

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

**CHAMBER SUMMONS NO. 1250 OF 2015
IN
SUIT NO. 2990 OF 2010**

Smt. Prabhavati Ambalal Patel & Anr. .. Applicants

In the matter of :

Smt. Prabhavati Ambalal Patel & Anr. .. Plaintiffs

Vs.

Shivanna Babu Shetty .. Defendant

Mr.Sean Wassoodew for plaintiff/applicant.

Mr.Rajesh Singh i/b Bharat Joshi for defendant/respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 17TH OCTOBER, 2015**

P.C.

1 This chamber summons is taken out on behalf of the applicant/plaintiff seeking leave to amend the plaint in terms of the schedule annexed to the chamber summons.

2 The counsel for the defendant opposes the chamber summons and the defendant has also filed an affidavit in reply. The basic objection is that the amendment being sought to be introduced to the plaint are illegal and irrelevant to the merits of the case.

3 I have considered the amendment sought. It is also necessary to mention that the prayer clause (c) to the plaint is for a direction against the defendants to remove illegal construction/structure in the suit property. In the manner what is being introduced is the fact that the plaintiff had, after the suit was filed, received a notice under Maharashtra Regional Town Planning Act, 1966 from the concerned authorities in relation to the illegal constructions on the suit property. This notice is dated 10.02.2015. The plaintiff has also stated that once he received the notice, when he made enquiries, he also came to know that there were other proceedings commenced against the defendants by the concerned authorities and therefore those are facts which are required to be brought on record for appropriate adjudication of the case. Order VI, Rule 17 of the Code of Civil Procedure, 1908 reads as under :

ORDER VI-RULE 17 :

Amendment of pleadings— The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

4 The stage at which we are in the suit is, the issues are yet to be settled. While considering an application for amendment, the Court does not

go into correctness and falsity of the case for the amendment. The Court is generally liberal when a suit is at a pre-trial stage unless serious injustice or irreparable loss is caused to the defendants. In the judgement of the Apex Court in the matter of **Revajeetu Builders & Developers Versus Narayanaswamy & Sons & Others**¹ reported in (2009) 10 SCC 84, the Apex Court has in paragraph 63 illustrated the factors to be taken into consideration while dealing with application for amendments. Paragraph 63 of the said judgment reads as under :-

63 On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- (1) Whether the amendment sought is imperative for proper and effective adjudication of the case?*
- (2) Whether the application for amendment is bona fide or mala fide?*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And*
- (6) As a general rule, the court should*

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decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

In fact, the Apex Court, as could be seen from the above, has even opined that these are only illustration and not exhaustive.

5 I have considered the amendment sought, the reply filed and have heard the counsel for the applicants and the defendant. In my view, the amendment is not something where it changes constitutionally or fundamentally the nature and character of the case. Moreover, the amendment sought is imperative because one of the relief sought in the suit is to direct the defendant to remove illegal construction and the contents of the amendment application is regarding the illegal construction. I must also hasten to add that I am not making any observation on the merits of the matter which should be decided at the time of trial. I also find that there is no *mala-fide* on the part of the plaintiffs in bringing this application for amendment. No prejudice will be cause to the defendant because the defendants will have the liberty to file further written statement.

6 In the circumstances, the chamber summons is allowed. The plaintiffs to amend the plaint as per the schedule annexed to the chamber summons. The amendment to be carried out and copy served on the defendant within two weeks from today. The defendant to file additional written statement/amend the written statement within three weeks of receiving the amended plaint.

7 Stand over to 1.12.2015 for issues. Parties, in the meanwhile, also to file their respective affidavits of documents and complete discovery and inspection.

(K.R. SHRIRAM, J.)