

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

**CHAMBER SUMMONS (LODG.) NO. 1122 OF 2015
IN
SUMMARY SUIT NO. 2363 OF 2003**

Raymond Limited	.. Plaintiff
Vs.	
H.V. Doshi and Brothers Private Limited	.. Defendant
And	
JK Files (India) Limited	.. Respondent

Mr.Cyrus Bharucha a/w Ms.Kavita Brid-Chavan, Ms.Minal Chandnani i/b Rajani Associates.

Ms.Neeta Parikh a/w. Ms. Disha H. Ponda, Ms. Cynthia Pereira for respondent in chamber summons (lodg.) No.1122/2015.

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

P.C.

1 At the outset, the counsel for applicant/plaintiff stated that the schedule annexed to the chamber summons required some corrections. Leave to amend was granted and amendment was carried out forthwith.

2 This chamber summons is taken out on behalf of the plaintiff for leave to amend the plaint as per the schedule annexed thereto. The plaintiff has also filed an additional affidavit in support of the chamber summons. The respondent wholly owned subsidiary of the plaintiff was incorporated in

February 1997. It is stated in the plaint that the plaintiff had a division by the name 'J.K. Files and Tools'. Under the said division, the plaintiff was carrying on business of manufacturing and marketing various engineering files and tools. The cause of action in the suit relates to the supplies made by this division of the plaintiff.

3 In the additional affidavit in support of the chamber summons, the plaintiff states that by an agreement dated 31.08.2009, this division viz. J.K.Files and Tools was sold to the respondent on a Slump Sale basis. It is also stated that pursuant to the said agreement, certain liabilities of the plaintiff incurred in connection with its division of J.K. Files and Tools would be taken over by the respondent with effect from 1.10.2009. Even though the division was sold pursuant to the agreement dated 1.10.2009, this chamber summons has been taken out only on or about 22.06.2015, after a delay in excess of 6 years.

4 The counsel for the defendant strongly opposes the chamber summons. The counsel for the defendant states that the suit could not have been maintained by the plaintiff because the respondent was originally incorporated on 18.06.1997 and the suit has been filed in the year 2003 and therefore, the suit itself is not maintainable.

5 The case of the plaintiff is that the division of the plaintiff viz. the J.K.Files and Tools which had dealt with the subject matter of the suit has been sold on Slump Sale basis to the applicant. Subsequent to the agreement dated 31.08.2009, as it appears from two documents annexed to the affidavit in support, i.e., fresh certificate of incorporation following change of name, the name of the respondent has undergone change in March 2001 and later in October 2009. The respondent had nothing to do with the plaintiff when the suit was filed. The suit as filed has been correctly filed by the plaintiff. Therefore, this objection of the defendant is not sustainable.

6 The defendant has also raised an objection that the agreement dated 31.08.2009 is not registered and the name of the respondent is not shown in the agreement. The respondent's present name is 'J.K. Files India Limited' and the earlier name of the respondent was 'Hindustan Files Limited'. The agreement dated 31.08.2009 is between the plaintiff and Hindustan files Limited. Therefore, to the extent of the objection raised that the agreement does not reflect the name of the respondent, the same is incorrect. At the same time, whether the said agreement could be looked at or not because it appears the agreement is not registered can be an issue which could be decided at the time of trial.

7 The counsel for the defendant also stated that if the respondent wanted to be step into the shoes of the plaintiff, this application should have been taken out by the respondent and not by the plaintiff. In my view, this is a hyper technical objection. The plaintiff is in carriage of proceedings and the plaintiff wishes to bring on record that it had sold the division which was concerned with the subject matter of the suit to the respondent and the respondent has no objection to step into the shoes of the plaintiff. Interest of justice will be met if the issue as to whether the respondent can maintain and prosecute the suit is also kept open and also to be decided at the time of trial.

8 The counsel for the plaintiff also states that if the respondent is going to step into the shoes of the plaintiff today, it would amount to the respondent filing a fresh suit and the suit will be barred by limitation. Even this issue can be kept open to be decided at the time of trial.

9 In the circumstances, subject to the objections raised by the defendant as recorded above and keeping all issues open including the issue of (a) whether the Slump Sale Agreement can be looked at or not in view of want of registration; (b) maintainability of the suit by the respondent and (c) limitation, this chamber summons is allowed in terms of prayer clause (b).

The plaintiff to carry out amendment to the plaint and serve a copy of the amended plaint upon the defendant within two weeks from today.

10 The defendant to file a written statement/amend the written statement filed within three weeks of receiving the amended plaint.

11 Stand over to 21.09.2015 for directions.

12 The plaintiff to pay a sum of Rs.25,000/- as costs to the defendant within two weeks from today. The amount to be paid by way of cheque drawn in favour of the advocate on record for the defendant. Notwithstanding the disposal of the chamber summons, the plaintiff to have the chamber summons numbered within two weeks from today.

(K.R. SHRIRAM, J.)