

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8923 OF 2024

Shrinivas Sunder Shetty

.. Petitioner

Versus

Ratanshaw M. Chamarbaugwala and Ors.

.. Respondents

-
- Mr. Sajid Shamim a/w. Mr. Jishan Ansari i./by S. Shamim & Co. for
Petitioner.

.....

CORAM : MILIND N. JADHAV, J.

DATE : JULY 01, 2024.

P.C.:

- 1.** Heard Mr. Shamim, learned Advocate for Petitioner.
- 2.** Mr. Shamim, learned Advocate has drawn my attention to the twin orders dated 02.11.2023 and 07.12.2023 which are appended at Exhibit “H” and Exhibit “J” at page Nos.145 and 165 of the Writ Petition. Both the orders are passed on Applications below Exhibit “1” filed by the Intervenor seeking impleadment in the Suit proceedings.
- 3.** One of the principal ground which has been stated is that the original Suit was filed in the name Ratanshaw M. Chamarbaugwala as Plaintiff by his Constituted Power of Attorney, but he was dead at the time of filing of the Suit and the learned Trial Court has taken cognizance of this fact in paragraph No.4 of its order dated 02.11.2023.

4. The only grievance expressed by the learned Advocate for Petitioner is that since long, both Chamber Summons No.672 of 2020 and Chamber Summons No.1872 of 2022 have been heard by the Trial Court but are pending and the delay is detrimental to the prospects of the Writ Petitioner to seek impleadment in the said Suit.

5. The aforesaid Writ Petition can be disposed of by directing the learned Trial Court to dispose of Chamber Summons No.672 of 2020 and Chamber Summons No.1872 of 2022 as expeditiously as possible and in any event within a period of four (4) weeks from today.

6. I am informed by the learned Advocate for the Petitioner that both the Chamber Summons have been heard by the learned Trial Court and they have been adjourned since December 2023. The reason for such adjournment is for compliance as informed by the learned Advocate for Petitioner and he would submit that the learned Trial Court has asked the parties to place on record the death certificate of the original Plaintiff and the same has not been placed on record by the parties or his CA till date.

7. Learned Advocate for the Petitioner would submit that in view of the abnormal delay caused in disposal of the impleadment Application, the Suit proceedings have been held in abeyance.

8. Respondent No.3 in the present Writ Petition is the person who is the Constituted Power of Attorney of the original Plaintiff and

he has filed the Suit proceedings. He is directed to place on record a copy of the death certificate of the original Plaintiff before the Trial Court within a period of 2 weeks from today which shall be taken into cognizance by the Trial Court and both Chamber Summons shall be disposed of strictly in accordance with law. Copy of this order shall be served on Respondent No.3 immediately by the Advocate for Petitioner. Affidavit of service shall be filed before the Trial Court.

9. It is clarified that, the learned Trial Court shall determine both the Chamber Summons on its own merits, strictly in accordance with law.

10. It is clarified that the reasons recorded in this order are mere *prima facie* opinion of the Court after reading the pleadings and they shall not influence any decision in the Suit proceedings that will be ultimately decided strictly in accordance with law and evidence.

11. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2024.07.01
17:54:33 +0530