

IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
CHAMBER SUMMONS NO. 526 OF 2014

IN

SUMMARY SUIT NO. 1591 OF 2014

Mr. Mukesh Dhirajlal Patel

...Plaintiff

Versus

1. Mahesh H. Mehta

2. Varsha M. Mehta

3. Roha M. Mehta

.... Defendants

Ld. Adv. Prashant Chande for plaintiff.

Ld. Adv. N.B. Khan for defendant nos. 2 and 3.

CORAM : HIS HONOUR JUDGE SHRI U.B.HEJIB

(C.R.NO. 24)

DATED : 6th FEBRUARY, 2017.

ORDER

1. This Chamber Summons is taken out by the plaintiff to amend the plaint to substitute in place of the deceased defendant no. 1, his LRs being defendant nos. 2 and 3, who are already on record and at the same time the alleged acceptor of the Bills of Exchange, on the basis of which the suit is triggered.

2. The defendant no. 3 objected to the grant of chamber summons on the ground that the defendant no. 1 died on 05.10.2015 and the chamber summons that is taken out on 01.03.2016 is time barred. The suit abated against the defendant no. 1, as there is no prayer for condonation of delay and even the plaintiff has not prayed to set aside the abatement. Moreover, the plaintiff has also sought to insert

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additional paragraphs and event in the plaint. The same amounts to new case widening the scope of the suit. If granted the amendment shall cause great hardship and serious prejudice to the defendant jeopardizing the case of the defendant. The right to sue cannot be said to be survived against defendant nos. 2 and 3, as suit has already abated.

3. The Learned Advocate Chande advocating for the plaintiff has placed reliance on the decision in **Gautam Bhawan Nirman Sahkari Samiti Ltd. Vs. Smt. Ramnik Kumari** [AIR 2005 Rajasthan 161], **Mohammad Arif V/s. Allah Rabbul Alamin** [AIR 1982 SC 948 (2)], **Bhure Khan Vs. State of Madhya Pradesh** [AIR 1982 SC 948 (2)] and **Collector of 24 Parganas Vs. Lalith Mohan Mullick** (AIR 1988 S.C. 2121).

4. In the first decision of **Ramnik Kumari**, the view was taken if the LRs of the deceased are already on record, may be in different capacity, the suit cannot abate.

5. In the second decision of **Lalith Mohan**, it was laid down that although some of the respondents pending the appeal died were sufficiently represented. Therefore, the plea that the appeal abated is untenable.

6. In the third decision, the same view as was enunciated in Supra **Ramnik** was laid down.

7. I have also heard N.B. Khan the Learned Advocate for the defendants, who have reiterated in the written argument Exhibit 3, contended as advocate of the defendant nos. 2 and 3. As submitted by N.B. Khan, the Learned Advocate for the defendant nos. 2 and 3, I do not see any new case put forth by the plaintiff in the chamber summons .

8. In the light of Supra enunciation of law, I have no hesitation in holding that the suit does not abate on account of death of

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the defendant no 1, as defendant nos. 2 and 3 are already on record and are also claimed to be acceptors of the Bills of Exchange in question. I therefore find considerable force in the submission of Learned Advocate Chande that right to sue still survived.

9. Learned Advocate Mr. Chande for the the plaintiff has rightly pleaded in the affidavit in support that otherwise also the defendant nos. 2 and 3 are liable qua LR's of the defendant no. 1 to the extent of estate of the deceased defendant no. 1 coming to their hands, which is in consonance with Sections 52 and 53 of the Civil Procedure Code.

10. In the result, chamber summons must be made an absolute in terms of the following order :-

ORDER

Chamber Summons No. 526 of 2016 is hereby made an absolute in terms of prayer.

(U.B.HEJIB)

Judge

City Civil & Sessions Court,
Gr. Bombay.

Date :- 06.03.2017

Dictated on : 06.03.2017

Transcribed on : 09.03.2017

Checked & Signed on : 09.03.2017

Ch. sum. 526/16 in Sum. Suit 1591/14

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGEMENT/ORDER”		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
09/03/2017	5.45 p.m.	Prachi Y. Potdar (H.G.)
Name of the Judge		HHJ Shri U.B.Hejib (CR No.24)
Date of Pronouncement of Judgment/Order.		06/03/2017
Judgment/order signed by P.O on		09/03/2017
Judgment/order uploaded on		09/03/2017