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

CHAMBER SUMMONS NO. 816 OF 2015
IN
SUIT NO. 4651 OF 1999

United Phospherous Ltd. .. Applicant

In the matter between :

United Phospherous Ltd. .. Plaintiff
Vs.
Standard Chartered Bank & Anr. .. Defendants

Mr.Sandeep Parikh a/w. Mr.Jas Sanghavi i/b PDS Legal for plaintiff.

Mr.Tushad Cooper a/w. Mr.Delhvi and Ms.Naimbair i/b India Law for defendants.

CORAM : K.R.SHRIRAM, J.
DATE : 24TH AUGUST, 2016

P.C.

1 This chamber summons is for leave to amend the plaint which is strongly opposed by the defendants. The suit was lodged on 21st July 1999.

The case of the plaintiff in the suit is that (a) the plaintiff had opened a Letter of Credit with the defendants and that the defendants were negligent in making payment of money to the Seller under the Letter of Credit; (b) in view of the defendants' honouring and paying under the Letter of Credit and wrongfully debiting the plaintiff's account maintained with the defendants, the plaintiff suffered loss as claimed in the plaint; (c) the documents submitted by the Seller to the defendants was not in conformity with the

L.C. Conditions and (d) the plaintiff never got the goods and therefore were entitled to be paid back the amount debited by the defendants.

It is also alleged in the plaint that the plaintiff has started legal proceedings against the Seller and the alleged Carrier for their part in the production of false documents and breach of Contract of Sale which the plaintiff had entered into with the Seller and those proceedings were pending.

2 The plaintiff, as stated that in the affidavit in support of this chamber summons, had obtained an Award dated 14th January 2000 against the Seller in the sum of US$ 8,57,603.80 + US$ 50,000/- + US$ 44,505.45. The amounts of US$ 50,000/- and US$ 44,505.45 totalling to US$ 94,505.45 forms part of the costs awarded.

3 The plaintiff had also initiated proceedings against the Shipper and in those proceedings, the plaintiff entered into a Settlement Agreement dated 10th December 2004 with the Shipper under which the plaintiff assigned the Award dated 14th January 2000 to the Shipper, in consideration of receiving an amount of US$ 9,99,000/- which, admittedly, has been received by the plaintiff.

4 According to the plaintiff, the plaintiff had incurred legal costs in the sum of Rs.1,48,38,735/- between August-1995 to March-2005 in the proceedings initiated against the Seller and the Shipper. The plaintiff, in the revised Particulars of Claim, which they have proposed to be introduced in the plaint, have admitted that they have received US$ 9,99,000/- on 1st February 2005 equivalent to Rs.4,36,25,893.30 which has been appropriated as under :

(a) Against economic loss suffered by the plaintiff : (Item 3 of the Particulars of Claim) – Rs. 1 crore.

(b) Against costs and expenses incurred by the plaintiff in relation to legal proceedings against Supplier and Shipper (Rs.1,48,38,735/-)

(c) Balance against overdue Rs.1,87,87,158/- which leaves a balance sum of Rs.1,04,34,224/- as on 2nd February 2005.

The plaintiff is claiming interest on the original claim amount of Rs.5,40,60,117.60 from 21st July 1999 till 1st February 2005 at Rs.8,92,88,181.50 and further interest at 20.5% per annum from 2nd February 2005 till 31st March 2015 at Rs.75,35,75,141.12. The plaintiff's claim, therefore, has been increased from Rs.5,40,60,117.60 to Rs. 85,32,97,546.62.

5 Since the suit was lodged in May-1999, as held by this Court in the matter of ***Sumita Pradipkumar Dixit Vs. Smt. Pushpadevi G. Makharia &***

Ors.[1], the amended provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908 would not be applicable. It was held by the Court in paragraph 22 of the judgement as under :

> *"22. In the result, it is held that the amended provisions of Order 6, Rule 17 of CPC would not be applicable to the suits which are filed prior to the date on which the amendment to CPC was brought into effect, i.e. 1.7.2002.........................."*

6 To consider the amendment application, the following chronology of dates and events are relevant :-

Sr.No.	***Date***	***Particulars***
1	*21-07-1999*	*Plaint lodged by the Plaintiff.*
2	*25-01-2001*	*Defendants filed their written statement.*
3	*23-06-2008*	*Issues framed and settled in the suit.*
4	*17-10-2008*	*Affidavit of evidence of the plaintiff filed.*
5	*04-12-2014*	*Fresh Affidavit of evidence of the plaintiff filed.*
6	*29-01-2015*	*Additional Affidavit of evidence of the plaintiff filed.*
7	*16-02-2015*	*Further affidavit of evidence of the plaintiff filed.*
8	*16-02-2015*	*Order passed by this Hon'ble Court appointing Commissioner for recording evidence in the suit.*
9	*05-03-2015*	*Letter of the Commissioner requesting the Commissioner for fixing preliminary meeting on 25th March 2015 for recording of the evidence in the suit.*
10	*17-03-2015*	*Letter from the Commissioner fixing the preliminary meeting on 7th April 2015.*
11	*07-04-2015*	*Preliminary meeting held and date fixed for recording of evidence on 7th May 2015 at 5:00 p.m.*

1 2011(4) ALL MR 198

12	*07-05-2015*	*Chamber Summons lodged and the defendants are served with the present chamber summons at 4:00 p.m.*

7 Even if the Amended Act is not applicable, it is settled law that all amendments ought to be allowed which (a) does not do injustice to the other side, (b) are necessary for the parties for determining the real question and controversy between the parties, and (c) if the amendments sought are such that they do not put the other party at a disadvantage and the other party can be compensated by costs.

8 At the same time, in the matter of ***Kisandas Rupchand V. Rachappa Vithoba Shilwant***[2], at page 655, His Lordship proceeded to state as under :

> *"…..........First, could the party asking to amend obtain the same quantity of relief without the amendment? If not, then it follows necessarily that the proposed amendment places the other party at a disadvantage, it allows his opponent to obtain more from him than he would have been able to obtain but for the amendment. "*

9 Therefore, if the plaintiff/applicant would have filed a separate suit asking for the same reliefs and if the suit would be time barred, then the defendants necessarily will be put to disadvantage if the amendment sought is allowed. The Apex Court in paragraph 63 of the judgement in ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors.***[3] has

2 ILR (1909) 33 Bom. 644
3 (2009) 10 SCC 84

listed the factors to be considered while dealing with the applications for amendment. The Apex Court has also observed that this Court should not permit *mala-fide,* worthless and/or dishonest amendments. Paragraph 63 and 64 read 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 imperative 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.*
>
> *64 The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.*
>
> (emphasis supplied)

10 In my view, the amendments sought can be termed as *'worthless'* and

the reason being the plaintiff has received a sum of US$ 9,99,000/- in full and final settlement of their claim against the Seller and Shipper. The entire basis of the plaintiff's claim, as claimed in the suit, is that the defendants had wrongfully accepted the documents which were not in conformity with the LC requirements and thereby made payment for the goods to the Seller and these goods were never received by the plaintiff. As against the Seller, the plaintiff obtained an Award in the sum of US$ 8,57,603.80 plus cost of US$ 50,000/- and US$ 44,505.45. This Award, the plaintiff assigned to the Shipper and received US$ 9,99,000/-. In the Award, the plaintiff has also been granted a sum of US$ 50,000 + US$ 44,505.45. It is the case of the plaintiff that they have spent a sum of Rs.1,48,38,735/- between August-1995 to March-2005 in pursuing the action against the Seller and Shipper. From the Seller, the plaintiff recovered US$ 94,505.45 as costs. The plaintiff has also recovered an additional sum of amount of US$ 1,41,396.20 from the Shipper (US$ 9,99,000/- – US$ 8,57,603.80). Therefore, the plaintiff has recovered effectively its entire claim in the suit.

11 I am conscious of the fact that in an application for leave to amend the plaint, the Court should not go into the facts or merits of the amendments to be introduced. But I had to mention the above points to come to a conclusion that the amendment itself is worthless inasmuch as the plaintiff's

entire claim has been worked out and the attempt to bring this amendment is only to keep the suit alive for whatever reason the plaintiff has.

12 Further, if the plaintiff was to succeed in this suit, the defendants would have had a right of recourse against the Seller and/or the Shipper of the goods. The plaintiff having obtained an Award against the Seller which has been assigned to the Shipper, no action by the defendants for recourse against the Seller or the Shipper, would be maintainable. To that extent, the defendants are put at a disadvantage.

It is settled law that a decision on an amendment application is a serious judicial exercise and while considering the application, the Courts must not refuse *bona-fide*, legitimate, honest and necessary amendments whereas at the same time, should not permit *mala-fide*, worthless and/or dishonest amendment. The Court also should not permit amendments where the proposed amendments constitutionally and/or fundamentally changes the nature and character of the case and 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. In my view, the present application is (a) worthless and (b) put the defendants at a disadvantage as the amendment proposed are grossly barred by limitation;

13 Moreover, according to the counsel for the plaintiff, the Award in favour of the plaintiff against the Seller of the goods was passed on 14th January 2000. The Settlement Agreement between the plaintiff and the Shipper, wherein the Award was assigned, is dated 10th December 2004. Therefore, the plaintiff could have filed this amendment application to claim the alleged amount of shortfall soon after 10th December 2004. The plaintiff has taken out the present chamber summons only on 7th May 2015 after almost 11 years. If a fresh suit had been brought in by the plaintiff, on the date the chamber summons was lodged, all the amounts as being claimed today, would be barred by limitation. At the same time, Shri Cooper, counsel for the defendants stated that the defendants have no objection if the following paragraphs from the schedule annexed to the chamber summons are allowed to be introduced in the plaint by way of amendments :

(a) Para I;
(b) Para II (12A) ;
(c) Para (IV).

14 Therefore, to that extent, the chamber summons is allowed.

As regards, the rest of the amendments sought, i.e., Paras (II) (12B), 12(C), 12(D), and Para (III) of the schedule, the amendment application is rejected.

15 The chamber summons disposed accordingly.

16 The amendments to be carried out and the amended plaint to be served within two weeks from today. Should the defendants wish to file any additional written statement to deal with the amendment sought, they may do so within one week of receiving the copy of the amended plaint.

17 The plaintiff to pay a sum of Rs.50,000/- as costs for this chamber summons.

18 The suit be listed on 16th September 2016 for directions.

(K.R. SHRIRAM, J.)