

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3152 OF 2016

Mrs.Archana Kawal Dumir & Ors.

.. Petitioners

vs.

Narendra Kumar Malik & Ors.

.. Respondents

Mr.Shilpan S. Gaonkar i/b Mr.Vikas K. Singh for the petitioner

Ms.Sushma Yadav for the respondent nos.1 and 2

Mr.Y.M.Choudhari with Ms.Reena Salunkhe i/b Ms.Pruna R. Lachandani for the respondent nos.3 to 5

CORAM : K. K. TATED, J.
DATE : JUNE 15, 2016

P.C.:

1 Heard the learned counsel for the parties.

2 By this petition, under Article 227 of the Constitution of India, petitioner plaintiff challenges the order dated 31.7.2015 passed by Bombay City Civil Court at Greater Mumbai in Chamber Summons No.2781 of 2014 in Short Cause Suit No. 1951 of 2011 rejecting plaintiff's application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment in plaint.

3 The learned counsel for the plaintiff submits that initially they filed a suit for declaration that Leave and License agreement dated 15.4.2011 (correct date 8.4.2011) executed by defendant nos.1 to 5 in respect of property bearing Nos.14 and 14/A, including open plot, Anjanikumar Industrial Estate, Bhandup (W), Mumbai 400 078 was illegal, null and void and not binding on the plaintiff's partnership firm. They have also prayed injunction restraining the defendant's from creating any third party right, title and interest of the suit property.

4 The learned counsel for the plaintiff submits that they preferred application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out appropriate amendment in plaint so that if the court comes to the conclusion that Leave and License executed by defendant nos.1 to defendant no.5 was not binding on the firm then they can recover the compensation from the occupant. He submits that as on today though defendant nos.3 to 5 are in possession of the said property they are not paying single paisa to the firm. Hence, the plaintiff sought permission to carry out appropriate amendment in the plaint seeking direction to defendant nos.3 to 5 to pay monthly compensation of Rs.5,50,000/- per month.

5 The learned counsel for the plaintiff submits that in a plaint at several places by typographical mistake the date of Leave and License Agreement is shown as 15.4.2011 instead of 8.4.2011.

6 The learned counsel for the plaintiff submits that the Trial Court dismissed their Chamber Summons on the ground that by carrying out

amendment in plaint, plaintiff wants to introduce new facts. Not only that, the Trial Court also held that if Chamber Summons is allowed, the nature of the suit from declaratory suit will be changed to suit for possession and compensation and that cannot be permitted. He submits that the Trial Court failed to consider the fact that plaintiff sought permission to carry out appropriate amendment in plaint ancillary to the main prayer. Hence, the order passed by Trial Court dated 31.7.2015 is required to be set aside and Chamber Summons No.2781 of 2014 preferred by plaintiff under Order 6 Rule 17 be allowed.

7 On the other hand, the learned counsel for the respondent vehemently opposed the present Writ Petition. They submit that Trial Court has considered the facts on record that by way of amendment the plaintiff wants to change the entire nature of the Suit. Hence, there is no question of entertaining the present Writ Petition.

8 I have heard both the sides. I have gone through the copy of plaint and application filed by plaintiff under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment in plaint. There is a dispute between the partners of the partnership firm. Some of the partners executed Leave & License in favour of defendant nos.3 to 5. Pursuant to the said Leave and License agreement, defendant nos.3 to 5 are in possession of the said units. These facts were known to the plaintiff at the time of filing the Suit. Hence, the plaintiff made prayer clause (a) in the suit for declaration that Leave & License agreement between defendant nos.1 to 5 is not binding on the partnership firm

and same be declared as illegal null and void. In the entire copy of plaint, no where plaintiff has made any averments for the purpose of compensation and for other reliefs. The amendment which the plaintiff sought shows that they want to introduce new facts and reliefs for compensation against defendant nos.3, 4 and 5. They want to change some of the clauses of Leave & License agreement for possession and compensation of the said units. If these amendments are allowed, the original Suit which was filed by the plaintiff for declaration will change the Suit for possession and compensation and that is not permitted under Order 6 Rule 17 of the Code of Civil Procedure, 1908. These facts are considered by the Trial Court at the time of deciding the plaintiffs Chamber Summons.

9 The learned counsel for the petitioner relies on the judgment in the matter of *American Dry Fruit Stores vs. ADF Foods Limited in Notice of Motion No.1022 of 2005 in Suit No.994 of 2005*, in support of his contention that the petitioner may be allowed to carryout amendment in the cause title of the suit by showing remaining partners as plaintiffs. It is to be noted that petitioner has filed application for amendment after more than 3 years and earlier also same was rejected. Hence, that cannot be considered at this stage also.

10 Hence, I do not find any substance in the present Writ Petition. Writ Petition stands rejected.

11 At this stage the learned counsel for the plaintiff submits that this Hon'ble Court be pleased to allow the petitioner to carry out

appropriate amendment in body of plaint as well as prayers correcting the date of Leave & Licence. He submits that by typographical mistake the date of Leave & License Agreement is shown as 15/4/2011 whereas actually the date is 08/04/2011. By consent of both the parties, petitioner plaintiff is allowed to carry out amendment to this extent only. Amendment be carried out within four weeks from today and amended copy be served on defendant's thereafter immediately.

JUDGE