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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO.1106 OF 2014****IN****SUIT NO.3 OF 2008**

Messers Bhoomitej Realtors

..Plaintiffs

Versus

Yatin Raoji Shahade & Ors.

..Defendants

.....
 Mr. S. S. Shah, Senior Advocate, i/b. M/s. Khona and Kayser for the Plaintiffs.

Ms. Yasmin E. Tavaría for Defendant no.7.

Mr. A. C. Tamhane a/w A.M. Khandekar and R. A. Tamhane i/b. Tamhane & Co.
 for Defendant no.10.

.....

CORAM: A. K. MENON, J.**DATE : 20 AUGUST, 2015.**

P.C.:

The present Chamber Summons is taken out by the plaintiff seeking impleadment of respondent as defendant no.1 and for incorporating certain averments which according to the plaintiffs are necessitated by virtue of the fact that during the pendency of the Suit, the defendant no.10 who was impleaded pursuant to the order of this Court dated 4th August, 2014 in Chamber Summons No.774 of 2010 has transferred 50% undivided interest in the suit shop no.3 to defendant no.11. The averments that are proposed to be now incorporated arise from the said alleged transfer. Mr. Shah, learned Senior Counsel appearing for the plaintiff present the application for amendment as prayed. Mr. Shah states that although an affidavit in rejoinder in the chamber

summons is ready, it is not been served upon some of the defendants, and he will, therefore, proceeds on the basis of denials and the same may not be held against him. The Chamber Summons is opposed on behalf of defendant no.7 who has filed affidavit in reply dated December, 2014. According to defendant no.7 the prayers in Chamber Summons No.1106 of 2014 now proposed to be added are identical to prayer clauses (b), (d) and (e) of Chamber Summons No.353 of 2010 which has already been allowed. This is the principal grievance of respondent no.7 on the basis of which Chamber Summons is opposed. The proposed amendment is also opposed by defendant no.10. Defendant no.10 has filed an affidavit-in-reply dated 13th March, 2015 in which he has taken up the contention that the suit against defendant no.10 is barred by the law of limitation and secondly on the ground that he has been come into possession pursuant to acquisition of the title under provisions of the SARFAESI Act, 2002.

2. These, in my view, are considered at the trial of the suit. As far as the proposed amendments are concerned, I do not find anything in these affidavits or the submissions made before me today on behalf of the concerned defendants which lead me to reject the application for amendment. As far as the proposed defendant no.11 is concerned, there is no affidavit filed in this behalf. The only contention being urged is that the suit Development Agreement Exhibit D is not sufficiently stamped and, therefore, the same may be impounded. This is an aspect which need not be considered at the hearing of this chamber summons inasmuch as the defendant no.11 is yet to be

impleaded in the suit and upon being impleaded it is always open to the respondent to take up this contention and the same will be dealt with at the appropriate time.

3. Suffice it to say that perusal of the Development Agreement dated 26th August, 2003, which is allegedly unstamped, I find that stamp duty of Rs.65,000/- appears to have been paid on the said document. The amendments proposed do not prejudice the defendants and I am of the view that the amendments should be allowed. The learned counsel for defendant no.11 seeks time to file a written statement. Learned counsel for defendant nos.7 and 10 also desire to file additional written statement.

4. In the circumstances, I pass the following order:-

(i) The chamber summons is made absolute in terms of prayer clauses (a) to (c).

(ii) The plaintiff shall carry out the amendments as per the schedule to the chamber summons within a period of two weeks from today.

(iii) Likewise, at the request of Mr. Shah, plaintiffs are permitted to carry out the consequential amendments to the Notice of Motion No.2968 of 2010.

(iv) The copies of the amended plaint and Notice of Motion to be served within a period of one week thereafter.

(v) Defendant no.11 to file his written statement within four weeks thereafter and the additional written statements of defendant nos.7 and 10 also

to be filed within a period of four weeks thereafter.

5. Chamber Summons No.1106 of 2014 is, accordingly, disposed of on the above terms.

(A. K. MENON, J.)

Wadhwa.