

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.930 OF 2014
IN
SUIT NO.1903 OF 1995**

Matasons Estate Pvt. Ltd.Applicant/Plaintiff

V/s.

Bombay Forgings Pvt. Ltd. Co.Defendant

**WITH
CHAMBER SUMMONS NO.1082 OF 2014
IN
SUIT NO.1903 OF 1995**

Ivory Property TrustApplicant

IN THE MATTER BETWEEN :

Matasons Estate Pvt. Ltd.Plaintiff

V/s.

Bombay Forgings Pvt. Ltd. Co.Defendant

Mr. Nirav Shah i/b. Little & Co. for the plaintiff and applicant in CHS/930/2014.

Mr. Sandeep Parikh a/w. Ms. Sukhada Wagle and Ms. Apurva Gupte i/b. Hariani & Co. for the defendant.

**CORAM : K.R.SHRIRAM,J
DATE : 5th OCTOBER,2016**

P.C.:-

CHAMBER SUMMONS NO.930 OF 2014

1 This chamber summons is for leave to amend the plaint as per the Schedule annexed thereto.

2 The written statement has been filed but the issues are yet to be settled. The suit filed is for specific performance. In the proposed

amendment what the plaintiff is seeking to introduce are certain facts that have come to light after the suit was filed and to add one prayer clause claiming damages in the alternative, if the decree for specific performance is not granted. This chamber summons has been lodged on 23rd April, 2014.

3 It appears from the order dated 24th February, 2010 that the defendant company went into BIFR some time in the year 1987 and the Scheme was sanctioned by BIFR on 11th November, 2002. On 7th February, 2014 when the suit was listed for issues the plaintiff was informed by the defendant's advocate that the defendant company was out of BIFR. Subsequent to that the defendant state that they came to know that the suit property was sold to a third party, i.e., M/s. Ivory Property Trust. Mr. Parikh, counsel appearing for the defendant states that the amendment sought relates to some other property unconnected to the suit property.

4 I am not at this stage going into the merits of the amendment sought but the fact is the relief that is being introduced is only by way of alternative prayer in the suit for specific performance. Even in the proposed amendment there is no mention of any other property. Moreover, if the amendment is allowed no prejudice will be

caused to the defendant, who can always file additional written statement. Moreover, the rules and procedure are handmaid of justice and the object of prescribing procedure is to advance the cause of justice. No party should ordinarily be denied the opportunity of advancing its cause in the process of justice dispensation.

5 In the circumstances, the chamber summons is allowed and accordingly disposed of in terms of prayer clause – (a).

6 The plaint to be amended and copy of the amended plaint to be served within two weeks from today. Within four weeks of receiving a copy of the amended plaint, the defendant to file additional written statement and serve a copy thereof upon the plaintiff.

CHAMBER SUMMONS NO.1082 OF 2014

1 This chamber summons is taken out by the applicant to be joined as party defendant in the suit and the plaintiff be directed to carry out necessary amendments to that effect.

2 The plaintiff had taken out chamber summons no.930 of 2014 for leave to amend the plaint in which the proposed amendment includes that the defendant surrendered the suit property in favour of

a third party by executing the alleged Deed of Surrender dated 23rd November, 2004 and that the defendant was aware about the rights of the plaintiff in the suit property. It is also stated that the plaintiff had registered *lis pendense* despite which the defendant sought to surrender its rights in the suit property.

3 The applicant in the present chamber summons is the third party to whom the defendant had surrendered its rights. Mr. Parikh, counsel for the applicant states that a part of the suit property has been taken over by the applicant and not the entire property and if for any reason the court is inclined to grant the relief of specific performance against the defendant in the suit, certainly the applicant in the present chamber summons will be affected.

4 In ***Nitin Gandhi & Anr. vs. Dinyar Pheroz Dubash & Ors.***¹ paragraph 40 reads as under :

“40. In a suit for specific performance, when a subsequent purchaser is sought to be impleaded, the true test to be applied by the court is to determine whether the purchaser claims title under the vendor of the plaintiff or whether he claims a title independent of or adverse to the title of the vendor. There are decisions, both of the Supreme Court as also this court which take view that impleadment is permissible where the party which is proposed to be joined claims through the vendor and under a subsequent agreement. This is to be distinguished from a case where title adverse to or independent of the vendor is sought to be asserted. In the former case, it is but necessary to join the subsequent purchaser in order to ensure that when a decree is passed by the court at the trial of the suit, the subsequent purchaser

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can be directed to join in completing the title which may be required to be conferred upon the plaintiff.”

5 In my view, the applicant is justified in asking to be included as a defendant in the suit since they are claiming their rights through the defendant. The applicant herein is claiming through a vendor, who is defendant. Therefore, it is permissible to implead the applicant as defendant to the suit.

6 In the circumstances, the chamber summons is allowed and accordingly disposed of in terms of prayer clause – (a).

7 The amendment to be carried out and copy of the amended plaint to be served within two weeks from today.

8 Mr. Parikh states that Hariani & Co. will accept the service of the amended plaint and also they have instructions to waive service of writ of summons. The applicant to file written statement and serve a copy thereof within three weeks of receiving a copy of the amended plaint.

9 The suit to be listed for issues on 28th November, 2016. In the meanwhile parties to file their respective affidavit of documents, complete discovery and inspection and also file and exchange their

statement of admission and denial with reasons for denial.

10 Since this is a suit filed in the year 1995, it is made clear that no further time will be granted if these directions are not complied with and the parties will be put to terms including substantial cost.

(K.R.SHRIRAM,J)