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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2259 OF 2014**

Rajkumari Renukadevi Batliwala

....Petitioner

V/s

Trade Impex Pvt. Ltd. and Ors.

....Respondents

Mr. Sarosh Bharucha a/w Mr. Akshita Bhargava and Rukshin Ghiara i/
b M. Mulla Associates for the Petitioner.

Mr. Rajesh Shah a/w Kirtida Chandarana i/b Mahernosh J.
Humranwala for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 5, 2021

P.C.:-

1] Respondent No.1/Plaintiff took out Chamber Summons No.2476 of 2013 seeking amendment to the Plaint in B.C.C.C. Suit No.6907 of 1978 which is allowed vide impugned order dated 14/2/2014.

2] The learned Counsel for the Petitioner by inviting attention of this Court to the affidavit filed by Respondent No.1/Plaintiff which is produced at page 442 (relevant page 445) would urge that it was within the knowledge of Respondent No.1/Plaintiff about passing of preliminary partition decree which led to carrying out amendment and

challenge to the same in another parallel pending B.C.C.C. Suit No.536 of 1980. As such, submissions are, once Respondent No.1/Plaintiff has knowledge about passing of preliminary partition decree and the same is challenged by it in parallel proceedings, it is not open for Respondent No.1/Plaintiff to say that it has no knowledge about passing of preliminary partition decree. It is further claimed that even though Petitioner has filed her Written Statement stating about aforesaid passing of preliminary partition decree, it cannot be inferred that Respondent No.1/Plaintiff got knowledge about the same only from Petitioner's Written Statement. Further contentions are, other issues on the aspect of jurisdiction and limitation of the claim were, though canvassed at the time of hearing of the Chamber Summons, Court had not addressed the said issues.

3] The learned Counsel for Respondent No.1/Plaintiff would try to justify the claim of the Respondent No.1 for entitlement for amendment permitted vide order impugned, based on certain developments occurred during pendency of the suit proceedings viz order of injunction passed on 19/5/1978 in present B.C.C.C. Suit No.6907 of 1978 and confirmation thereof. It is also submitted that

the proceedings in the form of challenge to the findings recorded on the issue of amendment since are pending before the Supreme Court, Chamber Summons seeking amendment was moved at the belated stage. As such, according to him, the order impugned could be justified from findings recorded therein. As such dismissal is sought.

4] Considered rival submissions.

5] Though it is apparent that the Petitioner has come out with a case that the fact about passing of preliminary partition decree was within the knowledge of the Respondent No.1/Plaintiff in pending suit between the parties and at the relevant time, Respondent No.1/Plaintiff has carried out the amendment, the said aspect, though argued, Trial Court has not recorded any finding on the same, thereby inferring about existing knowledge of the Plaintiff about passing of the preliminary partition decree before Written Statement was brought on record. Apart from above, other issues as regards limitation and jurisdiction also appeared to have been canvassed. However, the Court below appears to be oblivious to the aforesaid submissions and proceeded to pass the order impugned, thereby permitting amendment

only on the ground that in Written Statement brought on record, fact of passing of preliminary partition decree came to the knowledge of the Respondent No.1/Plaintiff. When it was argued, as is reflected in the order impugned that Respondent No.1/Plaintiff was having knowledge of passing of the preliminary decree even prior to filing of the Written Statement as is apparent from their conduct of carrying out amendment and challenge to the same in pending parallel B.C.C.C. Suit No. 536 of 1980, Court was expected to deal with the said submissions.

6] In the aforesaid backdrop, it is apparent that rivals submissions of the parties in the Chamber Summons were not at all considered and dealt with by the court below but for recording of findings that through Written Statement, Respondent No.1/Plaintiff got knowledge about passing of the preliminary partition decree.

7] As such, the order impugned, for the reasons stated above, calls for interference. The order impugned dated 14/2/2014 passed by the City Civil Court, Mumbai in Chamber Summons No.2476 of 2013 in B.C.C.C. Suit No.6907 of 1978 is hereby quashed and set aside. The

said Chamber Summons stood restored to the file of the learned Judge with direction to hear respective parties and record findings on the issues as were canvassed before him.

8] Petition stands partly allowed in the above terms. Since Chamber Summons is pending from 2013, learned Judge of the City Civil Court to decide the same expeditiously and in any case within a period of three months from the date of first appearance of the parties from today.

(NITIN W. SAMBRE, J.)