

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

**CHAMBER SUMMONS NO.146 OF 2016
IN
SUIT NO.178 OF 2013**

Hathibhai Bhulakhidas Pvt. Ltd.Applicant/deft.no.28

IN THE MATTER BETWEEN :

Biotor Industries Ltd. & Ors.Plaintiffs

V/s.

Tata Capital Financial Services Ltd. & ors.Defendants

**WITH
NOTICE OF MOTION NO.427/2013
NOTICE OF MOTION NO.1082/2014
NOTICE OF MOTION NO.1401/2015**

Mr.Kaushal Parsekar i/by Jayakar & Partners for plaintiffs.

Ms.Usha Gadagkar a/w Mr.Hamza Tatli i/by Diamondwala and Co.
for defendant no.18-applicant in Notice of Motion.

Mr.Jay Vakil i/by MDP & Partners for defendant nos.1 to 6.

Ms.Geeta Menon for defendant nos.14 & 15.

Ms.Jethra i/by Singhi & Co.for defendant no.16.

Mr.P.J.Pandit for defendant nos.22 to 24.

**CORAM : K.R.SHRIRAM,J
DATE : 20.12.2016**

P.C.:-

1 This chamber summons is taken out on behalf of defendant no.18 for leave to amend the written statement as per the schedule annexed to the written statement. It is stated in the affidavit in support that certain facts have come to light in respect of the

subject matter of the present suit subsequent to filing of the written statement and the applicant has also noticed that there are certain averments made in the written statement which the applicants have realized are incorrect. The applicants wish to bring those new facts on record and also explain those averments.

2 The chamber summons has been served upon the plaintiffs. No affidavit in reply opposing the chamber summons has been filed though the counsel for the plaintiffs opposes the chamber summons. The submissions of the counsel for the plaintiffs basically are going into merits of the matter. Courts do not, while hearing the application for amendment, consider the merits of the matter. The amendment sought is of a written statement and not a plaint. So the factors to be kept in mind while considering the application for amendment of the plaint also gets diluted. In ¹***The General Manager, Bharat Sanchar Nigam Ltd. Vs. Rakshak Industrial Security Agency Pvt. Ltd. & Ors.*** paragraphs 20, 21 & 22 read as under :-

20. It is equally well settled principle that a prayer for amendment of the plaint and a prayer for amendment of the written statement stand on different footings. The general principle that amendment of pleadings cannot be allowed so as to alter materially or substitute cause of action or the nature of claim applies to amendments to plaint. It has no counterpart in the principles relating to amendment of the written statement. Therefore, addition of a new ground of defence or substituting or altering a defence or taking inconsistent pleas in the written statement would not be objectionable while adding, altering or

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substituting a new cause of action in the plaint may be objectionable.

21. Such being the settled law, we must hold that in the case of amendment of a written statement, the courts are more liberal in allowing an amendment than that of a plaint as the question of prejudice would be far less in the former than in the latter case [see [B.K. Narayana Pillai v. Parameswaran Pillai](#) (2000(1) SCC 712) and [Baldev Singh & Ors. v. Manohar Singh](#) (2006 (6) SCC 498)]. Even the decision relied on by the plaintiff in *Modi Spinning* (*supra*) clearly recognizes that inconsistent pleas can be taken in the pleadings. In this context, we may also refer to the decision of this Court in *Basavan Jaggu Dhobi v. Sukhnandan Ramdas Chaudhary (Dead)* [1995 Supp (3) SCC 179]. In that case, the defendant had initially taken up the stand that he was a joint tenant along with others. Subsequently, he submitted that he was a licensee for monetary consideration who was deemed to be a tenant as per the provisions of Section 15A of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. This Court held that the defendant could have validly taken such an inconsistent defence. While allowing the amendment of the written statement, this Court observed in *Basavan Jaggu Dhobi's* case (*supra*) as follows:-

"As regards the first contention, we are afraid that the courts below have gone wrong in holding that it is not open to the defendant to amend his statement under Order 6 Rule 17 CPC by taking a contrary stand than was stated originally in the written statement. This is opposed to the settled law open to a defendant to take even contrary stands or contradictory stands, the cause of action is not in any manner affected. That will apply only to a case of the plaint being amended so as to introduce a new cause of action."

22. As we have already noted herein earlier that in allowing the amendment of the written statement a liberal approach is a general view when admittedly in the event of allowing the amendment the other party can be compensated in money. Technicality of law should not be permitted to hamper the Courts in the administration of justice between the parties. In the case of *L.J. Leach and Co. Ltd. v. Jardine Skinner and Co.* [AIR 1957 SC 357], this Court observed "that the Courts are more generous in allowing amendment of the written statement as the question of prejudice is less likely to operate in that event". In that case this Court also held "that the defendant has right to take alternative plea in defence which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to serious injustice."

Issues are also yet to be settled. Therefore, in my view, allowing the amendment of written statement would not cause any

prejudice to the plaintiffs.

3 At the same time the counsel for the plaintiffs submits that since the application is not restricted to purely bring subsequent developments on record, the applicant should also be put to terms. The counsel for the plaintiffs is justified in pressing for cost.

4 Therefore, the chamber summons is allowed in terms of prayer clause-(a). The amendment to be carried out and amended written statement to be served within four weeks. The applicant also to pay sum of Rs.5,000/- as cost to the plaintiffs which amount to be paid by way of cheque drawn in favour of the advocate on record of the plaintiffs within two weeks.

Stand over to 20.1.2017 for directions.

(K.R.SHRIRAM,J)