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

**CHAMBER SUMMONS NO. 1363 OF 2015
IN
SUIT NO. 974 OF 2004**

Mr Vijay V. Meghani

...Applicant/Plaintiff

VS

ING Bank N.V. & Anr.

...Defendants

.....

Mr Zal Andhyarujina, Advocate a/w Mr Naushad Engineer, Ms Smriti Singh i/b
M/s Dastur Kalambi & Associates for the Applicant/Plaintiff
Mr Pesi Modi, Sr. Advocate, a/w Kalpana Desai, Bhavya Mohan i/b AZB &
Partners for the Defendants.

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CORAM : S.C. GUPTE, J.

NOVEMBER 23, 2015

P.C. :

This Chamber Summons seeks amendment of the plaint. The Plaintiff was working as the Chief Representative Officer for India of BHF Bank. Sometime in 1999, ING Bank N.V. - Defendant No.1 herein took over the ownership, management and control of BHF Bank. Whilst BHF Bank continued to operate as an independent entity in Germany under a new name, ING BHF Bank A.G. - Defendant No.2 herein, the assets of the Bank in India together with the rights and obligations under its contracts were taken over fully by Defendant No.1. Defendant No.1 requested the Plaintiff to continue and his employment contract was extended. In 2002, the Plaintiff was appointed as a Senior Managing Director and Head of Corporate Financial Services (CFS) India of Defendant No.1 under a contract of employment dated 15 April 2002. It is the Plaintiff's case that the Plaintiff's employment was wrongfully terminated by Defendant No.1, namely, ING Bank N.V. The termination was by a letter dated 31 January 2003. Subsequent to the termination letter, a severance package was proposed by a letter addressed by Defendant No.1 to the Plaintiff on 12 February

2003. This letter was accepted by the Plaintiff in settlement of his claims on 31 March 2003. It is the Plaintiff's case in the suit as originally filed that acceptance of the severance package was due to peculiar circumstances including the Plaintiff's not having alternative employment and also having regard to the risk the Plaintiff would have incurred of losing whatever was being offered by the Defendants. It is the Plaintiff's case that the Plaintiff received this amount under protest and without prejudice to his rights and contentions. It is also further alleged by the Plaintiff in the plaint that the termination clause in the original contract of employment dated 15 April 2002 was itself illegal and void, since the Plaintiff was not in an equal bargaining position vis-a-vis Defendant No.1 at the time of entering into the contract of employment.

2 In the backdrop of these pleadings, the present Chamber Summons is moved by the Plaintiff to incorporate certain further averments to explain the case of economic duress faced by the Plaintiff which led him to accept the severance package. To that end the Plaintiff seeks to make averments in the plaint, firstly, to the effect that it was due to the threat of withdrawal of the offer of severance package, that the Plaintiff was compelled to sign his acceptance. Secondly, the Plaintiff wants to add that there were certain factions in the organization of Defendant No.1 and that due to the politically charged atmosphere prevailing in the office of Defendant No.1 as a result, the Plaintiff was caught in the crossfire between two groups with no one to protect his interest, and was accordingly constrained to accept the severance package. These averments merely supplement and make patent what it was already latent in the Plaintiff's pleadings and are in support of the original case of the Plaintiff that the severance package was accepted by him under protest and without prejudice to his rights and contentions. The averments sought to be introduced are necessary to determine the real controversy in the present suit and ought to be permitted to be added in the suit.

3 Learned Advocate for the Defendants, whilst opposing the Chamber Summons, relied on the judgment of the Supreme Court in the case of **Shiv**

Gopal Sah Alias Shiv Gopal Sahu Vs Sita Ram Saraugi & Ors¹. In this case, the Supreme Court was concerned with an application moved by a plaintiff nearly 15 years after the plaint was lodged before the trial court to introduce an altogether new claim based on facts, which were already available to the Plaintiff when the plaint was originally lodged. In this backdrop of facts, the Supreme Court held that the plaintiff could not be allowed to introduce a time barred claim unless a valid reason for introducing such claim at the belated stage was placed on record by the plaintiff. What the Court held was that though a time barred claim can be introduced through amendment, there would have to be an adequate explanation and the plaintiff must make out his bonafides for the same. These facts are clearly distinguishable from the facts of our case. There is no new claim or even new plea sought to be introduced in the present Chamber Summons. What is sought to be introduced is merely an amplification of the case which was originally pleaded before the Court with a view to bring out better particulars. That would be clearly permissible.

4 In the premises, the Chamber Summons is made absolute in terms of prayer clause (a). The amendment to be carried out within a period of two weeks from today. Advocates of the Plaintiff to serve a copy of the amended plaint on the Defendants. The Defendants are permitted to file an additional Written Statement dealing with the amended pleadings within a period of four weeks of service of the amended plaint.

(S.C.GUPTA J.)

1 (2007) 14 Supreme Court Cases 120

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.