

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

**CHAMBER SUMMONS NO.428 OF 2016
IN
SUMMONS FOR JUDGMENT NO.8 OF 2014
IN
SUMMARY SUIT NO.48 OF 2014**

Ahluwalia Contracts India Limited Applicant/Plaintiff

Vs.

M/s. Sheth Developers & Realtors
(India) Ltd. & Ors. Defendants

Dr. G.R. Sharma a/w. Mr. Anil K. Singh i/b. D.P. Singh for the
applicant/plaintiff.

Ms. Alpana Ghone a/w. Mr. Rashmin Jain i/b. Kanga and Co. for the
defendants.

**CORAM : K.R.SHRIRAM, J.
DATE : 21st DECEMBER, 2016**

P.C.

1 At the outset, the counsel for the plaintiff seeks leave to
withdraw the summons for judgment with liberty to take out fresh
summons for judgment.

2 Summons for judgment is dismissed as withdrawn with the
liberty as sought.

3 This chamber summons is taken out for leave to amend the
plaint. Order 6 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 The counsel for the defendants strongly opposes the chamber summons and states that part of the claim will be time barred if the proposed amendments are allowed. I have considered the proposed amendment and no new prayer is being added. Therefore, the question of any part of the prayer clause being time barred would not really arise. I do not find the nature and character of the suit being changed by the proposed amendment and I see no malafide on the part of the applicant in praying for amending the plaint. In my view, no prejudice would be caused to the defendants as well if the amendment application is allowed. Summons for judgment is yet to be taken.

5 Chamber summons therefore, allowed in terms of prayer clause-(a) keeping open the rights of the defendants to take all defences permissible in law. Amendment to be carried out and amended plaint to be served within three weeks from today.

(K.R. SHRIRAM, J.)