

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1141 OF 2015
IN
SUMMARY SUIT NO. 2879 OF 2004

Mansarovar Investment LimitedPlaintiff

IN THE MATTER OF :

Mansarovar Investment LimitedPlaintiff

: V/S :

Hanuman Securities Private Limited
and Ors.Defendants

* * * * *

Ms. Sneha Phene, Advocate for the applicant, original plaintiff.

Mr. Sunil Gangan a/w. Mr. Jayesh Mestry a/w. Ms. Aarti Prajapati i/by.
RMG Law Associates, Advocate for the defendants.

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Coram :- Smt. R.P. SondurBaldota, J.

22nd September, 2015.

P.C. :-

1). This Chamber Summons for amendment of plaint has been taken out by the plaintiff is 11 years after the filing of the suit and 9 years after defendants no.2 and 3 filed their written statement to contest the suit. It is opposed by defendants no.2 and 3.

2). The plaintiff filed the suit herein in the year 2004 as a summary suit against defendant no.1, Company and defendants no.2 and

3, its Directors. It had taken out summons for judgment for decree against all the defendants. By the order dated 12th December, 2005 the summons for judgment was made absolute against defendant no.1 and unconditional leave was granted to defendants no.2 and 3 to defend the suit. Within a short time thereafter i.e. on 9th January, 2006 defendants no.2 and 3 filed written statement. The issues in the suit were framed on 12th June, 2015.

3). In the written statement, defendants no.2 and 3 contend that, the plaint does not disclose any cause of action against them as the agreement on which the suit is based was with defendant no.1, Company. Therefore, when issues were framed on 12th June, 2015 the first issue framed was :

“Whether the plaintiffs prove that the plaintiff has cause of action against defendants no.2 and 3 ?”

Thereafter, the plaintiff took out the present Chamber Summons on 16th July, 2015 to add averments at paras-2 and 4 of the plaint against defendants no.2 and 3.

4). By the proposed amendments, the plaintiff seeks to add following facts to the plaint. The business of defendant no.1, was earlier carried on by defendants no.2 and 3 and their family members as a

partnership firm. They converted the firm into defendant no.1, Company with a view to defraud their clients by hiding behind veil of the limited liability company. Defendants no.2 and 3 alongwith the family members are the shareholders of defendant no.1 and that the suit transaction was handled by them. Thus, despite incorporation of defendant no.1, the business is actually continued to be carried on as a partnership firm by defendants no.2, 3 and their family members. They are now hiding behind the veil of defendant no.1 in order to deceive the plaintiff and deprive it of the money rightfully due to it. On these averments of fact, the plaintiff seeks to hold, defendants no.2 and 3 personally liable to pay the suit claim though the agreement was with defendant no.1, Company.

5). In the affidavit-in-support of the Chamber Summons, the plaintiff does not give any explanation as to why these facts could not be pleaded in the plaint filed in the year 2004. Ms. Phene, the learned Advocate appearing for the plaintiff submits that the amendment sought by the plaintiff is in the nature of clarification of the averments in the plaint and that no new cause of action is pleaded thereunder. It is also her argument that infact no prejudice would be caused to defendants no.2 and 3, if the amendments are allowed.

6). Ms. Phene relies upon the decision of the Apex Court in **Jai Jai Ram Manohar Lal Versus. National Building Material Supply,**

Gurgaon, reported in 1969 (1) Supreme Court Cases page 869

to submit that, however, negligent or careless may have been the first omission and, however, late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side. In the facts of the case, it cannot be said that the proposed amendment will not cause any injustice or prejudice to defendants no.2 and 3. It is obvious that, the Chamber Summons has been taken out to make Issue no.1 framed in the suit, redundant. Further, the amendments are neither in the nature of subsequent events nor the facts unknown to the plaintiff until the filing of the Chamber Summons. In that circumstance, it was necessary for the plaintiff to plead and establish the reason for not including the same originally in the plaint.

7). The second decision cited by Ms. Phene is in the case of **Laxmidas Dayabhai Kabrawala v. Nanabhai Chunilal Kabrawala and Others, reported in AIR 1964 Supreme Court page 11**, to support her submission that since the amendment is for clarification of the averments already made in the plaint, the same must be allowed. The relevant observations of the Apex Court are as follows :-

“ It is, no doubt, true that, save in exceptional cases, leave to amend under O.6 R.17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations are

added or fresh reliefs sought by way of amendment. Where for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading.”

It is obvious from the schedule to the Chamber Summons that the plaintiff is seeking to add fresh amendments to the plaint which have not been made earlier. This would undoubtedly cause prejudice to defendants no.2 and 3 and such an amendment at a belated stage that too without any explanation whatsoever for the delay cannot be allowed.

8). Further, the schedule of amendments contains general allegations. There are no particulars whatsoever of the manner of business carried on by defendants no.2 and 3 given. This would mean that, by way of amendments, the plaintiff seeks to bring in an absolutely vague case which cannot be permitted as it cannot be said that vague facts would be necessary for determination of the real questions in controversy between the parties.

9). Hence, the Chamber Summons is dismissed.

(SMT. R.P. SONDURBALDOTA, J)

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(sr. no.34)

Tuesday,22.9.2015

CERTIFICATE

. Certified to be true and correct copy of the original signed order.