

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
IN ITS ADMIRALTY & VICE ADMIRALTY JURISDICTION**

**CHAMBER SUMMONS NO.354 OF 2015  
IN  
ADMIRALTY SUIT NO.32 OF 2007**

M/s. Hatimi Steels .....Applicant

**In the matter between :**

New Era Shipping Limited .....Plaintiff

V/s.

M.V.P. Express & Ors. ....Defendants

----

Ms. S. Doshi i/b. Duttmenon Dunmorrsett for the applicant/original defendant no.4.

Mr. Bimal Rajasekhar i/b. Mr. Ashwin Shankar for the respondent/original plaintiff.

----

**CORAM : K.R.SHRIRAM,J**

**DATE : 31<sup>st</sup> AUGUST, 2016**

**P.C.:-**

1            This chamber summons is taken out for leave to amend the written statement as per schedule annexed to the chamber summons.

2            The counsel for the plaintiff states that the trial in the suit has begun in as much as the plaintiff's evidence has been taken on record and documents have been marked. The counsel for the plaintiff submits that the defendants in the chamber summons have not made out a case to show that they have exercised due diligence despite which the averments as sought to be introduced today could not be

made in the written statement.

3           The suit is for a degree against an Indian vessel. The averment which the defendant is seeking to include in the written statement by way of this amendment application is basically to raise an issue as to whether the suit filed in this court's admiralty jurisdiction is maintainable against a vessel flying an Indian flag.

4           Since this is purely an issue of law, in my view, no prejudice will be caused to the plaintiff if the amendment application as stated in the first part of the schedule to amend the written statement is allowed and is hereby allowed.

The chamber summons accordingly stands disposed.

5           The amendment to be carried out and copy of the amended written statement to be served upon the plaintiff within two weeks from today.

6           Ms. Doshi, counsel appearing for the applicant submits that since the court has allowed the chamber summons, the issues require to be recast. In my view, it is not necessary since the issue no.1 as settled on 5<sup>th</sup> February, 2014 is wide enough to include the amendment sought.

7           Mr. Bimal Rajasekhar, counsel appearing for the plaintiff raises a grievance that though the Commissioner was appointed on 25<sup>th</sup> March, 2014, the trial has not proceeded any further as the defendant no.4 have not been co-operating and they do not even respond to the emails sent by the Commissioner. Ms. Doshi, counsel for the applicant/defendant no.4 disagrees with the same.

8           Be that as it may, the Commissioner is directed to endeavor to complete recording of evidence of PW-1 by 31<sup>st</sup> October, 2016. The Commissioner to fix minimum two/three dates per session for cross examination of PW-1. If the parties do not respond promptly within 48 hours of receiving a communication from the Commissioner suggesting the subsequent dates, the Commissioner to go ahead and fix the dates convenient to him and the parties shall make themselves available at the time and dates fixed by the Commissioner. If the plaintiff or the witness does not remain present, the Commissioner should close the evidence of PW-1 and if the defendant do not remain present to cross examine the witness, the defendant's cross examination should be treated closed as no cross. Once the dates are fixed, the Commissioner not to grant any adjournment to any party.

9 Liberty to apply.

**(K.R.SHRIRAM,J)**