

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

CHAMBER SUMMONS NO. 1127 OF 2014

IN

SUIT NO. 825 OF 2009

Yogesh Anantrai Mehta

.. Applicant

In the matter between :

Yogesh Anantrai Mehta

.. Plaintiff

Vs.

M/s. Khandelwal Infotech Ltd.

.. Defendant

Mr.Arvind Kumar Chauhan for applicant/plaintiff.

Mr.Armin Wandrewala a/w. Mrs. A.H. Ganatra i/b Haresh G. Ganatra for defendant.

CORAM : K.R.SHRIRAM, J.

DATED : 16TH JANUARY, 2015

P.C.

1 This chamber summons is taken out on behalf of the plaintiff for leave to amend the plaint.

2 When the plaintiff's notice of motion was heard on 1st September 2009, the counsel for the plaintiff had made a statement that the plaintiff will not press for any relief in terms of prayer clauses (a) to (c) of the plaint provided the defendant deposit the sum of Rs.1.58 crores with the Prothonotary and Senior Master. The defendant agreed and an order of injunction was passed directing the defendant from transferring the TDR

which is the subject matter of the agreement dated 9th September 2006 up to the date on which the amount of Rs.1.58 crores was deposited. Admittedly, the defendant deposited a sum of Rs.1.58 crores with the Prothonotary and Senior Master. Therefore, as mentioned in paragraph 5(iv) of the said order, the order of injunction stood vacated.

3 I have considered the chamber summons and the affidavit in support. The Schedule of amendment, could be split into three parts : (i) the plaintiff wishes to introduce the Commissioner, Municipal Corporation of Greater Mumbai as defendant; (ii) to bring in certain facts which were already knowledge of the plaintiff before the suit was filed and (iii) to bring back prayers and reintroduce into the plaint the issue of TDR which the plaintiff had given up as mentioned in the order dated 1st September 2009.

4 After the amendment in 2002 to Order VI, Rule 17 of the Code of Civil Procedure, 1908, the Courts have been very lenient in allowing the applications for amendment to avoid multiplicity of proceedings. The Apex Court in the matter of ***Revajeetu Builders and Developers Vs. Narayanswamy & Sons & Ors.***¹ has illustrated certain factors to be taken into consideration while dealing with the application for amendment. One of

1 (2009) 10 SCC 84

the factor for the Court to take into consideration is whether the application for amendment is *bona-fide* or *mala-fide*.

5 To the extent, the plaintiff wishes to introduce the Commissioner of Municipal Corporation of Greater Mumbai as a party defendant, in my view, there is nothing wrong in allowing the application of the plaintiff. As regards, proposed insertions of sub-paragraphs 21(a) and 21(b), the counsel fairly stated that these were the facts which were to the knowledge of the plaintiff even before the suit was filed. In my view, these facts, therefore, should have been mentioned in the plaint when the plaint was filed and the plaintiff not having mentioned the same, I am not inclined to allow the proposed paragraphs 21(a) and 21(b).

6 As regards, the remaining proposed insertions, it is rather obvious that the attempt is only to get over the order dated 1st September 2009 whereby the plaintiff had given up their claims as stated in prayer (a) to prayer (c) of the plaint. Therefore, in my view, these proposed amendments also cannot be allowed.

7 In the circumstances, the chamber summons is partly allowed. The amendment permitted is bracketed in red. The plaintiff to amend the plaint

within two weeks from today and serve the amended plaint upon the defendant within one week thereafter. Should the defendant wish to file a further written statement, the same to be filed and copy served upon the plaintiff within two weeks of the service of the amended plaint upon the advocate for the defendant. The costs will be the costs in the suit.

(K.R. SHRIRAM, J.)