

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

**CHAMBER SUMMONS NO. 446 OF 2014**

**IN**

**SUIT NO. 2872 OF 2011**

Shruti Art Private Limited & Ors. .. Applicants

***In the matter between :***

Shruti Art Private Limited & Ors. .. Plaintiffs

Vs.

P.D.Warehousing Corporation & Ors. .. Defendants

**WITH**

**SUMMARY SUIT NO. 890 OF 2011**

P.D.Warehousing Corporation & Ors. .. Applicants/Plaintiffs

Vs.

Ajit C.Shah & Ors. .. Defendants

Ms.Deepti Panda i/b D.H. Nanavati for plaintiff in S/2872/2011, for applicant in CHS/446/2011 and for defendant nos.1 and 2 in SS/890/2011.

Mr.Astad Randeria a/w. Ms.Aditi Prabhu i/b Desai Desai Carrimjee and Mulla for defendant nos.1 to 5 and for plaintiff in SS/890/2011.

Mr.R.J. Singh for defendant no. 6 in S/2872/2011 and for defendant no.1 in SS/890/2011.

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

**DATE : 30<sup>TH</sup> NOVEMBER, 2016**

**P.C.**

1 This chamber summons is for leave to amend the plaint as per the Schedule annexed thereto. The basis of this amendment is to introduce certain facts which transpired after the suit was filed.

2 Shri Randeria, counsel appearing for defendant nos.1 to 5, who are

the main contesting defendants, states that (a) the plaintiffs are seeking to introduce certain prayers which are barred by limitation; and (b) the facts as mentioned in the proposed amendment do not stem from the facts transpired after the suit was filed. The counsel strongly opposes the chamber summons and requests the same be dismissed.

3 I have considered the proposed amendment and I am satisfied that the proposed amendment stem from the facts transpired after the suit was filed. Along with these new facts, the plaintiffs are also seeking to introduce certain prayers for damages. According to the plaintiffs, as stated in the proposed amendment, the cause of action for these additional claims happened only on or about 10<sup>th</sup> or 11<sup>th</sup> June 2011, they came to know about the new facts on 14<sup>th</sup> June 2011 and since this chamber summons has been lodged on 16<sup>th</sup> April 2014, it is well within time. According to counsel Mr Randeria, since the plaintiffs were dispossessed in March 2011, *ex-facie*, the application is barred by limitation.

4 In my view, when the plaintiffs came to know or the cause of action arose in March 2011 or in June 2011 cannot be decided at this stage. *Prima-facie*, looking at the amendment, it appears to be within time but the same can be finally determined at the stage of the final hearing of the suit.

Moreover, the issues in this suit are yet to be settled. The amended Order VI, Rule 17 of the Code of Civil Procedure, 1908 reads as under :

**17 Amendment of Pleadings.**- *The Court may at any stage at 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.*

5 In view of the amendment to Order VI, Rule 17 of the Code of Civil Procedure, 1908 the Courts are generally liberal in granting application for amendment of a claim at pre-trial stage unless the amendment application is not *bona-fide* or relief proposed to be introduced by the application for amendment are grossly barred by limitation or the proposed amendment changes the nature and character of the suit.

6 In my view, having considered the affidavit in support and having heard the counsel for the plaintiffs, I do not find the application to be *mala-fide*. The proposed amendments also does not change the nature and character of the suit.

7 In the circumstances, the chamber summons is allowed in terms of prayer clause (b).

8 The rights and contentions of the defendants to raise the issue of limitation is also kept open. It is also made clear the amendments will not relate back to the date of filing of the suit.

9 The amendment to be carried out and the amended plaint to be served within two weeks. The defendants to file additional written statement within four weeks of receiving the amended plaint.

10 The chamber summons stands disposed accordingly.

11 The suit be listed for issues on 13<sup>th</sup> February 2017. In the meanwhile, the parties to also file their respective affidavits of documents, complete discovery and inspection and also exchange their statements of admission and denial with reasons for denial.

12 Since this is a suit of the year 2011, the parties are directed to strictly and meticulously comply with the directions passed today and should they fail to comply with these direction, parties are put to notice, they will be put to terms.

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