

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.140 OF 2015
WITH
NOTICE OF MOTION NO.82 OF 2015
WITH
CHAMBER SUMMONS NO.808 OF 2012
IN
SUIT NO.3165 OF 2010**

Indira Rajguru

....Plaintiff

V/s.

Balkrishna K.Rajguru & Ors.

....Defendants

Mr.Y.V.Sanglikar a/w Ms.Teresa Daulat & Ms.Suvarna Ambre i/by
Divya Shah Associates for the plaintiff.

Mr.Rajesh Shah i/by Jayesh R.Vyas for defendant nos.3 & 4.

CORAM : K.R.SHRIRAM,J

DATE : 15.6.2016

P.C.:-

1 The counsel for the plaintiffs seeks leave to withdraw
Notice of Motion No.140 of 2015 and Notice of Motion No.82 of 2015.
Both the Notices of Motion dismissed as withdrawn.

CHAMBER SUMMONS NO.808 OF 2012

1 This chamber summons is for leave to amend the written
statement filed by defendant no.3. The written statement was
affirmed on 20.4.2011. The dispute per se is a fight between the
family members. The plaintiff is a sibling of defendant nos. 1 to 5.
Defendant no.3 is a brother of the plaintiff. It is trite that family
disputes stand at different level of equities than other commercial
disputes.

2 It is stated in the affidavit in support that in the last week of January-2012 for the first time it came to the applicants' knowledge that late K.K.Rajguru had left a declaration dated 25.7.2006. The applicants came to know about this declaration through Mrs.Amrutaben Rajguru who is the sister of late K.K.Rajguru and the aunt of the applicant. If one considers the schedule annexed to the chamber summons, what the applicant wishes to add is the fact that he came to know about a declaration in January-2012.

3 The counsel for the plaintiffs strongly opposed this application. The counsel submitted that if this amendment is allowed, it would set to nought the stand taken by the plaintiffs in the plaint. He also submitted that the trial has begun and therefore, this amendment should not be allowed. Order VI Rule-17 of the Code of Civil Procedure 1908 reads as under :-

“Amendment of pleadings – *The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”

4 Let us proceed on the basis that trial has begun. The plaintiffs' affidavit in lieu of examination in chief has been filed in the registry. The cross-examination is yet to begin. At this stage if a party wishes to amend their pleadings, such an amendment cannot be allowed unless the court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of trial. First of all the strict rigours for amending the plaint is not applicable to the written statement. Courts certainly can be more flexible while considering an application for leave to amend the written statement. Moreover, "in spite of due diligence" arises if party is introducing certain facts which were in existence prior to filing a written statement. In such a situation the applicant has to show as to why they did not include those facts in the written statement. The facts that the applicant proposes to introduce in the written statement are those which came to his knowledge post filing the written statement as can be seen from the schedule. Whether the averments are true or not cannot be considered at the stage of amendment application. That would be a subject matter of trial.

5 In the circumstances, chamber summons is allowed in terms of prayer clause-(a). Amendment to be carried out and the amended written statement to be served within one week from today.

6 Since the amendment has been permitted, Mr.Sanglikar submits that the plaint also will have to be amended to challenge this document Shri Shah submits that the issue relating to this declaration is already pending before the Porbunder Court.

(K.R.SHRIRAM,J)