

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

**CHAMBER SUMMONS NO. 1227 OF 2010
IN
COUNTER CLAIM (LODG.) NO. 1313 OF 2005
IN
SUIT NO. 41 OF 2003**

Shri Max Cajetan Travasso & Ors. .. Plaintiffs

Vs.

Mr.Lal Bherumal Leungani & Ors. .. Defendants

Ms.Yasmin Bansali i/b Yasmin Bhansali & Co. for plaintiffs in counter claim/applicants.

Mr.Cherim Lapachiya i/b Niranjan & Co. for defendants/respondents.

**CORAM : K.R.SHRIRAM, J.
DATE : 14TH SEPTEMBER, 2016**

P.C.

1 This chamber summons is taken out for leave to amend the counter-claim. The suit as filed by the plaintiffs was for specific performance of an Agreement dated 8th January 1984 and the Writing dated 16th November 1994. The plaintiffs have also sought for a declaration that the termination of the Agreement by the defendants, vide letter dated 16th December 1999, is bad, illegal and not binding upon the defendants.

2 The defendants filed the written statement and also the counterclaim in which the defendants' claim a sum of Rs.11,27,20,000/- together with

interest at 21% per annum and also for declaration that all actions begun by the plaintiffs pursuant to the Agreements referred above, are bad, illegal etc.

By these proposed amendments, the defendants, i.e., the plaintiffs in the counter-claim, seek to insert certain paragraphs which find the mention in the written statement but missed out in the counter-claim. Of course, the proposed amendments also include additional prayers viz., (i) for a direction to the plaintiffs/defendants to the counter-claim to hand over the possession of the suit property to the defendants/plaintiffs to the counter-claim; and (ii) for declaration that the Agreement dated 8th January 1984 and Writing dated 16th November 1994 has been validly terminated pursuant to the defendants' Advocates' letter dated 16th November 1994.

3 I am told that the plaintiffs/defendants to the counter-claim have not even filed written statement to the counter-claim. I do not find any mala-fide intention in taking out this chamber summons. The proposed amendments also does not change the nature of the counter-claim or the cause of action in the counter-claim. In my view, no prejudice also will be caused to the plaintiffs/defendants to the counterclaim if this chamber summons is allowed since the plaintiffs/defendants to the counter-claim are yet to file the written statement.

4 The chamber summons, therefore, is allowed in terms of prayer clause (a). The applicants to amend the counter-claim and serve a copy of the amended counter-claim upon the plaintiffs/defendants to the counter-claim within two weeks from today. The plaintiffs/defendants to the counter-claim to file the written statement within two weeks of receiving copy of the amended counter-claim. The rights and contentions of both the parties including on issue of limitation is kept open.

5 The applicants also to remove all office objections and have the counter-claim numbered within two weeks.

(K.R. SHRIRAM, J.)