

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7165 OF 2007
IN
CHAMBER SUMMONS NO.334 OF 2006
IN
B.C.C.C. S.C. SUIT NO.1265 OF 1994

Rajhans Mohanlal (Deceased) -]
Mrs. Indira M. Jain and Anr.] ... Petitioners

Versus

M/s. Kuber Builders and Ors.] ... Respondents

Mr. K. D. Jha for Petitioner.
None for Respondents

CORAM :- M. S. SONAK, J.
DATE :- APRIL 27, 2015

P. C. :-

1. Heard the matter for some time. The learned Counsel for Petitioners has produced on record a revised schedule proposing text of amendment. The same is taken on record and marked 'X' for identification.

2. This petition, questions Order dated 26/07/2007 by which the learned City Civil Judge, Greater Mumbai, rejected the Petitioners'

Chamber Summons No.334 of 2006, seeking, *inter alia*, to implead certain parties and for amendment of the plaint. The impugned order records that there was considerable delay in seeking impleadment of parties and the amendment proposed, does not relate merely to subsequent events.

3. The learned Counsel for Petitioners points out that the Petitioners are no longer interested in impleading any additional party and further, in the revised schedule, reference has been made, mainly to events subsequent to the institution of the suit. Besides, address of the Defendant No.4 has also sought to be rectified.

4. In view of the aforesaid, it would be appropriate to set aside the impugned order dated 26/07/2007 and afford opportunity to the Petitioners to take out a fresh Chamber Summons seeking leave to amend the plaint, in accordance with the revised schedule handed in to this Court today. It is reported that though issues have been framed in the mater, affidavit in lieu of examination-in-chief is yet to be filed by the Petitioners-Plaintiffs. In these circumstances, it cannot be said that the trial in the suit has commenced. In any case, the circumstance that the Petitioners had applied for leave to amend way back in the year 2007, can also not be ignored.

5. Accordingly, the impugned order is set aside. The Petitioners are granted liberty to take out, within a period of six weeks from today, yet another Chamber Summons seeking leave to amend the plaint in terms of the revised schedule handed in today. The City

Civil Court to consider and dispose of the same on its own merits and in accordance with law, within a period of six weeks from the date on which the same is lodged. Appropriate opportunity be also granted to the Respondents to file their reply and make their submissions with regard to the proposed revised schedule.

6. The Petitioners are are directed to place authenticated copy of this Order before the City Civil Court on or before 06/05/2015 at 2.45 p.m.

7. Rule is made absolute to the aforesaid extent. There shall be no order as to costs in this petition.

8. All parties to act on the basis of authenticated copy of this Order.

(M. S. SONAK, J.)