

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

**NOTICE OF MOTION NO. 766 OF 2008
IN
SUIT NO. 508 OF 2007**

Silver Beach Victor Co-operative Housing
Society Ltd. .. Plaintiff

Vs.

1. Vee Gee Creado Construction &
Developer Pvt. Ltd. & Ors. .. Defendants

**WITH
CHAMBER SUMMONS NO. 1677 OF 2015
IN
SUIT NO. 508 OF 2007**

Silver Beach Victor Co-operative Housing
Society Ltd. .. Applicant

In the matter between :

Silver Beach Victor Co-operative Housing
Society Ltd. .. Plaintiff

Vs.

1. Vee Gee Creado Construction &
Developer Pvt. Ltd. & Ors. .. Defendants

Mr.Pradeep J. Thorat a/w. Ms.Mallika Taly i/b S. Mahomedbhai & Co. for
plaintiff.

Mr.Harsh Behany i/b Mr.Nivit Srivastav for defendant no.1.

Ms.Teashree Gawde i/b Zohair & Co. for defendant no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 3RD MAY, 2016**

P.C.

CHAMBER SUMMONS NO. 1677 OF 2015

1 The chamber summons is for leave to amend the plaint. The counsel for the plaintiff states that copy of the chamber summons was served upon defendant No.1 on 22nd November 2014 and also upon defendant Nos.2 to 6. Defendant Nos.2 to 6 have filed affidavit in reply but defendant No.1 has not filed any reply. The counsel for defendant No.2 states that the issue of limitation under Section 9A has been framed and that is pending. The counsel submits that in view of the same, amendment should not be permitted.

2 The counsel for the plaintiff has placed before me a judgement of this Court in ***Immigrants Ideal Producers Co-operative Society Ltd. & Anr. Vs. Jahanara Moiz Dalal*** ¹ in which it is held that an issue framed under Section 9A cannot come in the way of hearing an application under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (CPC).

Order VI, Rule 17 reads as under :

ORDER VI-PLEADINGS GENERALLY..

17. 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.*

1 2004(2) Bom. C.R.597

What is framed is only preliminary issue of limitation under Section 9A and the other issues have not been framed.

3 It is settled that the purpose and object of Order VI, Rule 17 is to allow either party to alter or amend the plaint in such manner and on such terms as may be just. The power to allow amendment at the pre-trial stage is wide and could be exercised in the interest of justice.

4 The Apex Court in the matter of ***Revajeetu Builders & Developers Versus Narayanaswamy & Sons & Others***² analysed the factors to be taken into consideration while dealing with applications for amendments. Paragraph 63 of the said judgment 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?*

61. *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*

² (2009) 10 SCC 84

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.

In fact, the Apex Court, as could be seen from the above, has even opined that these are only illustration and not exhaustive.

5 In this case, I have considered the proposed amendment. The amendment sought to be introduced is something that transpired between the parties to the suit after the suit was filed. In my view, this amendment sought is necessary for effective adjudication of the case. Moreover, it does not change constitutionally or fundamentally the nature and character of the case. I also find that there is no *mala-fide* on the part of the plaintiff in bringing this application for amendment seeking to add the three prayers.

6 While the issue of limitation itself is being considered by this Court under Section 9A as a preliminary issue, the Court would also consider whether these three new prayers proposed to be introduced are also time barred or not?

7 In view thereof, the chamber summons is allowed in terms of prayer clause (a). The amendment to be carried out and amended plaint to be served within four weeks from today.

8 The matter to come up as per C.M.I.S. date.

(K.R. SHRIRAM, J.)