

CNR NO. MHCC01-011900-2018

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY

CHAMBER SUMMONS NO. 1685 OF 2018

IN

SUIT NO. 1264 OF 2017

Mrs. Ekta W/o. Hemchandra Shantilal Shah

...Plaintiff.

V/s.

Mr. Hemant Shantilal Shah & Ors.

...Defendants.

Appearances:

Learned Adv. Mr. Pankaj M. Bhatt for plaintiff.

Learned Adv. Mr. Prashant Pandit I/b M/s. Pandit & Associates for defendant No.1.

Learned Adv. Mulky I/b M/s. Gopal C. Poojary & Co. for defendant No.3.

**CORAM : HIS HONOUR JUDGE
SHRI M.M. SYED.
(C.R.No.04)**

DATED : 11th July, 2019.

-: ORAL ORDER :-

1. The plaintiff has taken out Chamber Summons seeking permission to amend the plaint, by adding certain facts.

2. According to the plaintiff, she has filed the suit for declaration & injunction and same is pending. Wherein, she has contended that she married with Hemchandra Shantilal Shah on 03.02.2009 and subsequently, on 23.03.2017, Hemchandra Shah died leaving behind him, the plaintiff as legal heir and legal representative.

3. The defendant No.1 is the brother-in-law i.e. real brother of her husband Hemchandra Shantilal Shah. The defendant No.2 is Cooperative Bank and defendant No.3 is the Life Insurance Corporation of India (LIC).

4. Mr. Hemchandra Shantilal Shah had opened one Demat account jointly with his brother i.e. defendant No.1 as a second holder and had invested in stocks and shares during his lifetime (hereinafter referred to as "Demat account"). Thus, deceased was the first holder in the Demat account on 30.04.2017. Apart from it, the deceased has separate saving bank account with the said defendant No.2 bearing No.00620010031065.

5. The deceased Hemchandra Shantilal Shah also taken out two life insurance policies in his name prior to her marriage for Rs.5,00,000/- bearing Policy No.901969760 dated 22.09.2001 and another for Rs.2,50,000/- bearing Policy No.902461821 dated 14.08.2004. The plaintiff has no issue from the Hemchandra Shantilal Shah and she has only surviving heir of her husband deceased Hemchandra Shantilal Shah as per the Hindu Succession Act.

6. After the death of plaintiff's husband, she made enquiry with defendant No.2 in order to get the share by lying in the said Demat account. She shocked to know that the defendant No.1 who is the second holder in the said Demat account, is trying to transfer shares from the said Demat account to the another account of the defendant No.1 fraudulently in order to deprive she from her rights to claim the said shares.

7. She has also made enquiry with defendant No.3 LIC and shocked to know that defendant No.1 was nominated as nominee by deceased Hemchandra Shantilal Shah and, therefore, defendant No.1 filed claim with defendant No.3. She addressed a letter through Advocate on 02.05.2017 calling upon the defendant No.2 to freeze the said Demat account till the plaintiff gets the Succession Certificate as well as to defendant No.3 to stop the payment in respect of policies of the deceased Hemchandra Shantilal Shah. She has also addressed a letter dated 09.05.2017 through Advocate not to transfer any share in respect of Demat account and to withdraw LIC policy amount of deceased Hemchandra Shantilal Shah and therefore, she filed the present suit for declaration that the defendant No.1 has no right in respect of stock and shares lying in Demat account as well as LIC policies amount.

8. The defendant No.1 appeared and filed the written statement. On receipt of notice of Chamber Summons, the defendant No.1 has also filed the reply to the Chamber Summons and resisted the Chamber Summons.

9. The defendant No.1 contended that plaintiff is trying to fill up the lacuna in the plaint, after filing the written statement by the defendant No.1 and, therefore, Chamber Summons required to be dismissed. The plaintiff had filed Testamentary Petition and obtained the succession order as alleged, but not annexed any copy thereof. Therefore, Cause of Action has been arisen and, therefore, she required to file separate suit.

10. The defendant No.3 has already disbursed amount of LIC policy and therefore, the suit prayer already become infructuous. The plaintiff is trying to add fresh cause of action by way of this Chamber Summons. Therefore, he prayed to dismiss the Chamber Summons.

11. The defendant No.2, though served with the notice, but did not appear. Therefore, the Chamber Summons is proceeded ex-parte as against defendant No.2.

12. The defendant No.3 also filed their reply and resisted the Chamber Summons. They contended that they have already disbursed the policy amount to the defendant No.1 and therefore, they prayed to dismiss the Chamber Summons.

13. Following points arise for my determination on which I record my findings as under for the reasons to follow :-`

	POINTS	FINDINGS
1.	Whether the plaintiff has made out case to amend the plaint, as mentioned in the Chamber Summons ?	In Affirmative
2.	What order?	As per final order

:- REASONS :-

AS TO POINT NO.1 TO 2 :

14. Heard learned Advocates for the parties, at length.

15. At the very outset, I would like to mention here that there is no dispute that the plaintiff is the widow of deceased Hemchandra Shantilal Shah and their marriage was taken place on 03.02.2009. It is also no dispute that said Hemchandra Shantilal Shah expired on

23.03.2017. There is also no dispute that deceased Hemchandra Shantilal Shah in his lifetime, even prior to his marriage with the plaintiff, had opened the Demat account jointly with the defendant No.1 in the defendant No.2 bank.

16. There is also no dispute that some stocks and shares are lying in the said Demat account. There is also no dispute that the Hemchandra Shantilal Shah had taken two life insurance policies one is for Rs.5,00,000/- bearing Policy No.901969760 dated 22.09.2001 and another for Rs.2,50,000/- bearing Policy No.902461821 dated 14.08.2004, from the defendant No.3 LIC.

17. There is also no dispute that after the death of Hemchandra Shantilal Shah, the plaintiff approached to the defendant Nos.1,2 & 3 and requested to not to make any transaction till she gets Succession Certificate.

18. It has also brought on record from the reply filed by the defendant No.3 to the Chamber Summons that they have disbursed the policy amount to the defendant No.1 as he was the nominee of the deceased Hemchandra Shantilal Shah and as well as assignment by deceased Hemchandra Shantilal Shah.

19. Now, I turn to proposed amendment i.e. schedule annexed to the Chamber Summons. The plaintiff intends to insert certain paragraphs in her plaint, which are as under :

“1. *After para 16 the following paragraphs be added as para 16(a) and 16(b).*

- 16(a) *Plaintiff states that the plaintiff thereafter filed Testamentary Petition being Testamentary Petition No.2015 of 2017 in the Hon'ble High Court, Mumbai to obtain Succession Certificate in respect of debts and securities of her husband. The plaintiff states that the Hon'ble High Court was pleased to grant Succession Certificate to the plaintiff on 10th July 2018. Plaintiff craves leave to refer to and rely upon the said Succession Certificate when produced.*
- 16(b) *The plaintiff states that after her marriage with the said Hemchandra Shantilal Shah in 2009, the plaintiff's husband had a kidney problem which gradually deteriorated. The plaintiff states that her husband had to undergo dialysis on account kidney failure. The plaintiff states that her husband was a partner in the one firm prior to his marriage with the plaintiff and was earning substantial amount. The plaintiff states that her husband Hemchandra Shantilal Shah invested his own funds in stocks and shares and also acquired two life insurance policies one for Rs.5,00,000/- and another for Rs.2,50,000/-. The plaintiff states tht her husband was paying premium on the said two insurance policies. After the death of her husband on 23.03.2017 the plaintiff came to know that defendant No.1 was trying to claim the amount of said two insurance policies and had filed claim form on basis of death certificate of her husband behind the back of plaintiff and without informing the Life Insurance Corporation that the plaintiff is the only surviving heir of her husband. When the plaintiff came to know about the sinister plot of the defendant No.1 the plaintiff through her Advocate sent Notice dated 02.05.2017 addressed to the Life Insurance Corporation i.e. defendant No.3 calling upon them to stop payment of aforesaid two policies to defendant No.1. However, defendant No.3 wrongfully released the said maturity amount of said two policies to the defendant No.1. The plaintiff states that the defendant No.1 who has fraudulently received the maturity amount of two policies of plaintiff's husband upon his death has committed an offence of misappropriation of said amount. Plaintiff reserves her right to prosecute the defendant No.1 in criminal court on the charge of misappropriation and/or breach of trust in respect of the estate of plaintiff's husband. The plaintiff states that since the defendant No.1 has fraudulently received the amount of said two policies, plaintiff is entitled to an order and direction to defendant No.1 to deposit in Court the amount of said two insurance policies of plaintiff's husband immediately. Plaintiff is also entitled to an order and direction*

that the amount of said two insurance policies deposited in court by defendant No.1 be paid over to the plaintiff on disposal of the above suit.

II. *After prayer clause (c) the following prayers may be added as prayer (cc) and prayer (ccc) :*

(cc) *Pending the hearing and final disposal of the suit the defendant No.1 be ordered and directed to deposit in court the amount received by defendant No.1 from the defendant No.3 on two life insurance policies one for Rs.5,00,000/- bearing policy No.901969760 dated 22.09.2001 and another policy for Rs.2,50,000/- bearing policy No.902461821 dated 14.08.2004.*

(ccc) *This Hon'ble Court be pleased to order and decree that the amount deposited by defendant No.1 being the maturity amount on Policy No.901969760 dated 22.09.2001 for Rs.5,00,000/- and being the amount of Policy No.902461821 dated 14.08.2004 for Rs.2,50,000/- being paid over to the plaintiff."*

20. No doubt, the learned Advocate for the defendants vehemently argued that the aforesaid facts were in the knowledge of the plaintiff, even she did not plead. The learned Advocate for the defendants also argued that the relief claimed by the plaintiff in the plaint become infructuous, as the amount has already been disbursed by the defendant No.3.

21. I would like to mention here that the plaintiff has specifically pleaded that after the death of her husband, she made an enquiry with the defendant No.2 and 3 about the Demat account as well as the insurance policies obtained by the deceased Hemchandra Shantilal Shah. Accordingly, she has issued the notice to all the defendants not to make any transaction or transfer the amount of Demat account as well as insurance policies. It indicates that the defendant No.3 had already

disbursed the amount, at the request of defendant No.1 by letter dated 18.04.2017.

22. Thus, the question in this quit is about entitlement of the amount of Demat account of the deceased Hemchandra Shantilal Shah as well as policies amount. Therefore, in view of the controversy between the parties, the proposed amendment mentioned in the schedule attached to the Chamber Summons, appears to be necessary. In the absence of pleading, party cannot lead evidence beyond pleadings.

23. Further more, in the present matter, the plaintiff intending to bring on record the subsequent event occurred during pendency of the suit. The issues are yet to be framed. If the proposed amendment is allowed, no prejudice would be caused to any of the defendant.

24. Therefore, considering all aspects as mentioned above, the proposed amendment mentioned in the schedule attached to the Chamber Summons, is necessary to decide the controversy between the parties. If the amendment is allowed, the defendants will get an opportunity to amend the pleadings, if any.

25. Therefore, I hold that the plaintiff has made out case to grant the permission to amend the plaint, by inserting paragraphs No.16(a), 16(b), 16(cc), 16(ccc) in the plaint. Therefore, the Chamber Summons deserves to be allowed. Hence, I answered point No.1 in affirmative and proceed to pass the following order.

-: O R D E R :-

1. The Chamber Summons No.1685 of 2018 is allowed in terms of prayer clause (a).
2. The plaintiff shall carry out the amendment as per schedule annexed to the Chamber Summons, on or before next date.
3. After carrying out amendment, plaintiff to serve copy of amended plaint on all the defendants.
4. Accordingly, the Chamber Summons stands disposed off.

(M.M. SYED)

Judge, (C.R.No.4)

City Civil Court, Gr. Mumbai**Date : 11.07.2019.**

Dictated on : 11.07.2019.

Transcribed on : 11.07.2019.

Signed on : 12.07.2019.

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

17.07.2019, at 12.40 p.m.

UPLOAD DATE AND TIME

Tushar P. Kuwar

[NAME OF STENOGRAPER]

Name of the Judge (With Court room no.)	HHJ Shri M.M. SYED Court Room No.4
Date of Pronouncement of Judgment/order	11.07.2019.
Judgment/order signed by P.O. on	12.07.2019.
Judgment/order uploaded on	17.07.2019.