IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 375 OF 2015
IN
SUMMARY SUIT NO. 2114 OF 1998

LIC Nomura Mutual Fund Trustee
Company Private Limited being the
sole Trustee of the LIC Nomura
Mutual Fund (Formerly known as LIC
Mutual Fund) .. Applicant

In the matter between :

Shri G. Krishnamurthy & Ors. .. Plaintiffs
Vs.
R.K. Garg .. Defendant

Ms.Snehal Paranjape a/w. Mr.Akshay Vora i/b Little & Co. for applicant.

Mr.Mayur Khandeparkar a/w. Mr.Z.A. Jariwala i/b Thakore Jariwala & Associates for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 3RD AUGUST, 2015

P.C.

1 This chamber summons is for leave to amend the plaint to bring on record certain facts that occurred after the suit was filed. What the plaintiff/applicant wish to bring on record is that there has been a change in the constitution of the plaintiff inasmuch as the suit was filed by individuals who are trustees of the LIC Mutual Fund. LIC Mutual Fund was formed as a

trust by the Life Insurance Corporation of India under the Indian Trusts Act, 1887. The Securities and Exchange Board of India (SEBI) issued a certificate of registration dated 9.05.1994 to LIC Mutual Fund.

2 As per the SEBI regulations, mutual funds were permitted to be vested in 'corporation trust' instead of 'board of trustees' and by a Deed of Modification dated 6.10.2003, the board of trustees of LIC Mutual Fund was replaced by a 'corporation trust' of LIC Mutual Fund Trust Company Private Limited. Thereafter, the LIC Mutual Fund entered into a Joint Venture dated 18.01.2011 with Nomura Mutual Fund Trustee Company Private Limited. The Registrar of Companies has issued a certificate of registration consequent upon change of name and copy thereof are annexed to the affidavit in support of the chamber summons. The Asset Management Company of the LIC Nomura Mutual Fund Asset Management Company Private Limited was formerly referred to the 'Jeevan Beema Sahayog Asset Management Company Limited and this name was changed to 'LIC Mutual Fund Asset Management Company Limited'. There has been some more change in the name of the companies/asset management companies/ mutual fund.

3 As the trustee company took over the trust affairs from the board of trustees and the trust name, the name of the trustee company and the asset management company of the said trust having undergone changes after filing of the suit, it is the case of the applicant that these changes have to be brought on record under the provisions of Order 22, Rule 10 read with Section 151 of the Code of Civil Procedure, 1908. Hence, the present chamber summons.

4 I have considered the affidavit in support, affidavit in reply and have heard the counsel for the plaintiff and the counsel for the defendant. The primary case of the counsel for the defendant is that even though there is no limitation prescribed under Order 22, Rule 10, the Apex Court has held that it would not give right to a party not to carry out the amendment for an indefinite period. These changes have to be brought on record within a reasonable period and the reasonable period would be three years. The counsel also submitted that the defendant had filed an action against the plaintiff before the Court of the Civil Judge, Junior Division, Chandigarh being Suit No.73 of 1996. The said suit was continued to be defended even after the purported deed of conversion and the changes were not brought to the notice of the Civil Judge, Junior Division, Chandigarh. The said suit came to be disposed by a judgment and order dated 17.10.2006. The

defendant had, who was the plaintiff therein, filed an Appeal against the said order of 17.10.2006 and it was in the said Appeal that the plaintiff for the first time raised objections and prayed that the appeal should be dismissed as bad for mis-joinder of parties. The defendant also states that even in the said application for dismissal of the appeal, the alleged conversion of the LIC Mutual Fund India, into Private Limited Company was not brought to the notice of the Hon'ble Appeal Court and in view of the contention that as the plaintiff ceased to be the trustees of the LIC Mutual Fund, the appeal filed by the defendant before the Additional District Judge, Chandigarh came to be dismissed. The counsel states that since the plaintiff ceased to be trustees of the LIC Mutual Fund, the present suit has stood abated.

5 It is true that the plaintiff did not move this application under Order 22, Rule 10 of the Code of Civil Procedure seeking amendment to the plaint for almost 12 years. The plaintiff, of course, had taken out a chamber summons earlier bearing (lodging) No.867 of 2014 but as there were certain errors in the affidavit in support, the said chamber summons came to be withdrawn and pursuant to the liberty granted by an order dated 25.08.2014, the present application has been taken out.

6 In my view, having considered the amendment sought, no prejudice whatsoever will be caused to the defendant if the chamber summons is allowed provided the issues viz. as to whether the amendment sought is barred by limitation or whether the suit has abated qua the erstwhile trustees not being party to the suit are kept open to be decided at the time of trial. By keeping open these issues to be decided at the time of trial, I am inclined to allow the chamber summons. The chamber summons is allowed subject to the aforesaid objections and any further objections raised by the defendant in the affidavit in reply. The plaintiff to amend the plaint to reflect the proposed amendments mentioned in the schedule to the chamber summons and serve a copy of the amended plaint within two weeks from today.

7 The further written statement to be filed within three weeks of receiving a copy of the amended plaint.

8 Stand over to 28.08.2015 for directions. The plaintiff to pay a sum of Rs.25,000/- as costs to the defendant. The amount to be paid by way of a cheque drawn in favour of the advocate on record for the defendant within two weeks from today.

(K.R. SHRIRAM, J.)