

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 925 OF 2014****IN****SUIT NO. 1365 OF 2008**

Mrs.Lata Shivkumar Achharya

...Applicant / Plaintiff

vs.

M/s.Sadguru & Krishna Developers & Ors.

...Defendants

AND**CHAMBER SUMMONS NO. 927 OF 2014****IN****SUIT NO. 1147 OF 2008**

Mr.Shivkumar Chatrumal Achharya

...Applicant / Plaintiff

vs.

M/s.Sadguru & Krishna Developers & Ors.

...Defendants

Mr.Jayesh Vyas for Plaintiff.

Mr.Manoj Nikose for Defendants.

CORAM : S.C. GUPTE, J.**RESERVED ON : 6 FEBRURY 2015****PRONOUNCED ON : 10 JUNE 2015****ORDER :**

These Chamber Summonses seek amendment of the complaints in the respective suits.

2 The Plaintiffs in these two suits, who are husband and wife, are agreement purchasers of a shop and a basement in a building proposed to be constructed by Defendant No.2 in the suit property under separate agreements for sale, both dated 18 November 1993. A part consideration was paid towards the purchase of the respective premises. The complaints respectively mention the

consideration as having been paid at the time of and after the execution of the agreements. It is the Plaintiffs' case in the Chamber Summonses that when the Plaintiffs sat with their advocate for preparation of evidence in lieu of examination-in-chief and examined the particulars of payments, they realized that some amounts were paid prior to the suit agreements and some after the suit agreements. It is the Plaintiffs' case that the narration in the plaint that the amounts were all paid at the time of and after the execution of the suit agreements was a bona fide error made through oversight and inadvertence. The Plaintiffs have explained the hurried manner in which the plaints were drafted and the circumstances in which the mistakes were made in the respective plaints about the time of payments. The Plaintiffs now seek to correct the mistakes by setting out the correct dates and manner of the respective payments totalling upto Rs.4 lacs in Suit No.1365 of 2008 and Rs.8 lacs in Suit No.1147 of 2008.

3 The Defendants oppose the Chamber Summonses. The Defendants submit that the applications for amendment are made belatedly and are not bona fide. The Defendants also contest the merits of the amendments sought to be introduced.

4 The truth or otherwise of what is sought to be averred now in the draft amendment proposed is a matter of trial. For the purpose of this application what is relevant is that the application appears to be bona fide. It adequately explains the circumstances in which the plaints mistakenly mentioned the payments as having been made at the time of and after the suit agreements. The mistakes originally crept in when the Advocate's notices were drafted. In reply to the notices, Defendant No.2 appears to have admitted having received the payments as alleged and the mistakes were thereafter mechanically carried into the plaints, particularly in the light of the purported admissions. Anyway the payments are all in close proximity of the suit agreements, both before and after, and it is believable that the statements originally made in the plaints were made under bona fide mistakes. The amendments are necessary to decide the real controversy between the parties.

5 The chamber summonses are, accordingly, made absolute in terms of prayer clauses (b) thereof. The delay is condoned. All contentions of the parties on merits are kept open, to be agitated at the trial. Amendments to be carried out within two weeks from today. No order as to costs.

(S.C. Gupte, J.)