

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

**CHAMBER ORDER NO. 417 OF 2023
IN
SUIT (L) NO. 19756 OF 2022**

P. Edward Nadar & Ors.	... Applicants / Org. Plaintiffs.
Versus	
Bhaichand Textile Mills & Anr.	... Respondents / Org. Defendants.

Mr. Mustafa Nulwala, i/b. DSK Legal, Advocates for the Applicants / Org. Plaintiffs.

Ms. Rashne Mulla Feroze, a/w. Mr. Sudarshan Satalkar, a/w. Mr. Aarooha Kulkarni, i/b. Federal and Co., Advocates for Defendant No. 1.

Mr. S V Raja Bhat, Advocate for Defendant No. 2.

**CORAM : SACHIN B. BHANSALI
PROTHONOTARY AND SENIOR MASTER**

CLOSED FOR ORDERS : 03RD NOVEMBER, 2023

PRONOUNCED ON : 10TH NOVEMBER, 2023

P. C. :

1. By way of present Chamber Order, Applicants seek restoration of captioned Suit, which is rejected for non-compliance of office objections under O.S. Rule 986 in view of Order dated 08.08.2023.
2. It is contended in Affidavit-in-Support of the present Chamber Order and while hearing Ld. Advocate for the Applicants that due to various objections and voluminous official translations of the documents, office objections could not be removed in time.
3. The present Chamber Order is strongly objected by Defendant Nos. 1 and 2 by filing their respective Affidavits-in-Reply.

4. The Ld. Advocate for Defendant No. 1 submits that office objections were raised on 30.06.2022 and the Plaintiffs had sufficient time to remove the objections.

The Ld. Advocate for Defendant No. 1 further submits that one of the office objections raised was that “Authorization by some of the Plaintiffs was not proper” as it appears from the plaint that the said Plaintiffs had neither signed the plaint personally nor through constituted attorneys appointed under Power of Attorney and the Plaintiffs have been unable to obtain the requisite authorization. The Ld. Advocate for Defendant No. 1 also submits that the present Chamber Order also lacks requisite authorization and suffers the same defects as the plaint and is liable to be dismissed.

The Ld. Advocate for Defendant No. 1 submits that the present Chamber Order and Affidavit-in-Support thereof have also been signed in the same improper manner as that of plaint; moreover, the Plaintiffs, who had not authorized the filing of Suit have also not personally signed or authorized the filing of Chamber Order.

The Ld. Advocate for Defendant No. 1 further submits that undertaking given by the Applicants that they will comply with all the objections within time, has been given irresponsibly, casually and on false basis that re-authorization is required to be obtained from some of the Plaintiffs when, in truth, it appears that Applicants failed to obtain consent / authorization from those Plaintiffs even for filing present Chamber Order. The Applicants have deliberately suppressed these facts and sought to furnish a knowingly false undertaking that they shall comply with all office objections despite being fully aware that the requisite authorization cannot be obtained from the co-Plaintiffs.

The Ld. Advocate for Defendant No. 1 submits that the Affidavit-in-Support of Chamber Order contends that the lawyers could not take the necessary steps to seek an extension due to the clerk's alleged failure to inform the lawyers to appear on 08.08.2023. However, the affidavit of lawyer's clerk annexed to the Affidavit-in-Support of Chamber Order nowhere states that he failed to inform the lawyers to appear on 08.08.2023. Thus, this is another instance of Applicants deliberately misleading this authority.

The Ld. Advocate for Defendant No. 1 submits that the present Chamber Order is liable to be rejected on the ground that Applicants have deliberately suppressed facts, as stated above and misled this authority.

In support of his contention, the Ld. Advocate for Defendant No. 1 relied on the case of **Mahesh Shamji Patel and Ors. Vs. HBD Financial Services and Anr.**, reported in 2017 SCC OnLine Bom 3376, wherein this Hon'ble Court has observed and held that :

“Para. 3The Petitioners have in the Affidavit in Support of the Chamber Order, suppressed the orders of extension dated 26th July, 2016 and 16th August, 2016 obtained from the Prothonotary and Senior Master for three and four weeks respectively on the ground that “due to oversight objections could not be removed”. The question therefore of allowing the relief sought by way of the above Chamber Order does not arise and the Chamber Order is dismissed with costs.”

The Ld. Advocate for Defendant No. 1 submits that the restoration should not be automatic and the cause shown should not be termed sufficient-mechanically. In support of his contention, the Ld. Advocate for Defendant No. 1 has relied upon Order dated 09.09.2015 passed in Writ Petition (L) No. 2396 of 2014 in the case of **Lawrence Fernandes Vs. The State of Maharashtra & Ors.**

The Ld. Advocate for Defendant No. 1 further submits that he is not disputing the power of this authority to set aside his own order and admit document or restore proceeding, as the case may be. However, the present Chamber Order may be adjourned to Hon'ble Judge in view of Rule 133 of Original Side Rules. The Ld. Advocate for Defendant No. 1, in support of his contention, relied upon the Full Bench Judgment in the case of ***Prem Siddha CHS & Anr. Vs. High Power Committee-II & Ors.***

5. In reply, the Ld. Advocate for the Applicants submits that the deponent of the Affidavit-in-Support of present Chamber Order viz. Plaintiff No. 34 has filed the present Chamber Order for and on behalf of those Plaintiffs, who have given authority in his favour and authority letters are annexed with the Additional Affidavit-in-Support of the present Chamber Order. The Ld. Advocate for the Applicants further submits that as per Order IX Rule 10 of C.P.C., 1908, out of many applicants / Plaintiffs, some of the Applicants can file present Chamber order and this Authority, may, at the instance of those appearing Applicants / plaintiffs, permit the Chamber order to proceed in the same way as if all the Applicants / plaintiffs had appeared, or make such order as it thinks fit.

The Ld. Advocate for the Applicants further submits that Order 1 Rule 12 of C.P.C., 1908 deals with the provisions of appearance of one of several plaintiffs or defendants for others. In support of his contention, Ld. Advocate for the Plaintiffs relied on Judgment of Hon'ble Delhi High Court in the case of ***Sh. Dinesh Sharma Vs. Mrs. Krishna Kainth.***

The Ld. Advocate for the Applicants draws my attention to Order XXIII Sub-Rule (5) of Rule (1) of C.P.C. which is in respect of abandonment of a suit by some of the Plaintiffs or part of a claim or withdrawal of a suit without the consent of other plaintiffs.

The Ld. Advocate for the Applicants / Plaintiff further relied upon case of ***Sanyog Sharma Vs. Suresh Goel***, reported in 2009(110)DRJ 35, and submitted that the application should not have been dismissed for non-signing of the Chamber order as it is a procedural and curable defect.

The Ld. Advocate for the Applicants / Plaintiffs submits that the contents and statements with respect of inadvertence on the part of Clerk in not removing office objections and seeking further extension of time, are one and the same and it is just a matter of expression of same statement in two ways.

The Ld. Advocate for the Applicants / Plaintiffs also submits that due to inadvertence on the part of advocate's clerk, parties should not suffer. In support of his contention, the Ld. Advocate for the Plaintiffs placed relied upon case of ***Kantadevi Vs. Khanderao Rambhau Gaikwad & Ors.***

The Ld. Advocate for the Applicants / Plaintiffs submits that in view of above circumstances, there is no suppression of material facts or false statements made by the Plaintiffs in as much as the undertaking given by the Plaintiffs in respect of compliance of office objections. It does not mean that Plaintiffs will get authorization of those Plaintiffs, who did / do not consent, but, it may be considered that after restoration of the present Suit, Applicants / Plaintiffs may take appropriate steps to delete and or transpose those Plaintiffs, who do not wish to prosecute the present Suit. The Ld. Advocate for the Plaintiff further submits that Plaintiffs have a good case on merits. The Ld. Advocate for the Plaintiff also submits that non-removal of office objections was unintentional and reasons beyond control of the Plaintiffs. The Ld. Advocate for the Plaintiff submits that Applicants / Plaintiffs ought not to be prejudiced owing to a failure to comply with technical objections, which can be removed, if an opportunity is granted to the Applicants /Plaintiffs.

6. The Ld. Advocate for Defendant No. 2 submits that he adopts the submissions of Defendant No. 1.

7. With the able assistance of Ld. Advocates for Applicants and Defendant Nos. 1 and 2, I have perused Affidavit in support of Chamber order, Affidavits-in-Reply and Additional Affidavit of Plaintiff No. 34. Heard Ld. Advocates for the Applicants and Defendant Nos. 1 and 2. Following points arise for the consideration and my findings with reasons thereon are as under:

Sr. No.	Points	Findings
1	Do the applicants make out a case for restorations of the Suit bearing Suit (L) No.19756 of 2022?	Yes.
2	Does the present Chamber Order require to be adjourned for the Hon'ble Judge?	No.
3	What Order?	As per final order.

REASONS

As to Point No. 1:

It is seen from the averments of the plaint that Applicants and absentee Plaintiffs in the present chamber order are members of Defendant No. 2 Society and have filed the captioned Suit *inter alia* praying for conveyance of the land, on which the building of Defendant No. 2 is situated and compliance of Defendant No. 1 with its obligations and representations as per the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

Before entering into the merits of the present Chamber order, it would be just and proper to deal with the objections, as raised by Ld. Advocates for Defendant Nos.1 and 2 about the maintainability of the present Chamber Order either for non-appearance of some of the plaintiffs or for want of requisite authorization from the absentee plaintiffs.

Ld. Advocate for Defendant Nos.1 and 2 submitted with great zeal that Applicants have suppressed true and material facts qua authorization of Plaintiffs who in fact did at any point of time give no authority in favour of Plaintiff No.34 to institute the captioned suit or to file the present Chamber Order.

It is seen that the affirmant of the Affidavit-in-Support of present Chamber Order viz. Plaintiff No. 34 has filed the present Chamber Order for and on behalf of those Plaintiffs, who duly authorized him in writing and authority letters are annexed with the Additional Affidavit-in-Support of the present Chamber Order.

The answer to first objection, as raised, lies in Order IX Rule 10 of C.P.C., 1908, which provides that where there are more plaintiffs than one, and one or more of them appear and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit. After applying the said provision to the present Chamber order I hold that the present Chamber order is maintainable through Applicants and even other Plaintiffs do not appear.

To answer second limb of objection, provisions contain in Order 1 Rule 12 of C.P.C., 1908 would come in aid of the present Applicants, which deals with the provisions of appearance of one of several plaintiffs or defendants for others, which reads as under :

“12. Appearance of one of several plaintiffs or defendants for others -

(1) Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such

other in any proceeding.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.”

In support of his contention, the Ld. Advocate for the Applicants rightly relied on Judgment of Hon’ble Delhi High Court in the case of ***Sh. Dinesh Sharma Vs. Mrs. Krishna Kainth***, wherein in Para. 36, it is observed as under :

“36. In so far as the plea of the appellant / defendant that the suit has not been properly instituted is concerned, the suit has been instituted by the husband of the respondent / plaintiff on the basis of an authorization letter executed by the respondent / plaintiff in his favour which includes authority by the respondent / plaintiff to appear, plead, sign, file, verify, etc.”

The Ld. Advocate for the Applicants draws my attention to Order XXIII Sub-Rule (5) of Rule (1) which provides that nothing in this rule shall be deemed to authorize the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiffs.

Taking into consideration of all the aspects as discussed supra, I do not find any merit in the contentions of Ld. Advocates for Defendant Nos.1 and 2. Consequently, objections with respect to maintainability of the present Chamber Order as raised by Ld. Advocates for Defendant Nos. 1 and 2 do not sustain.

Now turning to the merits of the Present chamber order, it is seen that broadly on three aspects / grounds restoration of suit is claimed, which are; (i) due to various objections which include official translations of the voluminous documents, (ii) failure on the part of Advocate’s clerk to notify Advocate to seek further extension of time to remove office objections and (iii) inadvertence on the part of Advocate’s Clerk.

There is nothing on record to discard and disbelieve the contention of Applicants with respect to first objection viz. various objections which include official translations of voluminous documents, were pending for compliance. Therefore, the same is accepted for the purposes of the present Chamber order.

I find, specific statement in the Affidavit of Plaintiff No. 34, filed, in support of the Chamber order with respect to 2nd ground that the lawyer could not take the necessary steps to seek an extension due to the clerk's failure to inform the lawyer to appear on 08.08.2023. I also find, specific mention in Para. 5 of Clerk's affidavit-in-support of Chamber order that he failed to notify Advocate for Plaintiff(s) that there is a requirement of seeking further extension for removal of office objections and in view of this inadvertent error the present Suit has been dismissed as rejected under Rule 986. Thus, there is consistency in aforesaid two statements, one by Plaintiff No. 34 and other one by Clerk concerned with respect to seeking extension of time to remove office objections on the suit. There cannot be any other interpretation except as aforesaid. In view thereof, statements made by applicants in support of Chamber order would prevail over the counter statement made by defendants in reply. And I accept the said contention of the Applicants in support of the present Chamber order.

Now turning to third ground for seeking restoration of suit, Ld. Advocate for Applicants rightly placed reliance on the decision of the Hon'ble Court in ***Kantadevi Vs. Khanderao Rambhau Gaikwad & Ors.***, wherein in Paras. 9 and 10, it is observed that due to oversight of Advocate's clerk, the matters were dismissed; therefore, on that count alone, applicant's statutory right of Appeal cannot be defeated. In view thereof and for no fault on the part of Applicants /Plaintiffs and inadvertence on the part of Advocate's clerk, the prayer of the Applicants in the present Chamber order to get the suit restored on its file, cannot be rejected.

In *catena* of decisions, this Hon'ble Court and Hon'ble Apex Court held that a procedural law should not ordinarily be construed as mandatory, as it is always subservient to and is in aid of justice. Therefore, procedure for restoration of suit on taking out the Chamber order needs to be dealt with by keeping in mind aforesaid pronouncements.

8. For the foregoing reasons, I hold that the Applicants have made out a sufficient cause for restoration of the suit by allowing this Chamber order to meet the ends of justice. Hence, I answer Point No. 1 in the affirmative.

As to Point No.2:

The Ld. Advocates for Defendant Nos. 1 and 2 while concluding their submissions, submitted that the Chamber Order may be adjourned to Hon'ble Judge in view of Rule 133 of the O.S. Rules. It is to be noted that Full Bench of this Hon'ble Court in the case of ***Prem Siddha CHS & Anr. Vs. High Power Committee-II & Ors.***, held that this Authority has powers to restore the suit once rejected under O.S. Rule 986. In this view of the matter, I do not find necessary to adjourn the present Chamber Order to the Hon'ble Judge as submitted by the Ld. Advocates for Defendant Nos. 1 and 2. Hence, I answer Point No. 2 in the negative.

As to Point No.3:

In view of answers to aforesaid points, I do not find any difficulty in allowing this Chamber Order and restoring the suit on its original file. Thus, to answer point No. 3, the present Chamber Order is allowed, as prayed and suit is restored to its original file. Applicants /Plaintiffs to remove office objections on the Suit and to get the same numbered and/or registered within eight weeks from the date of uploading of this Order, failing Suit to stand rejected under O.S. Rule 986 for non-compliance of office objections.

PROTHONOTARY AND SENIOR MASTER