

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.909 OF 2017
IN
SUIT NO.36 OF 1969**

Naina Ajay Goculdas and Anr. and Hemlata Vijaysingh Ved and Ors. versus The Provident Investment Co. Ltd. and Ors.	...	Applicants Plaintiffs Respondents
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Mr. Ankit Lohia with Mr. Bharat Jain, Mr. Abhishek Dubey i/by Economic Laws Practice, for Applicants.
Mr. A.R.Varma with Mr. Y.S.Bhate, for Defendant No.2
Mr. Arun Siwach with Mr. Karan Gandhi i/by Cyril Amarchand Mangaldas, for Defendant Nos.4 and 5.

**CORAM: N.J.JAMADAR, J.
DATE: 10th NOVEMBER, 2022**

P.C.:

1. This Chamber Summons is taken out by the Applicants who claim to be the legal representatives of Plaintiff No.5, who passed away on 12th April, 2016. The Applicants assert that they are the only legal representatives of deceased Plaintiff No.5 as Ajay, Son of deceased Plaintiff No.5, husband of Applicant No.1 and father of Applicant No.2 Shyam, predeceased Plaintiff No.5.
2. The Application is supported by a copy of the death certificate and the affidavit.
3. An Affidavit in Reply is filed on behalf of Defendant No.1 resissting the prayers in the Chamber Summons. It is contended that the Applicants have not placed

on record the testamentary instruments on the basis of which the Applicants are claiming to be the successor in interest of deceased Plaintiff No.5. It is further contended that there is a delay of about 40 days in taking out the Application which has not been satisfactorily explained. The Plaintiff No.5 passed away on 12th April, 2016 and the Chamber Summons is preferred on 22th September, 2016.

4. In paragraph No.6 of the Application, the Applicants have made an endeavour to account for the delay in taking out the Application. The reasons assigned in Paragraph No.6 cannot be said to be unsustainable. In any event, the Court is expected to lean in favour of the condonation of delay so as to advance the cause of substantive justice. It is pertinent to note that the claim of the Applicants is not solely based on the testamentary succession. They claim to be the wife and son of predeceased son of deceased Plaintiff No.5. Thus, to advance the cause of substantive justice, Chamber Summons is allowed.

5. Abatement stands set aside.

6. The Applicants are permitted to bring them on record as legal representatives of deceased Plaintiff No.5.

7. The Plaintiffs are allowed to amend the Plaint in accordance with the Schedule annexed to the Chamber Summons.

8. The Chamber Summons stands disposed.

(N.J.JAMADAR, J.)