

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

CHAMBER SUMMONS NO.1337 OF 2012

IN

SUIT NO.1448 OF 2005

Katpadi Krishnarai KamathApplicant/Plaintiff

V/s.

Mr. Harishchandra A. Pandit & Ors.Defendants

WITH

CHAMBER SUMMONS NO.416 OF 2014

IN

SUIT NO.1448 OF 2005

Ramesh Lakpatrai AggarwalApplicant/Def.No.6

IN THE MATTER BETWEEN :

Katpadi Krishnarai KamathPlaintiff

V/s.

Mr. Harishchandra A. Pandit & Ors.Defendants

Mr. U.P. Bobade i/b. Mr. Mukesh Sbramaniam for the plaintiff and for the applicant in CHS/1337/2012.

Mr. Nitin R. Gandhi for the respondent in CHS/1337/2012.

Mr. Aditya Shiralkar i/b. Mahimtura & Co. for the defendant no.6 and for the applicant in CHS/416/2014.

Mr. Atul Daga a/w. Ms. Prachi Mhatre i/b. M/s. Shiralkar & Co. for the defendant no.7.

CORAM : K.R.SHRIRAM,J

DATE : 21st SEPTEMBER, 2016

P.C.:-

CHAMBER SUMMONS NO.1337 OF 2012

1 This chamber summons is for leave to amend the plaint as per the Schedule annexed to the chamber summons. The plaintiff had initially taken out a chamber summons bearing no.915 of 2007 for leave to amend the plaint, which chamber summons was withdrawn

with liberty to file a fresh chamber summons. The plaintiff thereafter took out fresh chamber summons no.1937 of 2007 for leave to amend the plaint to add further parties as party defendants and to add subsequent events pursuant to which further reliefs were claimed by the plaintiff with regard to the suit property. This chamber summons was allowed by an order dated 9th July, 2008 against which the defendants filed an appeal. The said appeal came to be disposed by an order dated 13th July, 2010 at which time the plaintiff once again sought leave to withdraw the chamber summons no.1937 of 2007 with liberty to take out a fresh chamber summons seeking appropriate amendments in the plaint. The appeal court was pleased to permit the plaintiff to withdraw the chamber summons with liberty to take out a fresh chamber summons and accordingly disposed of the appeal.

2 Following that the plaintiff has taken out the present chamber summons. It is stated in the affidavit in support that subsequent to the filing of the suit certain new facts came to the knowledge of the plaintiff after the plaintiff took inspection of the records maintained by the Competent Authority, U.L.C. in July to August, 2005, records of the Municipal Corporation of Greater Mumbai in April to June, 2007 and also with defendant nos.6 to 7 in or around January, 2007.

3 The counsel for the plaintiff states that the court should take a liberal view as required under Order VI, Rule 17 of the Code of Civil Procedure particularly in view of the fact that the defendants are yet to file their written statement. The counsel for the plaintiff also states that the amendments do not change the character and nature of the suit and also is not barred by limitation.

4 Mr. Daga, counsel appearing for the defendant no.7 and Mr. Shiralkar, counsel appearing for the defendant no.6 oppose the chamber summons. According to them the amendments sought are barred by limitation since the plaintiff has in the affidavit in support stated that subsequent events became known to him between July, 2005 to January, 2007 and the chamber summons has been taken out in 2012 and hence barred by limitation. The counsel further submitted that prayer clause - h (i) (c) of the proposed amendment cannot be a relief to be granted by this court in a civil suit. The counsel also submitted that the further amendments to prayer clause - (d) of the plaint to increase the claim from Rs.60,22,33,819/- to Rs.645,92,91,800/- and interest from 12% p.a. to 18% p.a. is also grossly barred by limitation.

5 The Apex Court in *M/S. Revajeetu Builders & Developers*

vs. M/S. Narayanaswamy & Sons & Ors.¹ in paragraph 63 has set down the factors to be considered while hearing an application for leave to amend the plaint, which reads as under :-

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is im-perative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

6 Mr. Daga, counsel for the defendant no.7 in support of his submission that the amendment is barred by limitation relied upon a judgment of this court in **Kantilal Amarchand Manjal vs. Municipal Corporation of Greater Bombay and Ors.**² to submit that mere granting leave to withdraw the chamber summons with liberty to file fresh chamber summons does not extend the period of limitation. In that case the plaintiff had withdrawn the suit with liberty to file a fresh suit. In that context, the court came to a conclusion that

1. (2009) 10 SCC 84

2. 1996 (1) ALL MR 111

whenever a fresh suit is filed, it is always subject to law of limitation as if the first suit had not been filed at all. The court however, has not dealt with the situation as in the present case where first chamber summons was taken out within time with liberty to file fresh chamber summons, the second chamber summons was also taken out, which was allowed and at the stage of appeal, liberty was granted to file fresh chamber summons.

7 Therefore, whether these periods, which were spent in prosecuting the chamber summons have to be excluded or not have to be considered.

8 As regards the objection regarding the proposed prayer clause - h (i) (c) that such a relief cannot be granted in a civil suit, if the plaintiff had included this relief when the suit was filed, certainly the court would have considered this only at the time of final hearing of the suit.

9 As regards the increase in the claim amount from Rs.60,22,33,819/- to Rs.645,92,91,800/-, in paragraph 9 of the affidavit in support of the chamber summons, the plaintiff has stated that the present market value of the suit land/property had considerably appreciated from Rs.60.22 crores to about

Rs.645,92,91,800/-. The expression used is “present market value”.

Therefore, I cannot come to a conclusion that this amendment is also barred by limitation.

10 Mr. Daga, counsel for the defendant no.7 also stated that leave under Order 2, Rule 2 has not been obtained to claim increase in damages when the plaint was lodged.

In my view, these are points which can be considered at the time of trial of the suit.

11 Keeping open the defendants' right to raise the point of limitation, maintainability of a civil suit for claiming prayer clause - h (i) (c), whether leave under Order 2, Rule 2 was obtained and that the amendment will not relate to the date of the suit, the chamber summons is allowed and accordingly disposed of in terms of prayer clause – (a).

12 The amendments to be carried out and copy of the amended plaint to be served within two weeks from today. The defendants including newly added defendant, who is respondent in this chamber summons shall file their written statement and serve a copy thereof within six weeks of receiving a copy of the amended

plaint.

13 Mr. Daga, counsel for the defendant no.7 requests that eight weeks time be granted to file the written statement. Therefore, the time to file written statement and serve a copy is granted upto eight weeks from the date of receiving a copy of the amended plaint. The defendants can raise all their points in the written statement as per the liberty granted above.

CHAMBER SUMMONS NO.416 OF 2014

1 Mr. Shiralkar, counsel for the applicant/defendant no.6 seeks leave to withdraw this chamber summons in view of the order passed above with liberty to raise all points as raised in the chamber summons in addition to the liberty granted above.

2 The chamber summons is disposed as withdrawn with the liberties sought.

(K.R.SHRIRAM,J)