

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHAMBER SUMMONS NO.1243 OF 2019
IN
APPEAL NO.416 OF 2016
IN
TESTAMENTARY SUIT NO.16 OF 2007
IN
TESTAMENTARY PETITION NO.475 OF 2003

Leena Prakash Bijoor .. Applicant
(Orig. Appellant)

IN THE MATTER BETWEEN

Mr. Suresh Hemmady .. Appellant
(Orig. Petitioner)

Versus

Dinesh Pandurang Bellare .. Respondent
(Orig. Caveator)

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- Ms. Anjali Purav Yajurvedi, Advocate for the Applicant / Appellant
 - Mr. Prashant Chavan a/w. Ms. Ruchi Patil i/by Mr. Sameer K. Sawant, Advocate for the Respondent
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CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.

DATE : MARCH 01, 2022

P.C.:

. The Applicant, Leena Prakash Bijoor, is the legal heir and beneficiary under the Will of the deceased Shri. Suresh Hemmady who expired on 09.07.2017. The Applicant has filed the present Chamber Summons for seeking impleadment in the Appeal in place of the deceased Appellant.

2. The Appellant Shri. Suresh Hemmady had filed Petition for Probate of the last Will and Testament of late Mira R. Nadkarni being the sole executor named under the said last Will. Testamentary Petition No.475 of 2003 was converted into Suit No.16 of 2007. By judgment dated 10.06.2012, the learned Single Judge of this Court dismissed the aforesaid Suit. Being aggrieved, Shri. Suresh Hemmady filed Appeal (L) No.331 of 2013, which was admitted on 12.11.2013. Appeal (L) No.331 of 2013 is numbered as Appeal No.416 of 2016.

3. The present Chamber Summons is filed by the Applicant on 03.08.2019. There is admittedly a delay of 22 months in filing the present Chamber Summons. The Applicant has also prayed for setting aside the abatement of the Appeal and condoning the delay of 22 months in filing the Chamber Summons. The reasons for allowing condonation of delay are stated in paragraph No.3 of the Affidavit in Support dated 03.08.2019 filed by the Applicant.

4. When this matter was listed on board on 17.11.2021, this Court passed the following order:

"1. The above Appeal was filed by Shri Suresh Hemmady (Original Petitioner) who was the executor of the Will dated 15th April, 1988 of one Smt. Mira Nadkarni. By the above Appeal, the Original Appellant had impugned the Judgment dated 10th June, 2013 passed by the learned Single Judge of this Court, rejecting the Probate Petition filed by the Original Appellant / Executor. The Original Appellant / Executor has now passed away. The Respondent - Dinesh Pandurang Bellare (Original Caveator) has also passed away.

2. The learned Advocate for the Respondent states

that the legal heirs of Original Respondent - Shri Dinesh Pandurang Bellare are, Smt. Geeta Dinesh Bellare (wife), Shri Jayant Dinesh Bellare (son), Mrs. Vidya Madhav Sathe (daughter) and Mrs. Meenakshi Satyendra Kumble (daughter).

3. Since the Original Appellant / Executor has passed away, the flat of the deceased at Moqul Lane Mahim is in possession of the Respondent. However, the Applicant in the above Chamber Summons claims to have bequeathed the entire 100% share in the flat, which we are informed is kept locked.

4. Before we pass any orders, we have asked the Advocates for the parties to keep their respective clients present on 25th November, 2021 at 5.00 p.m. in Chamber No.45 to enable the Court to assist the parties in attempting at an amicable settlement in the matter.

5. Stand over to 25th November, 2021 at 05.00 p.m. in Chamber No.45."

5. Shri. Chavan, learned Advocate appearing for the Respondent has submitted the names and details of the legal heirs of the deceased Respondent by way of a draft amendment across the bar. The same is taken on record and is marked 'X' for identification.

6. Both the learned Advocates appearing for the Applicant and the legal heirs of the Original deceased Respondent have jointly submitted that it would be in the interest of justice if the legal heirs of the deceased Appellant and the deceased Respondent are brought on record for prosecution of the present Appeal.

7. Hence by consent of the parties, the following order is passed:

- i. Chamber Summons No.1243 of 2019 stands allowed in terms of prayer clauses 'a' to 'd';

ii. The following legal heirs of deceased Respondent Dinesh Pandurang Bellare shall be brought on record:

- (a) Geeta Dinesh Bellare
F-31, Karnatak Building, Mogul Lane,
Mahim, Mumbai - 400 016.
- (b) Jayant Dinesh Bellare
F-31, Karnatak Building, Mogul Lane,
Mahim, Mumbai - 400 016.
- (c) Vidya Madhav Sathe
Flat No.7, Vyas Bhavan, Plot No.148,
Hindu Colony Lane No.6, Dadar (E),
Mumbai - 400 014.
- (d) Meenakshi Satyendra Kumble
Flat No.16, 1st Floor, Building No.3/5,
Talmikiwadi, Tardeo,
Mumbai - 400 007.

iii. The Applicant shall carry out the necessary amendments in the Appeal proceedings within a period of two weeks from the date of this order and serve a copy of the amended proceedings on the newly added Respondents;

iv. Re-verification is dispensed with.

8. In view of the above directions, Chamber Summons No.1243 of 2019 stands disposed of.

9. Appeal is adjourned to 4th April, 2022.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]