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

CHAMBER SUMMONS NO. 656 OF 2014

IN

SUIT NO.849 OF 2013

Amal Investments Pvt. Ltd.

...Applicant/Plaintiff

Vs

Mercantile Corporation & Ors.

...Defendants.

WITH

CHAMBER SUMMONS NO.617 OF 2014

IN

SUIT NO. 850 OF 2013

Anand Investments Pvt. Ltd.

...Applicant/Plaintiff

VS

Mercantile Corporation & Ors.

...Defendants

.....

Mr Sanjay Jain a/w Ms Astha Tamhankar i/b Chitnis & Co. for the Plaintiff.

Mr Zal Andhyarujina i/b M/s Jhangiani, Narula & Associates for Defendant Nos.1 and 2.

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CORAM : S.C. GUPTE, J.

FEBRUARY 11, 2015

P.C. :

These Chamber Summonses are taken out by the original Plaintiffs for an amendment in the plaint. By this amendment, the Plaintiffs basically propose to add two things. Firstly, the Plaintiffs propose to introduce a letter dated 31 December 1971, which according to the Plaintiffs accompanied the agreement for sale, on which the Plaintiffs had originally placed reliance in their respective suits. The proposed amendment is to the effect that the agreement, which is a standard form of agreement of sale, was enclosed with this letter dated 31 December 1971; this letter was signed by one Kantilal, the then Director of the Plaintiffs in token of acceptance of the agreement. Secondly, the Plaintiffs seek to rely upon a similar letter which was addressed by Defendant No.1 to Yamuna Investments Pvt. Ltd., Defendant No.8 to the present suits. It is the case of the Plaintiffs that the original letter dated 31 December 1971, which accompanied the

agreement for sale, referred to above, was returned to Defendant No.1; that this letter was on the same terms as the letter addressed to Yamuna Investments Pvt. Ltd.; and that, therefore, the Plaintiffs want to annexe the letter addressed to Yamuna Investments Pvt. Ltd. as an annexure to their respective complaints. It is the case of the Plaintiffs that this document came to the notice of the Plaintiffs when the matter was being discussed for the purpose of leading evidence on the preliminary issue framed in the matter. (There is a preliminary issue framed in respect of limitation.) The Plaintiffs, therefore, propose to amend the complaints. The Chamber Summonses are served on all the Defendants. None of the Defendants except Defendant No.12 appears to show cause.

2 The amendment application is opposed by Defendant No.12, who is the principal contesting defendant. It is submitted, firstly, that the facts now sought to be introduced in the complaints were already within the knowledge of the Plaintiffs when the present suits were filed. Learned Counsel for Defendant No.12, relies on the complaint and proceedings in companion suit No.1437 of 2012 in this behalf. In this suit, which was filed by Defendant Nos.12 and 13 herein against the Plaintiffs in the present suits, the Defendants' complaint referred to the particular letter, which is now sought to be introduced by the Plaintiffs. In reply, it was the case of the Plaintiffs in that suit that the Plaintiffs were not aware of the particular letter. These pleadings do not disclose that the fact that there was indeed such a letter was within the knowledge of the Plaintiffs. If anything, they show that the Plaintiffs were not aware of the existence of such letter. It is the case of the Plaintiffs in the present Chamber Summonses that it was only when the matter was being discussed for the purpose of leading evidence on the preliminary issue, that this letter came to light. This letter was disclosed by one Jagdish, who had proposed to appear as a witness for the Plaintiffs and who was associated with the Gokul family, who are shareholders of the Plaintiffs. Secondly, it is submitted by the learned Counsel for Defendant No.12 that introduction of this letter amounts to a complete change of the cause of action. It is submitted that the original contract as pleaded in the complaint is sought to be substituted by a new contract now sought to be introduced in the present amendment. It is clear from the text of the amendment proposed by the Plaintiffs

that what the Plaintiffs now propose to introduce is the fact that the agreement originally relied upon by the Plaintiffs was enclosed with a covering letter and that letter was signed by the representative of the Plaintiffs in token of acceptance of the contract. The terms of the contract pleaded by the Plaintiffs are the very same terms which are contained in the agreement, so far relied upon by the Plaintiffs. The rights claimed by the Plaintiffs in the present suits are on the basis of these very terms. Neither the factum of the original agreement nor the content thereof is sought to be substituted by the Plaintiffs. Therefore, there is no substance in the objection that a vested right is being denied to or taken away from the Defendant or that the cause of action is being completely or materially altered to the disadvantage of the Defendant. The amendment is necessary to bring out the real controversy between the parties. The Plaintiffs have adequately explained the reasons for not having originally pleaded the averments now proposed to be introduced and also the reasons for introducing the amendment now and not at any time earlier.

3 Accordingly, the Chamber Summonses are made absolute in terms of prayer clause (a). The amendments to be carried out within two weeks from today.

4 The Plaintiffs are permitted to substitute the word “**certified**” shown in paragraph IV of the schedules annexed to the Chamber Summonses by the word “**ratified**”.

5 Place the suits for directions on 26 February 2015.

(**S.C.GUPTE J.**)