

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

**COMMERCIAL APPEAL (L) NO. 31 OF 2016
IN
CHAMBER SUMMONS NO. 816 OF 2015
IN
SUIT NO. 4651 OF 1999**

UPL Limited	}	Appellant
versus		
Standard Chartered Bank	}	
and Anr.	}	Respondents

Mr. Fredun Devitre - Senior Advocate
with Mr. Sandeep Parikh, Mr. Prakash
Shah and Mr. Durgaprasad Poojari i/b.
M/s. PDS Legal for the appellant.

Mr. Tushad Cooper with Mr. Srinivas
Atreya, Ms. Nishita Nambiar and
Mr. Shavez Mukri i/b. M/s. India Law for
the respondents.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- DECEMBER 5, 2016

P.C. :-

1. Heard both sides.
2. Admit. Respondents waive service. By consent, the appeal is heard forthwith.

3. This appeal is directed against the order passed on 24th August, 2016 by the learned Single Judge in Chamber Summons No. 816 of 2015 in Suit No. 4651 of 1999.

4. The appellant is the original plaintiff, whereas the respondents are the original defendants.

5. After the appeal was argued for some time, what we have noted is that the impugned order grants the appellant/plaintiff leave to amend and by incorporating certain amendments as per the schedule to the chamber summons. However, some of the amendments have been disallowed and the amendment application is rejected to that extent.

6. The rejection of the amendments is on the finding that there would be a disadvantage to the respondent/defendants. Similarly, if the amendments are found to be worthless, then, the court has discretion in rejecting the application for amendment or refusing the relief.

7. We have carefully perused the order under challenge. We find that the exercise undertaken at this stage is fairly elaborate. Though the learned Single Judge was aware of the fact that the court cannot go into the facts or merits of the amendments to be

introduced at the stage of grant of leave to amend, still, the finding that the amendment is worthless has been rendered. It is indeed elaborate and touching the merits. There cannot be any cryptic finding, but the court must weigh all the materials on record to arrive at a definite conclusion as to how the claim could be said to be worthless. The reasons assigned in paras 11 and 12 would non-suit the appellant/plaintiff at this stage itself. We do not find that the judgment relied upon by the learned Single Judge and delivered by the Hon'ble Supreme Court of India can be of any assistance to the respondents. The amendments have not been found to be mala fide or dishonest. In these circumstances, we do not think that the order under challenge can be sustained.

8. As a result of the above discussion, we allow this appeal. We set aside the order of the learned Single Judge to the extent it denies leave to amend to the appellant/plaintiff. The amendments, which are excluded from the order under challenge and in regard to which the leave has been refused are also allowed to be incorporated. The following order would, therefore, serve the ends of justice:

- (i) The order of the trial court rejecting certain amendments is set aside and all the amendments sought for in the chamber summons stand allowed.

(ii) We express no opinion on the merits of any findings rendered by the learned Single Judge and clarify that the trial court at the hearing of the suit shall decide the same uninfluenced in any way by the findings recorded in the impugned order.

(iii) This order shall be without prejudice to the rights and contentions of both parties which rights and contentions are expressly left open including that the claim is barred by limitation.

9. We clarify that while we have allowed the appeal, we have not expressed any opinion on the rival contentions or merits of the amendments. The amendments to be carried out within a period of two weeks from the date of receipt of a copy of this order. Liberty to file additional written statement within a period of six weeks thereafter.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)