

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

COMMERCIAL SUIT NO.46 OF 2014

National Bank for Agriculture & Rural Development .. Plaintiff
Vs.
Saral Enterprises and Ors. .. Defendants

ALONG WITH

SUIT NO.577 OF 2009

SUIT NO.1151 OF 2011

Jayanand Khira & Co. Pvt. Ltd. and Anr. .. Plaintiffs
Vs.

Chittaranjan Damodardas Shah (*Deleted*) .. Defendants
Dr. Viral C. Shah and Ors.

And

Sachin C. Shah and Ors. .. Prop. Defendant

ALONG WITH

SUIT NO.1438 OF 2011

Chitranjan Damodardas Shah and Ors. .. Plaintiffs
Vs.

Chanchalben Murji Chheda and Ors. .. Defendants

ALONG WITH

SUIT NO.2500 OF 2012

White Rose CHS Ltd. and Ors. .. Plaintiffs
Vs.

Khira Nagar Co-op. Housing Societies .. Defendants
Association Ltd. and Ors.

ALONG WITH

SUIT NO.2211 OF 2011

Chanchalben Murji Chheda and Ors. .. Plaintiffs
Vs.

Viral Hotel and Theaters Pvt. Ltd. and Ors. .. Defendants

ALONG WITH

NOTICE OF MOTION NO.2222 OF 2011 IN SUIT NO.1438 OF 2011

NOTICE OF MOTION NO.1558 OF 2011 IN SUIT NO.1151 OF 2011

NOTICE OF MOTION NO.2650 OF 2011 IN SUIT NO.2211 OF 2011

Murshi R. Chheda and Ors. .. Applicants

Jayanand Khira & Co. Pvt. Ltd. and Anr. .. Applicants

Murji R. Chheda and Ors. .. Applicants

ALONG WITH

CHAMBER SUMMONS NO.740 OF 2014 IN SUIT NO.2500 OF 2012

CHAMBER SUMMONS NO.329 OF 2013 IN SUIT NO.2500 OF 2012

CHAMBER SUMMONS NO.234 OF 2014 IN SUIT NO.2500 OF 2012

IN-PERSON APPLICATION NO.110 OF 2019 IN SUIT NO.2500 OF 2012

White Rose CHSL and Ors. .. Applicants

Mr. Ganesh Kamat, i/by Mr. B.P. Bharti, for the Plaintiff in COMS/46/2014.

Ms. Huda Diamondwala, i/by Diamondwala & Co., for the Plaintiffs in S/577/2009 and S/1151/2011.

Mr. Malcolm Siganporia, i/by Mr. Jayesh Vyas, for the Plaintiffs in S/2500/2012.

Mr. Rajiv Carvalho, with Mr. Gobinda G. Mohanty, i/by Mohanty & Associate, for Defendant No.1 in COMS/46/2014.

Mr. Bipin Joshi for Defendant Nos.1 to 3 in S/577/2009; for the Plaintiffs in S/1438/2011; for Defendant Nos.1 to 5 in S/1151/2011 and; for Defendant Nos.8 to 12 in S/2500/2012.

Mr. Amit Shastri, AGP for Defendant No.6 in COMS/46/2014.

Mr. Himanshu Takke, AGP for Defendant No.9 in S/1151/2011 and for Defendant No.17 in S/2500/2012.

Ms. Pooja Yadav for the MCGM.

CORAM : A. K. MENON, J.

DATE : 6TH JANUARY, 2022.

[THROUGH VIDEO CONFERENCE]

P.C. :

COMMERCIAL SUIT NO.46 OF 2014

At the request of Mr. Kamat, learned counsel for the plaintiff, list the Suit on 20th January 2022.

SUIT NO.577 OF 2009

None present for the plaintiffs. List the Suit on 20th January 2022.

SUIT NO.1151 OF 2011

1. Plaintiffs are absent today. Defendant nos.1 to 5 and 7 appear to have filed written statements. No written statement appears to have been filed by defendant nos.6, 8 and 9. One last opportunity is granted to defendant nos.6, 8 and 9 to file their written statements, if they are in time.
2. Without prejudice to any submissions on behalf of the plaintiffs, written statements shall be kept ready within a period of two weeks from today.
3. List the Suit on 20th January 2022.
4. Plaintiffs' Advocates shall inform the counsel representing the Municipal Corporation and the State Government on behalf of defendant nos.6, 8 and 9 of this order.

SUIT NO.1438 OF 2011

1. Mr. Joshi on behalf of the plaintiffs seeks extension of time to carry out amendment by bringing on record the name of one of the legal heir – Sachin C. Shah of the plaintiff no.1, since the other two legal heirs are already on record as plaintiff nos.2 and 3. Accordingly, time to carry out amendment, as aforesaid, is extended by two weeks from today. Re-verification is dispensed with.

2. Written statements have been filed by defendant nos.1, 2, 3(a), 3(b) and 4 to 8. Thus, all written statements having been filed, issues will have to be framed. Accordingly, list the Suit on 20th January 2022 “for framing of issues”.

SUIT NO.2500 OF 2012

1. On behalf of the plaintiffs, Mr. Sigantoria states that amendment, to bring on record legal heirs of deceased defendant no.9, though allowed, has not yet been carried out. He seeks extension of time. Mr. Sigantoria states that two of the legal heirs of deceased defendant no.9 are already on record as defendant nos.8 and 10. Hence, he proposes to implead one Sachin C. Shah, the only other legal heir, as defendant no.9(a). Amendment to be carried out within two weeks from today. Re-verification is dispensed with.

2. On behalf of defendant no.9(a), Mr. Joshi undertakes to enter appearance and waives service of writ of summons and copy of the plaint. He however seeks leave to file written statement on behalf of defendant nos.8, defendant no.9(a) (now proposed to be impleaded), defendant no.10 and defendant no.11, on whose behalf he undertook to enter appearance. He submits that since the suit has already been transferred to the list of undefended suits, leave be granted to file the written statements. Mr. Sigantoria submits to the orders of the court as far as leave to file written statement is concerned.

3. In view of the fact that defendant no.9(a) is brought on record now and is entitled to file a written statement, it is just and appropriate that all these defendant nos.8, 9(a), 10 and 11 are granted leave to file written statements. Accordingly, on the application of Mr. Joshi, leave is granted to file written statements on behalf of defendant nos.8, 9(a), 10 and 11. Vakalatnama and written statements to be filed within two weeks from today.

4. Accordingly, if written statements on behalf of defendant nos.8, 9(a), 10 and 11 are filed in the registry on or before 20th January 2022, the same

shall be taken on file and copies thereof shall be served in advance upon Advocates for the plaintiffs.

5. As far as the remaining defendants are concerned, Suit to be listed for passing ex-parte decree on 20th January 2022.

SUIT NO.2211 OF 2011

1. None appears for the plaintiffs.
2. Mr. Joshi states that defendant no.2 has expired. Defendant nos.3 and 4 are two of the legal heirs of the deceased defendant no.2. The third legal heir of the deceased defendant no.2, namely, Sachin C. Shah, is not a party-respondent to the suit.
3. In view of the defendant no.2 having expired, leave is granted to the plaintiffs to carry out amendment by impleading Sachin C. Shah as defendant no.2(a). Amendment to be carried out within two weeks from today. Re-verification is dispensed with.
4. Mr. Joshi states that written statements on behalf of defendant nos.1 to 4 is on record. On behalf of the proposed defendant no.2(a), he undertakes to enter appearance within two weeks from today. Statement is accepted. He further submits that defendant no.2(a) seeks to adopt the written statement dated 11th February 2013 already filed by defendant nos.1 to 4. In view thereof, leave is granted to the proposed defendant no.2(a) to adopt the written statement filed on behalf of defendant nos.1 to 4.
5. Defendant nos.5 and 6 have also filed their written statements. This leaves defendant nos.7 and 8, whose written statements are not on record. Liberty to apply in the event defendant nos.7 and 8 do not file their written statements.
6. List the Suit on 20th January 2022.

NOTICE OF MOTION NO.2222 OF 2011 IN SUIT NO.1438 OF 2011

This Notice of Motion seeks interim reliefs. Suit is now ready for framing of issues. Since no ad-interim application appears to have been made and no interim order appears to have been passed, no purpose would be served if the motion remained pending. Mr. Joshi submits that he will seek appropriate reliefs in the suit. Accordingly, notice of motion is disposed.

CHAMBER SUMMONS NO.234 OF 2014 IN SUIT NO.2500 OF 2012

1. Not on board. By consent, taken on board.
2. It seems that the transposition sought by this Chamber Summons has already been carried out since Cosmos Co-op. Housing Society Ltd. is now shown as defendant no.27 in the suit. Hence, the chamber summons is disposed as infructuous.

CHAMBER SUMMONS NO.329 OF 2013 IN SUIT NO.2500 OF 2012

As far as this Chamber Summons is concerned, Mr. Siganporia states that since the suit is now scheduled for being heard and there is no ad-interim order made in the chamber summons, he does not press prayers in the chamber summons at this stage. Hence, chamber summons is disposed.

Registry to take steps to ensure that disposed notices of motion, chamber summonses and interim applications are not listed on board once disposed as this causes unnecessary delays in obtaining confirmations of pendency from the counsel appearing in various matters especially where there are large number of defendants. Moreover, it also increases the burden in transporting voluminous records despite they are disposed. The Prothonotary and Senior Master shall issue appropriate directions to the registry in compliance with this order.

(A.K. MENON, J.)