

Sharayu Khot.

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

INTERIM APPLICATION NO. 526 OF 2022

IN

COMMERCIAL SUIT NO. 215 OF 2021

Suresh Bathija & Ors.

...Applicants/
Plaintiffs

Versus

Uma Construction & Ors.

...Defendants

WITH

COMMERCIAL SUIT NO. 215 OF 2021

WITH

NOTICE OF MOTION NO. 12 OF 2021

IN

COMMERCIAL SUIT NO. 215 OF 2021

Ms. Asha Nair for the Applicants/Plaintiffs.

CORAM : R.I. CHAGLA J

DATE : 11 October 2022

ORDER :

SHARAYU
PANDURANG
KHOT

1. Heard learned Counsel for the Applicants/Plaintiffs.

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2. By this Interim Application, the Applicants are seeking

permission to amend the cause title of the Plaint to reflect the correct address of Defendant Nos. 1 and 3 in the Plaint and the Notice of Motion as per schedule annexed to the Interim Application.

3. Further, relief is sought for permission to the Applicants to serve the Plaint and Notice of Motion on proposed amended address mentioned in the schedule on Defendant Nos. 1 and 3 through the Bailiff, City Civil Court, Mumbai.

4. The Applicants have stated that the Plaint which was filed by the Applicants on 25th October 2018 had been dismissed on account of non removal of office objections on 17th June 2019. The Applicants had taken steps to file Chamber Order for restoration of the captioned Commercial Suit which was allowed by order dated 17th December 2019. Thereafter, there were office objections to be complied with, which was not removed by the erstwhile advocate. By notice dated 7th September 2021, the Chamber Judge of this Court had directed that in all matters wherein time expired for removing office objections during the period commencing from 16th March 2020 shall stand extended for 90 days from 1st September 2021. The present advocate had removed all the office objections within the

stipulated period and thereafter, the Plaint came to be numbered.

5. The Applicants have thereafter, tried to serve the writ of summons to the Defendants through Sheriff of Mumbai on 7th December 2021 at the address mentioned in the cause title. However, the envelopes containing the writ of summons sent to Defendant No.1 returned with remarks “not known”. Further, the envelope containing writ of summons sent to Defendant No. 3 was returned with the remark “left” and the envelope sent to Defendant No. 4 returned with remark “not delivered/absent”. Affidavit to this effect has been filed by the Bailiff and clerk of the office of the Bailiff of the City Civil Court, Mumbai. The Applicants have stated that only Defendant No. 2 received the writ of summons. Thereafter, Defendant No. 4 had been served personally by covering letter dated 30th December 2021. Service on Defendant Nos. 1 and 3 was still to be effected and the Applicants made enquiries about the whereabouts of Defendant Nos. 1 and 3 and then came to know their exact address as mentioned in the schedule annexed to the Interim Application.

6. Accordingly, present Interim Application has been filed for amendment of the cause title of the Plaint and the Notice of

Motion for reflecting the correct address of Defendant Nos. 1 and 3.

7. Having considered the averments in the Interim Application as well as noting the fact that the service of writ of summons still remains to be effected on Defendant Nos. 1 and 3 for which the Applicants had taken steps to enquire about the change in address of Defendant Nos. 1 and 3 which they have recently received, the amendment sought for by the Applicants is required to be allowed. Hence, the following order is passed. :-

- (i) The Applicants are permitted to amend the cause title of the Complaint and Notice of Motion in accordance with the schedule of amendment annexed to the Interim Application.
- (ii) Amendment shall be carried out by the Applicants within a period of one week from the uploading of this order.
- (iii) The Applicants are thereafter, permitted to serve the Complaint and Notice of Motion on the Defendant Nos. 1

and 3 through the Bailiff at the amended address.

(iv) Interim Application is disposed of in the above terms.

[R.I. CHAGLA J.]