Sunil Builders No.1 seeking the following reliefs:

“(a) That the delay, if any, in filing the Chamber Summons be condoned.

(b) That the Hon'ble Court be pleased to permit the Applicant to amend the Plaint as per the Schedule annexed hereto.

The Schedule annexed to the Chamber Summons reads thus:

SCHEDULE TO THE CHAMBER SUMMONS

1. *The name of the Original Petitioner be deleted, and in his place the following be added as Petitioner.*

M/s. Sunil Builders No.1.

*a partnership firm registered under the
Indian Partnership Act, 1932 having its
registered office at Mahalaxmi Bldg. No.
3, Sir Bhalchandra Road, Hindu Colony,
Dadar (East), Mumbai 400 014.*

2. *Add the following persons as Additional Respondent No.1 to 5.*

1. *Nalima Shashikant Vanarse.*
2. *Hema Vasantrao Kakade*
3. *Geeta Dattatray Kapadekar*
4. *Madhavi Madhukar Patil and*
5. *Gauri Deepak Bachal.*

3. *The following be added as paragraph 1(a) after paragraph 1.*

1(a) The Original Petitioner had vide Articles of Agreement dated 12th March, 1981 agreed to sell to the Petitioners the property which is the subject matter of the present Petition. Thereafter, the Original Petitioner has by Indenture dated 30th November 1994, sold, transferred and conveyed the property which is the subject matter of the present Petition to the Petitioners. The Original Petitioner has further by an Irrevocable

Power of Attorney dated 30th November, 1994 granted absolute powers relating to the said property to the Petitioners. Thus, the Petitioners are entitled to the said property and continue and maintain the present Petition.

(b) The Original Petitioner has since expired leaving behind the Additional Respondents No.1 to 5 as his only heirs and legal representatives. The Additional Respondents No.1 to 5 have by their letter dated 15.9.1994 confirmed the transfer of the said property to the Petitioners. The Additional Respondents No.1 to 5 are joined as proper parties, however, no reliefs are claimed against the Additional Respondents No.1 to 5.”

2. The Applicant claims right to the property by virtue of sale deed 30 November, 1994, executed in his favour by the original Petitioner during the pendency of this Petition. The Applicant claims that the original Petitioner had put him in possession of the said property. The original Petitioner died in July 1997. The Applicant claims that the legal representatives of the original Petitioner have no right to the property. On the basis of the said sale deed dated 30 November, 1994 the Applicant Petitioner seeks leave to implead his name as a Petitioner by deleting the name of the deceased Petitioner.

4. An Affidavit-in-Reply has been filed on behalf of the Respondent No.3 by one Shri Vinod Babu Chavan, Asst. Commissioner of Police, wherein it is stated that though the Writ Petition was filed by the original Petitioner, the Applicant had pursued the Petition as Power of Attorney of the original Petitioner. The Applicant did not disclose that he had purchased the property by Indenture dated 30 November, 1994. It is further pointed out that the earlier Chamber Summons for impleading the Applicant as party to the Petition was dismissed by this Court on 10 April, 1996.

5. We have heard the learned Counsel for the Applicant and the learned AGP.

6. The Petition was filed by the original Petitioner-Dhondupant Kondaji Khandke sometime in August 1986. As is apparent from the Chamber Summons and the documents enclosed therewith, the original Petitioner had executed an Agreement for Sale in favour of the Applicant much prior to filing of the Petition. Subsequently, during the pendency of the Petition, the original Petitioner had entered into a Conveyance-cum-Indenture dated 30 November, 1994 in respect of the subject property executed in favour of the Applicant for consideration of Rs.3,50,000/-. A Power of Attorney dated 30 November, 1994 was also executed by the original Petitioner whereunder the original Petitioner had appointed Sunil

Ramji Singh as his Attorney to exercise the powers as stated therein. Accordingly, the Applicant proceeded with the Petition as an Attorney of the Petitioner.

7. It is seen that the Writ Petition was initially allowed on 26 June, 1995 on the basis of the judgment of the Supreme Court reported in **1994(4) SCC 192 (Grahak Sanstha Manch and ors. v/s. State of Maharashtra)**, and the State Government was directed to de-requisition the premises in question and hand over vacant possession of the same to the Petitioner on or before 31 December, 1995. The State Government, thereafter, filed a Review Petition being Review Petition No.26 of 1995 impugning the order dated 26 June 1995. In the said Review Petition, Chamber Summons was taken out by the Applicant for impleading him as a party-Respondent. Learned AGP has produced before us a copy of the order dated 10 April 1996 . A perusal of which shows that the said Chamber Summons was taken out by the Applicant- Sunil Builders contending that they had entered into a development agreement with the original owner and therefore they are required to be joined as party-Respondent to the Review Petition. The said Chamber Summons, was ultimately dismissed by the Division Bench by its order dated 10 April, 1996.

8. It appears that the Review Petition filed by the State of Maharashtra being Review Petition No.26 of 1995 was ultimately dismissed by the Division Bench of this Court by order dated 3 May 2005. Aggrieved by that order the State of Maharashtra had filed an SLPs, which came to be numbered as Civil Appeal No.5244 of 2007 and Civil Appeal No.5243 of 2007. By order dated 2 November, 2007, the Civil Appeals came to be disposed of by setting aside the impugned order in the Review Petition and remanded the matter back to the High Court to consider the Writ Petition afresh. While disposing of the Civil Appeals, the Supreme Court observed as follows:

“Keeping in view the fact that in the event it is held that the premises in question, in fact, was leased by the Respondent, the question of issuance of a writ of or in the nature of mandamus, as was directed by the Division bench of the High Court, would not arise and, thus, we are of the opinion that interest of justice would be subserved if the impugned judgments are set aside and the matter is remitted to the High Court for consideration of the writ petition filed by the Respondent, on merit afresh. We direct accordingly.”

9. In view of the above, the Writ Petition stood revived and came up for consideration before this Court for hearing and disposal. On the own

showing of the Applicant, the sole original Petitioner had expired in July 1997. The legal representatives of the deceased Petitioner were not brought on record, resulting in abatement of the Petition. The Applicant however continued prosecuting the Writ Petition as POA holder of the original Petitioner. Suffice it to say that the POA having come to an end after the death of the original Petitioner, the Applicant could not have proceeded with the present proceedings on the basis of the POA. Moreover, the earlier Chamber Summons as indicated hereinbelow to implead the Applicant as a party was also dismissed.

10. During the course of hearing of the Writ Petition before one of us (A.A.Sayed,J., in the earlier assignment)), it was pointed out by the Bench that the Petition is of the year 1986 and considering the age of the Petitioner it may be quite likely that the sole Petitioner may have expired and in that event, the legal heirs may be required to be brought on record. It is only thereafter that the present Applicant had taken out the present Chamber Summons without disclosing that he had earlier filed a Chamber Summons in the Review Petition No.26 of 1995 seeking to bring itself on record and that the Chamber Summons was rejected. As stated hereinabove, the sole Petitioner had expired in July 1997 and failure to bring on record the legal representatives has resulted in abatement of the

Petition. The Applicant has not assigned any reasons for the inordinate delay in filing this Chamber Summons. There is no prayer for setting aside the abatement. The Applicant has not come to Court with clean hands and has deliberately suppressed material facts. The conduct of the Applicant disentitles it to the grant of reliefs in the Chamber Summons.

11 In the circumstances, we dismiss the Chamber Summons.

(ANUJA PRABHUDESSAI,J.)

(A.A.SAYED, J.)