

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

**CHAMBER SUMMONS NO. 293 OF 2019
IN
TESTAMENTARY PETITION NO. 2865 OF 2018**

Seema Sameer Dey & Ors. ... Applicants

Versus

Tejendra Mohan Sarkar alias Tajendra
Mohan Sarkar alias Kartik Sarkar ... Deceased

Ms. Chaitali Jadhav i/b Mehul Shah for the Applicants.

CORAM : R.I. CHAGLA, J.

DATED : 30th SEPTEMBER, 2022

ORDER :

1 The learned Advocate appearing for the Applicants has sought leave to incorporate the schedule of draft amendments as annexure to the Chamber Summons. The Applicants shall forthwith incorporate the schedule of draft amendments as annexure to the Chamber Summons. Re-verification is dispensed with.

2 Heard the learned Advocate appearing for the Applicants in Chamber Summons No.293 of 2019. By this Chamber Summons the

Applicants have sought deletion of the name of the Original Petitioner and addition of the names of the Applicants as per schedule annexed to the Chamber Summons. Condonation of delay of 361 days has been sought and thereupon for the Applicants to carry out the amendments as per schedule annexed to the Chamber Summons.

3 The Applicants state that the Original Petitioner had expired on 29.08.2018. The Testamentary Petition had been filed by the Original Petitioner for probate of last Will and Testament of the deceased Tajendra Mohan Sarkar, who expired on 15.03.1989. The Applicants have stated that Original Petitioner had left his last Will and Testament dated 16.02.2018. The Applicants were under impression that the present Chamber Summons for bringing the Applicants as legal heirs of the Original Petitioner was to be taken out after probate is granted in Testamentary Petition (L) No.1961 of 2019 which had been filed for grant of probate of the said Will left by the Original Petitioner.

4 The Applicants states that they are legal heirs of the Original Petitioner who was the Executor as well as beneficiary of the property mentioned in the schedule to the Testamentary Petition filed by the Original Petitioner. Applicant No.1 is the wife of the Original Petitioner and Applicant Nos.2 and 4 are the sons of the Original Petitioner as well

as Applicant No.3 is the daughter of the Original Petitioner. The Applicants have accordingly taken out the Chamber Summons for bringing the Applicants in place of the Original Petitioner on record for perusing the Testamentary Petition No.2865 of 2018 filed by the Original Petitioner. There has been a delay of 361 days in taking out the present Chamber Summons for the aforementioned reason.

5 Having considered the averments in the affidavit in support of the Chamber Summons as well as noting the fact that the Applicants who are the legal heirs of the Original Petitioner and lay persons who were under the impression that the Chamber Summons for bringing the legal heirs in place of the Original Petitioner was to be taken out after probate is granted in the Testamentary Petition (L) No.1961 of 2019 which had been filed by the Applicants for probate of the said Will left by the deceased-Original Petitioner, it would be appropriate to condone the delay in filing the Chamber Summons and grant relief sought for therein. Hence the following order is passed :

- i) The delay of 361 days in filing the Chamber Summons is condoned.
- ii) The Applicants are permitted to carry out amendment of the Petition in accordance with the schedule annexed to

the Chamber Summons by deleting the name of the Original Petitioner and adding the names of the Applicants as Petitioners in Testamentary Petition No.2865 of 2018.

iii) The Applicants shall carry out amendment within a period of two weeks from the date of this order. Re-verification is dispensed with.

iv) Chamber Summons is accordingly disposed of in the above terms.

(R.I. CHAGLA, J.)

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signed by
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