

..Petitioners

M. F. Zamindar

..Respondent

**Mr. G. V. Murti a/w Mr. Mohun Rao a/w Mr. Pradeep Dubey for the i/b
MSR & Associates for the Petitioners**

CORAM : R. M. SAVANT, J.

DATE : 29th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 29-6-2015 passed by the Learned Judge of the City Civil Court, Mumbai, by which order, Chamber Summons No.268 of 2015 filed by the Respondent i.e. original Plaintiff for amendment of the plaint came to be allowed.

2 The Suit as originally filed by the Respondent/Plaintiff is for an injunction restraining the Petitioners / Defendants from terminating the contract / agreement dated 8-1-2005 and also seeking injunction against the Defendants from carrying out any sort of construction activity on the Suit site from any other agency. It is pending the Suit that the contract in question which was awarded to the Respondent came to be terminated on 31-1-2014. Thereafter the instant Chamber Summons came to be filed on 30-3-2015 and the delay was sought to be explained that the Plaintiff did not realise the urgency with which the amendment was required to be moved, in view of the fact that the Suit was pending. By the said Chamber Summons, the termination

of the contract vide the said letter dated 31-1-2014 was sought to be questioned. The Chamber Summons was opposed to on behalf of the Petitioners /Defendants. The Trial Court considered the said Chamber Summons and on the ground that since the amendment covers the subsequent event, the same would have to be allowed as otherwise there would be injustice to the Plaintiff. The Trial Court has accordingly allowed the said Chamber Summons by the impugned order dated 29-6-2015.

3 The Learned Counsel for the Petitioner Mr. Murti would contend that the termination of the contract vide letter dated 31-1-2014 constitutes a separate cause of action and the instant Suit which was filed for injunction could not have been allowed to be amended.

4 In my view, the said submission cannot be accepted as one of the considerations whilst considering an application for amendment of the plaint is to avoid multiplicity of the proceedings. Moreover in the instant case the termination has taken place pending the Suit and therefore the Plaintiff is entitled to bring the said fact on record and claim the relief on the said basis. Hence the discretion exercised by the Trial Court in allowing the amendment application warrants no interference of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order