

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

**CHAMBER SUMMONS NO.851 OF 2010
IN
SUIT NO.3105 OF 2009**

Kishan G. Hirani & Ors.	Applicants/Plaintiffs
V/s.	
Neeraj Constructions & Ors.	Defendants
And	
Mrs. Smita Harsh Bhosale & Anr.	Respondents

**WITH
NOTICE OF MOTION NO.4126 OF 2009
IN
SUIT NO.3105 OF 2009**

Kishan G. Hirani & Ors.	Applicants/Plaintiffs
V/s.	
Neeraj Constructions & Ors.	Defendants

**WITH
NOTICE OF MOTION NO.259 OF 2010
IN
SUIT NO.196 OF 2010**

Anil Kishan Hirani & Anr.	Applicants/Plaintiffs
V/s.	
Neeraj Constructions & Ors.	Defendants

Mr. Abhishek Pungliya for the plaintiff.
Mr. Naushad Engineer a/w. Mr. Jayesh Mestry i/b. RMG Law for the defendant nos.1 to 3.
Mr. Rajesh S. Datar for the respondents.

**CORAM : K.R.SHRIRAM,J
DATE : 31st AUGUST, 2016**

P.C.:-

CHAMBER SUMMONS NO.851 OF 2010

1 At the outset, the counsel for the applicants seeks leave to

amend the schedule annexed to the chamber summons. The counsel for the applicants states that the reference to Exhibit “HH”, Exhibit “II” and Exhibit “JJ” is made in the schedule to the chamber summons but copies of those documents have not been annexed to the schedule.

2 Leave granted. The amendment to be carried out within one day.

3 The suit as filed is on the basis that the defendants have agreed to sell the flat to the plaintiffs and the defendants have committed breach of the said agreement. It is also alleged that the defendants have sold the suit flat to the respondents herein. It is also stated in the affidavit in support that the plaintiffs came to know about the defendants having sold the flat to the respondents after the suit was filed and during the hearing of the notice of motion that the plaintiffs have taken out. The plaintiffs are seeking amendment of the plaint on the basis that if any order is passed against the defendants that would affect the rights of the respondents and therefore, the respondents are proper and necessary party to the suit.

4 In the schedule there are other averments also which the applicants are seeking to be introduced in the plaint. Mr. Engineer,

counsel appearing for the defendants states that since the issues are also yet to be settled in the matter, the chamber summons may be allowed but subject to keeping open all the rights and contentions of the defendants including the issue on limitation to be raised in the additional written statement to be filed on behalf of the defendants. Mr. Datar, counsel appearing for the respondents opposes the chamber summons.

5 In view of the submissions recorded above in paragraph 3, in my view the respondents are proper and necessary party to the suit. The chamber summons is, therefore, allowed and accordingly disposed of in terms of prayer clause – (a).

The plaintiffs to pay a sum of Rs.5,000/- as cost to the advocate on record for the defendant nos.1 to 3.

6 The amendment to be carried out and amended copy of the plaint to be served upon the defendants and newly added defendants within two weeks from today.

7 Mr. Datar, counsel appearing for the respondents, who are introduced as defendant nos.4 and 5 waives service of the writ of summons.

8 The written statement/additional written statement to be filed and copy served within four weeks of receiving the amended plaint. Within two weeks thereafter parties to file their respective affidavit of documents and also complete discovery and inspection. Within one week thereafter parties to file and exchange their statement of admission and denial with reasons for denial.

9 The suit be listed for issues after ten weeks.

10 Notice of motion no.4126 of 2009 and notice of motion no.259 of 2010 be listed for hearing on 6th October, 2016.

(K.R.SHRIRAM,J)