

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

**NOTICE OF MOTION NO. 1173 OF 2016
WITH
CHAMBER SUMMONS NO. 1374 OF 2016
IN
SUIT NO. 779 OF 2011**

Hazal Louis Gonsalves & Ors. .. Applicants

In the matter between :

Hazal Louis Gonsalves & Ors. .. Plaintiffs

Vs.

Municipal Commissioner of Gr.Mumbai & Ors. .. Defendants

Mr.J.G. Damani for plaintiffs/applicants.

Mr.Amit Shashtri, AGP for defendant nos.1 to 8.

Mr.M.U. Pandey for defendant no.9.

CORAM : K.R.SHRIRAM, J.

DATE : 21ST JULY, 2016

P.C.

CHAMBER SUMMONS NO. 1374 OF 2016

1 This chamber summons is for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (CPC) and in the alternative the amendments in the plaint carried out by the plaintiff on 1st July 2014 pursuant to the order dated 18th June 2016 be struck off.

2 At the outset, the counsel for the applicants, in fairness, submitted that he is pressing for prayer clause (b) and not rejection of the plaint under

Order VII, Rule 1 of CPC. The counsel states that under order VI, Rule 18 of CPC, if a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, he shall not be permitted to amend after the expiration of such limited time, unless the time is extended by the Court.

3 The counsel submitted that in the order dated 18th June 2014, in paragraph nos. 5 and 6, the Court has dealt with the amendments to be carried out. The counsel submitted that though the amendments permitted in paragraph 6 was carried out, the amendment, as directed in paragraph 5 has not been carried out. The counsel also submits that he wrote two letters to the counsel for the plaintiffs to strictly comply with the order but the plaintiffs chose not to carry out the amendments. The counsel for the plaintiffs submitted that the plaintiffs have amended the plaint in accordance with the directions contained in paragraph 5 of the order 18th June 2014. The counsel submitted that in prayer clause (a), they have scaled down their demand from 1/6th undivided share to 1/10th undivided share and therefore, the amendments have been incorporated.

4 The counsel for defendant no.9 pointed out and rightly so that even though in prayer clause, the defendant has scaled down his demand from

1/6th to 1/10th, in the plaint, in paragraph 22, it is mentioned 1/10th, in paragraph 27, it is mentioned 1/10th and in paragraph 35, it is mentioned 1/6th. The counsel for the plaintiff, after considering these paragraphs, agreed that those paragraphs also required to be amended. The counsel sought leave of the Court to incorporate those amendments and submitted that they will carry out the amendments within one week from today.

The amendment permitted is only to match the figure mentioned in prayer clause (a).

5 In view of this order, the chamber summons No.1374 of 2016 does not serve and is accordingly disposed.

6 The counsel for the plaintiffs states that all the defendants have been served the writ of summons and copy of the plaint. The counsel appearing for defendant no.9 states that defendant no.9 has filed the written statement. The counsel for the plaintiffs states that defendant nos.1 to 7 have also filed the written statement. The Prothonotary and Senior Master, by an order dated 5th August 2014, had granted time for the plaintiffs to serve defendant nos.10 to 17 and 19 to 22 and directed the office to issue fresh writ of summons and extended the returnable date to 22nd December 2014. On 22nd December 2014, the plaintiffs were given further time to serve defendant

nos.10 to 17 and 19 to 22 and the returnable date was extended till 23rd March 2015. It was also made clear that if the plaintiffs did not serve defendant nos.10 to 17 and 19 to 22, the suit will be dismissed for non-compliance of Original Side Rule 87. The suit was listed before me on 13th June 2016 and the matter was stood over to 30th June 2016 and it was listed on 7th July 2016 and stood over to 14th July 2016 along with chamber summons (lodg.) No.1514 of 2016. On 14th July 2016, the matter was stood over to today.

7 The counsel for the plaintiffs states that they have not, after the order dated 22nd December 2014 was passed, taken steps to serve defendant nos.10 to 17 and 19 to 22. The suit against defendant nos.10 to 17 and 19 to 22 stands dismissed for want of prosecution. The suit against defendant no.18 was, pursuant to an order dated 21st January 2014, was transferred to the list of undefended suits though in the order of Prothonotary and Senior Master, it is mentioned that defendant nos.4 to 8 have filed written statement. I find from the written statement on record that only defendant nos.4 to 7 have filed the written statement. Therefore, the suit against defendant no.8 is also transferred to the list of undefended suits.

8 Since the written statement of defendant nos.1 to 7 and 9, who are the

main contesting defendants, are on record, the suit as against these defendants can proceed. Within three weeks from today, the parties to file their respective affidavits of documents and also give inspection of their documents. Within one week of taking inspection, parties to file their respective statements of admission and denial with reasons for denial.

9 The suit be listed on 29th August 2016 for issues.

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10 In view of the above order, the counsel for the plaintiffs does not wish to press this notice of motion No.1173 of 2016. The notice of motion accordingly stands disposed.

(K.R. SHRIRAM, J.)