

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

**CHAMBER SUMMONS NO.980 OF 2015
WITH
NOTICE OF MOTION NO.259 OF 2015
IN
SUIT NO.180 OF 2015**

Sumitra Shashikant Khokhani & Ors.Plaintiffs

V/s.

M/s.Westbury Finvest Pvt. Ltd. & Ors.Defendants

Ms.Armin Wandrewala i/by P.Gujar for plaintiffs.

Mr.Himanshu Kode i/by Sanjiv A.Sawant for defendant nos.1 & 2.

**CORAM : K.R.SHRIRAM,J
DATE : 14.12.2016**

P.C.:-

1 This chamber summons is taken out for leave to amend the plaint. The plaint was lodged on 12.2.2015 and this chamber summons has been taken out on 17.7.2015 for leave to amend the plaint as per the schedule annexed to the chamber summons. The counsel for the defendant nos.1 & 2 states that their written statement has already been filed in January-2016. It should be noted that written statement has been filed after the chamber summons for leave to amend was taken out. Even issues are yet to be settled. Order-6 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."

2 The courts are lenient while considering the application for leave to amend the plaint if the application is not malafide or the proposed amendments do not change the nature and character of the suit or the proposed amendments are not ex-facie barred by limitation. And of course they are just and necessary for the purpose of determining the real question in controversy between the parties.

3 The counsel for the defendant nos.1 & 2 strongly opposed the chamber summons.

As regards the other defendants, Ms.Wandrewala, on instructions, stated that they have already been served copy of the chamber summons. Nobody has filed any affidavit in reply.

4 In the proposed amendments, no additional prayers are sought to be inserted. In paragraph-53 of the plaint, the plaintiffs have stated that the defendant nos.1, 2 & 4 in collusion with the officer of defendant nos.7, 8 & 9 obtained IOD and CC by playing a fraud upon the plaintiffs. What the plaintiffs propose to add to the plaint are documents that the plaintiffs obtained under RTI application

which according to the plaintiffs supports their allegation of fraud in the plaint. The proposed amendments do not change the nature and character of the suit and I do not find the same to be malafide. They are also in my view, just and would help in determining the real questions in controversy between the parties.

5 Therefore, the chamber summons is allowed in terms of prayer clause-(a) and accordingly disposed.

Amendments to be carried out and amended plaint to be served within two weeks. Additional written statement to be filed within 3 weeks of receiving the amended plaint. Those defendants who have not filed any written statement, shall file their written statement to the amended plaint within 3 weeks of receiving the amended plaint. Should those defendants fail to file written statement within 3 weeks granted, the suit as against those defendants shall stand automatically transferred to the list of undefended suit without further reference to the court.

6 Notice of Motion No.259 of 2015 be listed on 19.1.2017.

(K.R.SHRIRAM,J)