

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

**CHAMBER SUMMONS NO.1020 OF 2010
NOTICE OF MOTION NO.1531 OF 2009
NOTICE OF MOTION NO.2433 OF 2012
IN
SUIT NO.1823 OF 2008**

Dilip Jamunadas Giyanani & Ors.Plaintiffs

V/s.

Mr.Kumar Bhatija & Ors.Defendants

Ms.Priti Wagle a/w Mr.M.M.Borkar i/by Charanjeet Chanderpal for plaintiffs.

Mr.R.A.Shah i/by M/s.Mansukhlal Hiralal & Co. for defendant nos.6, 7 & 8.

**CORAM : K.R.SHRIRAM,J
DATE : 15.6.2016**

P.C.:-

1 This Chamber summons No.1020 of 2010 is for leave to amend the plaint. The amendment sought is as per the amended schedule annexed to the Chamber summons. The amendment is split in 3 paragraphs.

2 The issues are yet to be settled. Order VI Rule-17 of the Code of Civil Procedure 1908 reads as under :-

“Amendment of pleadings – The Court may at any stage of 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"

3 ¹***In Revajeetu Builders & Developers Vs Narayanaswamy & Sons***, the Supreme Court has laid down the factors to be taken into consideration while dealing with the application for amendment. Paragraphs 63 & 64 of the said judgment read as under :-

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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

1 2009(10) SCC 84

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.

4 As regards the first amendment sought, Mr.Shah in fairness submits that he has no objection but he would like to amend the written statement or file additional written statement to deal with it.

5 As regards 2nd & 3rd amendments sought, the plaintiff seeks specific performance of the agreements dated 9.10.1992, supplementary allotment agreement dated 11.4.1994 and supplementary agreement dated 26.7.2005. On the face of it any claim for specific performance of these 3 agreements is grossly time barred. The Apex court has, as per the quotation above, said 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, if a fresh suit is brought for the specific

performance of the 3 agreements, the suit will be time barred.

6 In the circumstances, Chamber summons is partly allowed. Amendment is permitted only to the extent of paragraph-1 mentioned in the amended schedule and bracketed.

Chamber summons accordingly disposed.

Amendment to be carried out and amended plaint to be served within two weeks from today. The defendants to file additional written statement within two weeks thereafter.

7 On or before 25.7.2016 the parties shall file their respective affidavit of documents. On or before 30.7.2016 parties shall give inspection of documents and also file and exchange statement of admission and denial with reasons for denial.

Matter be listed for issues on 8.8.2016.

NOTICE OF MOTION NO.1531 OF 2009

In view of the order passed above, this Notice of Motion does not survive and is accordingly disposed.

NOTICE OF MOTION NO.2433 OF 2012

The suit is for partition. Considering the prayers in this Notice of Motion, the same cannot be granted at the interim stage.

These are matters which can be decided only after the trial in the suit is over.

In the circumstances, Notice of Motion is dismissed.

(K.R.SHRIRAM,J)