

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

**CHAMBER SUMMONS NO. 745 OF 2014
WITH
NOTICE OF MOTION NO. 1011 OF 2014
IN
SUIT NO. 2121 OF 2012**

Metropolis Healthcare Ltd. .. Applicant

In the matter between :

Metropolis Healthcare Ltd. .. Plaintiff

Vs.

M/s. Navkar Construction Company & Ors. .. Defendants

Ms. Neeta Jain a/w. Mr. Sanmish Gala i/b Markand Gandhi & Co. for plaintiff.

Mr. G.C. Mohanty i/b Pandya & Poonawala for defendants.

CORAM : K.R. SHRIRAM, J.

DATE : 21ST JUNE, 2016

P.C.

CHAMBER SUMMONS NO. 745 OF 2014

1 The counsel for the plaintiff seeks leave to amend the schedule.

Leave granted. Amendment to be carried out forthwith.

2 The chamber summons is taken out by the plaintiff for leave to amend the plaint. The amendment sought is to bring on record the developments post filing the suit as is evidenced in the schedule annexed to the chamber

summons. In fact, one of the amendment is to reduce the original claim amount from 'Rs.12,36,97,570/-' to 'Rs.7,86,97,570/-'.

3 In ***Revajeetu Builders and Developers Vs. Narayanswamy & Sons & Ors.***¹ at paragraph 63, the Apex Court spells out the factors to be taken into consideration 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 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.

1 (2009) 10 SCC 84

4 In this case, the trial is yet to begin. Even the issues are not settled.

5 Heard the counsels. Having considered the amendment sought, in my view, it is a fit case to allow the chamber summons.

The chamber summons is allowed in terms of prayer clause (a).

Amendment to be carried out and the amended plaint to be served within two weeks. Within four weeks of receiving the amended plaint, the defendants to file their written statement.

The chamber summons accordingly disposed.

6 Ms.Jain, counsel for the plaintiff states that they have called upon the advocate for the defendants, who have informed them that defendant no.2 also has expired, to provide details of the L.Rs. of defendant no.2 to which the defendants have only responded by giving the name of son of defendant no.2. There is no mention about the spouse of defendant no2 or any other L.Rs..

7 Shri Mohanty, counsel for the defendants states that within one week from today, they will provide the details of other L.Rs. and if there are no L.Rs., state so in the communication to the advocate for the plaintiff.

8 The suit be listed for directions on 5th August 2016.

NOTICE OF MOTION NO. 1011 OF 2014

9 Prayer clause (a) of this Notice of Motion is as under :-

“(a) Pending the hearing and final disposal of the present suit, the statement made by the defendants as more particularly set out in the letter dated 26th September, 2012, Exhibit -'C' to the present motion be continued.”

10 At the ad-interim stage, the Court had, vide a detailed order, continued the statement as contained in the letter dated 26th September 2012 until the disposal of the notice of motion. I have considered the affidavit in reply. From the reply, there is nothing emanating as to why the ad-interim order should not be continued until the disposal of the suit. *Prima-facie* there is an admission of liability.

11 In the circumstances, ad-interim order granted on 31st July 2014 to continue until the final disposal of the suit.

12 The notice of motion accordingly disposed.

(K.R. SHRIRAM, J.)