



edh

6-cts-159-2018-J+.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

CHAMBER SUMMONS NO.159 OF 2018

IN

TESTAMENTARY SUIT NO.94 OF 2011

1. Auto Credit Corporation]
carrying on business at Shop]
on the ground floor at Varsha]
Building, situated at 27B,]
Maharashi Karve Road, Charni]
Road, Mumbai - 400 004.]

2. Rekha Praskash Jain]
Adult, Occupation Business,]
Indian Inhabitants of Mumbai,]
Ground Floor, Varsha]
Building, 27-B, Maharashi]
Karve Road, Opp. Charni Road]
Railway Station, Mumbai- 400 004.]

... Applicants

In the matter between

Mukesh Bansilal Shah]
An Adult Indian Inhabitant,]
residing at Rajul Apartment, Flat]
No.501/A, Napeansea Road,]
No.501/A, Napeansea Road,]
Mumbai.]

... Plaintiff

versus

1. Mahesh Mithalal Trivedi]
Hindu Inhabitant of Mumbai]
Residing at Room No.23, A]
Block, 1st Floor, 202-D Parekh]
Wadi, V P Road, Mumbai - 400 004.]

2. Champaben Kantilal Vaya]
Adult, Indian Inhabitant, residing]
at Flat No.7, Tulshiram]
Building, 5 Hem Colony, Next]
to GTC, S V. Road, Vile Parle]
(W), Mumbai - 400 056.]

2.1 Kishore Kantilal Vaya]
 Age: 58 years, of Mumbai,]
 Indian Inhabitant, residing at]
 501-A Parimal Co-op. Housing]
 Society Ltd., Juhu Lane, Andheri]
 (W), Mumbai – 400 058.]

2.2 Suresh Kanitlal Vaya]
 Adult, Indian Inhabitant, residing]
 at Flat No.7 & 8, Tulsidham]
 Buildings, 5 Hem Colony, Next]
 to GTC, S V. Road, Vile Parle]
 (W), Mumbai – 400 056.]

2.3 Pradeep Kantilal Vaya]
 Age: 53 years, of Mumbai,]
 Indian Inhabitant, residing at 17,]
 5th Floor, 153 Shri Krupa Prasad]
 Housing Society Ltd, Behind]
 Sony Mony, S V Road, Vile]
 Parle (W), Mumbai – 400 056]

... Defendants.

AND

1. Auto Credit Corporation]
 carrying on business at Shop]
 on the ground floor at Varsha]
 Building, situated at 27B,]
 Maharashi Karve Road, Charni]
 Road, Mumbai – 400 004.]

2. Rekha Praskash Jain]
 Adult, Occupation Business,]
 Indian Inhabitants of Mumbai,]
 Ground Floor, Varsha]
 Building, 27-B, Maharashi]
 Karve Road, Opp. Charni Road]
 Railway Station, Mumbai- 400 004.]

... Intervenor

AND

Ketan Trivedi]
 Administrator appointed by this]
 Hon'ble Court, at present]
 Addl. Prothonotary and Senior]

Master, Original Side, High	]	
Court, Mumbai.	]	... Administrator

Ms. Shaista Pathan i/by YNA Legal for the Applicants in CST/19/2018.

Ms. Vaishali Kasbe i/by Mr. Suresh Dubey for the Plaintiff in TS/94/2011.

Mr. Preet Chheda for the Plaintiff in TS/59/2008 and for Defendant in TS/94/2011.

Ms. Swayam S. Chopda, OSD, Court Receiver.

Mr. Ketan Trivedi, Administrator, present.

CORAM : KAMAL KHATA, J.
RESERVED ON : 10th September 2025.
PRONOUNCED ON : 30th September 2025.

JUDGMENT:

1) By this Chamber Summons, the Applicant seeks leave to intervene in the Testamentary Suit No.94 of 2011 and a further direction to the Administrator to remove the seal affixed on the garage/shop located on the ground floor of Roshni building, 27 Maharshi Karve Road, Charni Road, Mumbai 400 004.

2) Before dealing with the Chamber summons on merits, it is necessary to refer to two pertinent orders. The first is the order of this court dated 11th September 2018, whereby the Applicant's first prayer was rejected, holding that a person without a caveatable interest has no locus before a probate Court, particularly when the

Applicant is admittedly a purported tenant or occupant. The Second is order dated 15th January 2020 by which the Applicant was directed to take steps for tagging a CRA pending before this Hon'ble Court. Despite ample time having been granted, the Applicants have neither taken such steps nor demonstrated that tagging is administratively infeasible. The pendency of this Chamber Summons has thus become an impediment in a matter otherwise ripe for final hearing.

3) In the backdrop of these two crucial orders, I now proceed to consider the submission advanced by the learned counsel for the parties and to decide the Chamber Summons. Though only prayer (b) survives for consideration, I deem it fit to address all issues raised.

4) The Applicant contends that she was a tenant of Madhavi Dhirajlal Sagar, and thereafter of Mahesh Mithalal Trivedi, who claims ownership of the said building. It is pointed out that in RAE Suit No.418/1069 of 1991 and RAE Suit No.419/1070 of 1991, filed by the landlady (Madhavi Dhirajlal Sagar) for recovery of possession, were both dismissed. The Appeals therefrom, being Appeal Nos.414 and 415 of 2008, were also dismissed on 30th November 2011. Against the dismissal of these Appeals, the Applicant has filed Civil Revision Application No.456 of 2013 and 882 of 2012 which are pending before this Court. Though admitted in October 2013, they are

still pending for hearing and final disposal, and no stay of the dismissal Orders has been granted. Accordingly, the Applicant asserts that she continues to be a lawful tenant of the said premises.

5) Ms. Pathan, learned Advocate for the Applicants, submits that the Applicant has been in a continuous possession of the tenanted premises since 1991, and has regularly paid rent until the disposal of the Suits before the Small Causes Court at Mumbai.

6) The Applicant further submits that, by a covering letter dated 20th July 2017, she has tendered a sum of Rs.2,94,127.70/- by bankers' cheque to the Administrator, by depositing the same in the Office of the Court receiver, High Court Bombay. The Administrator, however, refused to accept the banker's cheque and returned it to the Applicant's Advocate. It is further submitted that on 23rd July 2018, at around 9.30 p.m., when the Applicant was out of Mumbai, the Administrator placed a seal on the tenanted premises, despite the Applicant's compliance with the Administrator's communication. As per Report No.1 of 2017, the Administrator appointed in respect of Roshni and Varsha buildings was only authorised to collect the rent from tenants. The Administrator had no authority to seal or dispossess the Applicant without notice.

7) It is submitted that a perusal of the Orders dated 2nd November 2012 and 22nd November 2012 indicates that the

Administrator was empowered only to collect rent, and had no power to affix a seal upon the tenanted premises in occupation of the Applicant. It is accordingly submitted that the seal on the premises be removed and the Applicant be permitted to re-occupy and use the premises, as she is suffering losses on account of being prevented from carrying on her business therefrom.

8) Mr. Trivedi, the Administrator, in response to the Chamber Summons, submits that he had sealed the premises, and that since the time of his appointment as an Administrator, he had always found the premises in a locked condition. The Administrator states that the Applicants had described themselves as owners of the premises, and had not produced any Order directing them to deposit the rent in the Small Causes Court. Moreover, the rent had been deposited only until April 2008 and not thereafter.

9) He further submits that though the suits stood abated on the death of the Landlady Mrs. Sagar, the Advocate Mr. J.S. Raymond who represented Mrs. M.D. Sagar, had wrongly continued the Suit and allowed Mr. M.M. Trivedi to be substituted as a Plaintiff, despite the fact that no Probate or Letters of Administration had been granted in his favor of Mr. M.M. Trivedi. Therefore, Mr. M.M. Trivedi had no right to continue the proceedings based on the Power of Attorney of a deceased.

10) Upon his appointment as the Administrator, he visited the property and found the premises locked. He was informed by one Mr. Dilip, an employee of Mr. Romel, that a firm named *M/s. Speed Labs* was carrying on business there. By a communication dated 27th May 2017, all concerned were notified that he had been appointed Administrator of the properties belonging to Mrs. M.D. Sagar. The Applicant, however, did not produce any documentary proof showing that she was filing an affidavit on behalf of the purported tenant, Auto Credit Corporation. There was neither a notarial endorsement confirming her authority, nor the signature of the other partner, Mr. Shashi Dinesh Jain, who had ceased to be a partner pursuant to a family arrangement dated 19th March 1998.

11) Mr. Trivedi submits that he had called upon the Applicants to furnish documents, which they failed to produce. His actions were therefore in compliance with the Court's Orders and undertaken with a view to protect the tenanted premises, and he cannot be faulted for sealing them. He further contends that Mr. Jimmy R. Nazir, the founder partner of Auto Credit Corporation, had neither filed any affidavit nor produced documents showing that Rekha Jain was a tenant of the premises.

12) According to the Administrator, rent could not be

collected from Rekha Jain since, as per records, Auto Credit Corporation through Shashi Dinesh Jain, was the tenant and no tenancy had been created by the landlady in favour of the Applicants. The Deed of Assignment dated 1991, being inter se between Auto Credit Corporation and its partners (Nos. 3 and 4), transferred goodwill and tenancy rights, the landlady had not accepted Rekha Jain as a Tenant. Therefore, the Applicants have failed to establish any legal right to tenancy.

13) He further submits that despite the sealing of the premises, in the first week of January 2019 he was informed that activity was being carried on inside Roshni Building. On 3rd January 2019, he visited the premises and verified that the seals and locks were intact on the rear and front doors. However, upon opening the front door, he was surprised to find several materials lying inside the premises.

14) When he had earlier visited the ground floor of Varsha Building, a board of *M/s. Speed Labs* was found, but on 3rd January 2019, a board of *Home Studio* was seen. In the presence of Mr. Trivedi and Mr. Bharat Sagar, Constituted Attorney of Mr. M.B. Shah, it was found that materials had been placed in the premises without his knowledge.

15) By an Order dated 9th January 2019, a Court

Commissioner was appointed to verify the Administrator's submissions. A report dated 28th January 2019 was filed, which recorded that articles such as chairs, glassware, and sofas were lying inside the premises, and that the rear door had been tampered with by removing nuts, bolts, and screws. This, according to the Administrator, clearly established that the premises had been opened unlawfully from the rear and materials placed inside without permission of either the Administrator or the Court.

16) He also relies on the affidavit of Mr. Kamlesh Sampat, Manager of *Home Studio*, who stated that someone had opened the Roshni Building premises and was removing materials therefrom. Upon inquiry, the Administrator informed him that it was he who had removed them. Mr. Sampat, however, was not aware of the Administrator's purpose in visiting the premises and had also taken photographs without the Administrator's permission, which are annexed to his affidavit.

Analysis and Conclusion

17) I have heard both parties and perused the papers. In my view, this Chamber Summons is wholly misconceived. There is absolutely no question of tenants being impleaded as parties in a Testamentary Suit. Any claim of tenancy must be established before the Small Causes Court, which has exclusive jurisdiction in that

regard. From the Administrator's Report, it is evident that attempts have been made to create third-party rights in the absence of the landlady, and that there has been an effort to utilize the premises without authority. Such conduct cannot be countenanced.

18) In my view, at best, Auto Credit Corporation can be construed merely as an occupant of the building and not as a tenant. An occupant, per se, has no right, title, or interest to assign or create third-party rights to use, occupy, or carry on business from the premises without proper authority. In the absence of such authority, no person other than the original partners of Auto Credit Corporation itself can claim to utilize the premises. Auto Credit Corporation ought to have moved the competent Court to establish its tenancy rights over the property assuming it was in use and occupation of the said premises.

19) From the Administrator's report as well as the Commissioner's report, it is evident that the sealed premises were tampered with. Having regard to such conduct of the Applicant, this Court *suo motu* directs the Registry to issue a Show Cause Notice to Rekha Prakash Jain, calling upon her to explain why contempt proceedings should not be initiated for tampering with sealed premises. The Show Cause Notice shall be made returnable on 12th November 2025.

20) By instituting the present Chamber Summons, the Applicants have not only delayed the progress of the Suit but have also subjected the Court Administrator to unnecessary hardship and difficulty in administering the deceased's estate. Such conduct cannot be permitted.

21) The Supreme Court in *Dnyandeo Sabaji Naik v Pradnya Prakash Khadekar*¹ has held that Courts are duty-bound to ensure that legal system is not exploited by litigants who employ the forms of the law to defeat or delay justice. The imposition of exemplary costs is a vital tool to deter and weed out frivolous litigation, as well as to prevent its recurrence.

22) In the present case, the Applicant sought to tender rent to the Administrator without having been declared as a tenant. Despite the premises being sealed, they were tampered with without obtaining permissions from the competent Court. The Applicant has further delayed the final adjudication by failing to take steps to tag the matters, despite having been granted ample time. These actions and inactions have unnecessarily consumed the Court's valuable time on collateral issues, thereby delaying adjudication of the core dispute. In my view, such misuse of judicial process warrants a strong deterrent, which can only be ensured through imposition of exemplary costs.

¹ (2017) 5 SCC 496

23) In these circumstances, the Chamber Summons stands dismissed with exemplary costs of Rs.25,00,000/- to be paid to the Armed Forces Battle Casualties Welfare Fund within a period of four weeks from the date of uploading of this Judgment on the website of the Bombay High Court. The account details of the said Welfare Fund are as under:

Account Name	:	Armed Forces Battle Casualties Welfare Fund.
Account Number	:	90552010165915.
Bank Name	:	Canara Bank.
Branch	:	South Block, Defence Headquarters,
		New Delhi - 110011.
IFSC Code	:	CNRB0019055.

24) Upon failure to pay costs within stipulated period, the Collector, Mumbai is directed to attach the properties of the Applicants for recovery of the costs amount which shall be paid to Armed Forces Battle Casualties Welfare Fund as compensation within a period of three months.

25) List the matter for compliance on 12th November 2025.

(KAMAL KHATA, J.)