

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 280 OF 2019
IN
SUIT NO. 1572 OF 2007**

Meena Chandru Sadarangani & ors. ...Applicants

In the matter between

Arjan Sadarangani s/o Tahilram ...Plaintiff
Sadarangani

Versus

M/s. Veriegate Real Estate Pvt. Ltd. & ors. ...Defendants

Mr. J. A. Udaipuri, a/w Mrs. S. P. Trivedi, Mr. Sandeep
Hirwadekar, i/b M/s. Bharat & Co., for the Plaintiff.
Mr. Sandeep Parikh, a/w Ms. Taruna Nagpal, i/b DSK Legal,
for the Defendant no.1.

CORAM: N. J. JAMADAR, J.

DATED : 23rd FEBRUARY, 2021

PC:-

1. This chamber summons is taken out by the applicants to implead them as the legal representatives of the plaintiff Mr. Arjan Sadarangani, who expired on 15th November, 2018. During the pendency of this chamber summons, plaintiff no.1(a) Chandru Sadarangani also passed away and his legal representatives are prosecuting this chamber summons as applicant nos.1(a) to 1(c).

2. The application is supported by the affidavit and copy of the death certificate of Mr. Arjan Sadarangani. The application has been preferred within the stipulated period of limitation.

3. Defendant no.1 has resisted the application for bringing the legal representatives of the deceased plaintiff on record on two counts. First, the claim of the applicants that they are the legal representatives of the deceased plaintiff is sought to be contested. Second, defendant no.1 contends that the right to sue did not exist with the plaintiff in his personal capacity and, thus, the right to sue does not survive on the alleged legal representatives of the plaintiff. It is further contended that there was no concluded contract between the plaintiff and the defendants against whom the decree for specific performance is sought. On this score also, the application is not legally tenable.

4. I have heard Mr. Udaipuri, the learned Counsel for the plaintiffs and Mr. Parikh, the learned Counsel for defendant no.1.

5. The learned Counsel for defendant no.1 would urge that once the defendant has disputed the status of the applicants as the legal representatives of the deceased plaintiff, it was incumbent upon the applicants to substantiate their claim of being the legal representatives of the deceased plaintiff. In the absence of any material of unimpeachable character, the claim of the applicants cannot be sustained. To this end, attention of

the Court was invited to the provisions contained in Rule 5 of Order XXII of the Code of Civil Procedure, 1908 ('the Code').

6. The aforesaid provision envisages the determination of the question whether any person is or is not the legal representative of the deceased plaintiff or the defendant. Such determination would, however, be warranted where a credible dispute is raised and the issue cannot be decided on the basis of the affidavits in support of the application and opposition thereto. In paragraph 7 of the affidavit-in-reply, the defendant no.1 has professed to deny the character of the applicants and has also claimed that he was not aware that the deceased plaintiff was a bachelor. In the backdrop of such nature of the resistance put-forth by the defendants, the Court does not find it unsafe to place reliance on the assertions in the application and affidavit in support thereof. In the view of the Court, it would be unwarranted to embark upon an enquiry about the character of the applicants as the legal representatives of the deceased plaintiff on the basis of mere denial thereof on behalf of the defendant no.1.

7. The submission on behalf of defendant no.1 that the right to sue does not survive was sought to be based on the averments in the plaint. Emphasis was laid on the following averments made in paragraph 7 of the plaint:

“7. The plaintiff states that initially he has agreed to purchase the suit property in his personal capacity however, the Defendant No.2 a private limited company of which the Defendant nos.3, 4 and 5 are the Directors. The Plaintiff brought the suit property in the said company and the Plaintiff has been made an additional Director in the said company of the Defendant No.2 for the purpose of developing the suit property with the financial support of the Defendant No.2 Company. There is a symbiotic relationship between the Plaintiff and the Defendant No.2 company in as much as they need each other for the successful development of the suit property.”

8. In the backdrop of the aforesaid averments in the plaint, it was urged on behalf of the defendant no.1 that the deceased plaintiff was not seeking the specific performance of the alleged contract in his personal capacity. The learned Counsel for defendant no.1 also invited attention of the Court to the letter dated 2nd December, 1999 (Exhibit-B) and 14th December, 1999 (Exhibit-C), which according to the plaintiff, incorporate the terms of the alleged contract between the parties, and urged that the said letters, by no stretch of imagination, constitute a concluded contract.

9. It is true that the averments in the plaint, especially in paragraph 7, are not artistically worded. The substance of the averments is that the deceased plaintiff brought the right to seek the performance of the contract as a part of his capital in the defendant no.2 Company, wherein he was made an additional director. However, the lacuna in the claim of the

deceased plaintiff, would not get filled in by the substitution of the applicants as the legal representatives of the deceased plaintiff. The defendants would have the opportunity and right to contest the entitlement of the plaintiff to the prayers of specific performance and/or for damages in lieu of specific performance. Even if a part of the right to sue survives, the applicants cannot be denied the right to prosecute the suit. Hence, the application deserves to be allowed. Thus, the following order:

: ORDER :

- (i) The chamber summons stands allowed in terms of prayer Clauses (a), (b) and (c).
 - (ii) The applicants shall carry out the necessary amendment in accordance with the schedule appended to the chamber summons, within a period of two weeks from today.
 - (iii) The defendants are at liberty to file additional written statement qua the amendment, to be carried out in terms of this order, within a period four weeks of being served with the copy of the amended plaint.
 - (iv) The chamber summons stands disposed of.
10. Suit be listed on 24th April, 2021.

[N. J. JAMADAR, J.]