

(1941) 10 BOM CK 0017

Bombay High Court

Case No: O.C.J. Suit No. 338 of 1940

Bachubai Manjrekar

APPELLANT

Vs

Raghunath Ghanshyam  
ManjrekarRESPONDENT

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**Date of Decision:** Oct. 7, 1941**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 41

**Citation:** (1942) 44 BOMLR 108**Hon'ble Judges:** Chagla, J**Bench:** Single Bench

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**Judgement**

Chagla, J.

On July 8, 1941, the plaintiffs obtained a decree against the defendant for a sum of Rs. 10,794-10-0, costs and interest on judgment at six per cent. Mr. Bhimji for the plaintiffs applies for an order under Order XXI, Rule 41, of the Civil Procedure Code, 1908, for the oral examination of the defendant and his late accountant Purshottam Dattaram Shete, and for production of the books of account of the business of Ghanshyam Govind Tendolker and of Ghanshyam Raghunath Manjrekar for Samvat Years 1994, 1995, 1996 and 1997 and for the production of the title-deeds and securities relating to the defendant's properties and business in Portuguese Goa.

2. Mr. Kirtikar, the First Assistant Master, points out to me that for the last six years there has been a practice of this Court that applications for an order under Order XXI, Rule 41, of the Civil Procedure Code, should be made on a chamber summons. Mr. Bhimji contests this position and argues, first, that there is no such practice, and, secondly, that if there is such a practice, it is not borne out by the decisions of our Court nor by the law nor by rules framed by our Court.

3. Mr. Bhimji draws my attention to the decision in *In re Premji Trikumdas* (1893) ILR 17 Bom. 514. In that case Messrs. Bhaishankar & Kanga obtained an order against

their client Premji Trikumdas for payment of certain costs due to them. Thereafter Mr. Bhaishankar Nanabhoy, the senior partner of that firm, obtained an order ex parte u/s 267 of the then Code, which corresponds to our Order XXI, Rule 41, requiring Premji Trikumdas, his wife Premabai and one Jana Ookha to be examined in respect of the property of the judgment-debtor and to produce papers and documents relating to his property. Premabai then took out a chamber summons to set aside the order obtained by Bhaishankar, and that was the summons that came before the Court for decision. Mr. Justice Starling dismissed the summons, and from that decision an appeal was preferred to the Appellate Court consisting of Sir Charles Sargent C.J. and Mr. Justice Telang. The Court of Appeal refused to interfere with the decision of Mr. Justice Starling. It is to be noted that neither Mr. Justice Starling nor the Court of Appeal commented adversely upon the practice of obtaining an order ex parte u/s 267 of the then Civil Procedure Code. On the contrary, that practice was taken for granted. In *National Bank of India, Ltd. v. Ghuznavi* (1915) ILR 43 Cal. 285 the procedure to be followed under Order XXI, Rule 41, was expressly considered and Chaudhuri J., following the decision in *In re Premji Trikumdas*, laid down that as the Calcutta High Court had framed no special rules with reference to this matter, an order under Order XXI, Rule 41, could be obtained ex parte. These are the only two decisions of the Courts in India, and they both negative the practice of obtaining an order on a chamber summons.

4. In England under the corresponding rule of the Supreme Court, Order XLII, Rule 32, the procedure laid down is that normally the application must be made by a summons returnable before a Master in chambers, though in special circumstances an order can be obtained ex parte. It is to be noted that our rule is much wider than the corresponding English rule. In England under Order XLII, Rule 32, only the judgment-debtor, or in the case of a corporation any officer thereof or any other person connected therewith, can be examined; whereas in India not only the judgment-debtor or an officer of a corporation but any other person under Sub-Clause (c) of Order XXI, Rule 41, who is in a position to give the requisite information or to produce the necessary documents, can be examined. It is curious, therefore, that while the scope of the rule in England is narrow, ordinarily a chamber summons is insisted upon; while in India although the Court may summon before it a person who is not a party to the proceedings at all, yet an ex parte order to that effect can be made. It will be remembered that in *In re Premji Trikumdas* an ex parte order was actually obtained against Premabai, the wife of the judgment-debtor Premji Trikumdas, a total outsider to the suit in which the order for costs was obtained.

5. Further, under Rule 79 of our High Court Rules, the mode of proceeding in chambers is by summons only when notice is required to be given, and Mr. Bhimji, I think, rightly contends that as Order XXI, Rule 41, does not require a notice to be given, it is not necessary that he should adopt the mode of taking out a chamber summons.

6. As regards the practice, my attention has been drawn to an order made by Macklin J. in Suit No. 1263 of 1933, on June 2, 1937, where he made an order ex parte on an application under Order XXI, Rule 41, and therefore Mr. Bhimji contends that the practice of our Court has not been so consistent or so inveterate as to amount to a rule of law.

7. Under these circumstances I must hold that it is not necessary to take out a chamber summons in order to apply to the Judge in chamber under Order XXI, Rule 41. But I should like to say that except in very exceptional circumstances the Court should never make an order without in the first instance giving a notice to the party against whom an order is sought. In this case the order is sought not only against the judgment-debtor but also against his late accountant Purshottam Dattaram Shete, and I would therefore direct that before I hear this application notice should be given both to the judgment-debtor and Purshottam Dattaram Shete of this application.