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

CHAMBER SUMMONS NO.366 OF 2016
WITH
NOTICE OF MOTION NO.305 OF 2009
IN
SUIT NO.77 OF 2009

Madhavlal N. Pittie & Ors. ....Plaintiffs

V/s.

Bachhraj and Co. Pvt. Ltd. & Ors. ....Defendants

Mr. Ashish Kamat a/w. Mr. Abhay Jadeja, Mr. Varun Satiya and Mr. Praddep Mane i/b. Crawford Bayley and Co. for the plaintiffs/applicants in CHS/366/2016.
Mr. Janak Dwarkadas, senior advocate a/w. Mr. Sharan Jagtiani and Mr. S.V. Mehta i/b. M/s. Malvi Ranchoddas and Co. for the defendant nos.1,3,4 and 6.
Mr. J.P. Sen, senior advocate a/w. Ms. Sneha Phene and Mr. Murtlza Federal i/b. Federal and Rashmikant for the defendant no.2.
Mr. Bhojraj Baral i/b. Mr. Kalpesh Joshi for the defendant no.5.
Mr. Atit Shukla a/w. Mr. Dharmesh Pandya i/b. Ashwin Pandya and Associates for the defendant no.7.

CORAM : K.R.SHRIRAM,J
DATE : 13th OCTOBER,2016

P.C.:-

CHAMBER SUMMONS NO.366 OF 2016

1 This chamber summons is taken out for leave to amend the plaint as per the Schedule annexed to the chamber summons.

2 The plaintiffs have filed this suit by way of a derivative action primarily challenging the action by defendant nos.2 to 6 who

are in management of defendant no.1 company qua the plaintiffs who are minority shareholders for selling and transferring 3,46,96,250 equity shares of Bajaj Hindustan Limited (BHL) that the plaintiffs had in their name for over 70 years and constituted approximately 55% of the value of investments of defendant no.1 to defendant no.6. The plaintiffs are challenging sale itself because the plaintiffs feel that it was unnecessary to sell the shares and in any event, the sale was ill-timed because market was not conducive for the sale. These shares were sold by defendant no.1 to defendant no.6 in furtherance of the Bajaj family settlement.

3 The family of defendant no.6 and defendant no.2 had entered into a family settlement agreement (Bajaj family settlement agreement) which, according to defendants, necessitated the sale. The plaintiffs had been calling upon the defendants for copies of the said Bajaj family settlement agreement. It is the plaintiffs' case that they wrote repeated letters to the advocates for the defendant nos.1,3,4 and 6 for copy of the Bajaj family settlement agreement but they were told that there was no written settlement agreement and it was all oral. This was the stand that the defendant nos.1,3,4 and 6 consistently took before this court. But when the written statement

was filed there was a reference to the Bajaj family settlement agreement dated 21st December, 2008 and hence the plaintiffs sought inspection of the said document. Finally in view of the order dated 22nd September, 2015, the defendant nos.1,3,4 and 6 on 3rd October, 2015 gave inspection of an unstamped and unregistered Bajaj family settlement agreement.

According to the plaintiffs in this Bajaj family settlement agreement, the defendant no.6 has wrongfully represented himself to be entitled to the 3,46,96,250 equity shares of BHL held by defendant no.1 and has agreed to deliver the said shares held by defendant no.1 to defendant no.2. It also records that defendant no.6 shall ensure requisite resolutions are passed by defendant no.1 in furtherance thereto. There are other portions of the family settlement agreement relating to these 3,46,96,250 equity shares of BHL held by defendant no.1, with which the plaintiffs are unhappy.

4 The plaintiffs have taken out this chamber summons on 21st October, 2015 (within 18 days of being given inspection) to bring on record these facts relating to the contents of Bajaj family settlement agreement and to also add few prayers primarily challenging the said Bajaj family settlement agreement and for declaration that the said

agreement to the extent of 3,46,96,250 equity shares of BHL is illegal, not binding on defendant no.1, etc. It is necessary to note that the plaintiffs are not party to the said Bajaj family settlement agreement.

5 Order 6 Rule 17 of the Code of Civil Procedure provides as under :-

> *"**17. Amendment of Pleadings**.- the Court may at any stage at 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."*

6 The courts, if the trial is yet to begin, are generally liberal while considering an amendment application if the amendment is necessary for the purpose of determining the real questions in controversy between the parties. The Apex Court in the matter of ***Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Others***[1] alanysed the factors to be taken into consideration while dealing with application 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. (2009) 10 SCC 84

> *(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?*
>
> *(3) 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 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.*

7 Let us first consider whether the amendment proposed is imperative for the purpose of determining the real questions in controversy between the parties or for proper and effective adjudication of the case. Mr. Sen, senior counsel submitted that the controversy in the suit is unrelated to the family settlement agreement and the relief sought in the plaint can be considered without touching the Bajaj family settlement agreement and setting aside of Bajaj family settlement agreement is not necessary for determining the real controversy between the parties to the suit.

The real question of controversy between the parties is the sale of 3,46,96,250 equity shares in BHL to defendant no.6. According to the plaintiffs it was against the interest of defendant no.1 company.

Prayer clause – (a) of the plaint reads as under :-

> *"(a) that this Hon'ble Court be pleased to order and declare that the impugned sale, i.e., the proposed sale of the suit shares, 3,46,96,250 shares of Bajaj Hindustan Limited and/or any part thereof by defendant no.1 to defendant no.6 is void, bad in law and contrary to the interest of defendant no.1."*

8 The issues were settled on 18th December, 2014 and issue no.6 reads as under :-

> *"6. Whether the plaintiffs are entitled to an order and declaration that the impugned "sale", i.e., the "sale" of 3,46,96,250 shares of Bajaj Hindustan Limited by defendant no.1 to defendant no.6 and/or his nominees is void, bad in law, contrary to and/or violation of the interest of defendant no.1 and/or its minority shareholders, and that the same is not binding on defendant no.1 and/or its minority shareholders?"*

9 If the issue no.6 is answered in the affirmative or in the negative, it will still not be necessary for the court to go into the Bajaj family settlement agreement at all. The Bajaj family settlement agreement is not binding on the plaintiffs. They are not parties to the said family settlement agreement. Even if the family settlement agreement is not set aside, the plaintiffs will still not be prejudiced because the plaintiffs main challenge is for the sale of 3,46,96,250 shares of BHL by defendant no.1 to defendant no.6. If the plaintiffs succeed, the onus will be on defendant no.6 to bring in back those 3,46,96,250 shares into defendant no.1 or to pay damages.

10 Moreover, in my view, no third party can challenge a family settlement agreement. I find support in a judgment of Punjab and Hariyana High Court in ***Vinod Kumar vs. Neelam Chabra***[2] and of a full bench of Madras High Court in ***Muppudathi Pillai vs. Krishnaswami Pillai***[3]. The plaintiffs admittedly are not parties to the Bajaj family settlement agreement. Moreover there are 21 persons who are parties to the Bajaj family settlement agreement, which the plaintiffs are not seeking to bring on record. Any order passed on the Bajaj family settlement agreement will certainly affect those parties to the Bajaj family settlement agreement who are not defendants to the suit. This would be the position even though the plaintiffs are seeking only to set aside that portion of the family settlement agreement which is directly related to the 3,46,96,250 equity shares in BHL that defendant no.1 sold to defendant no.6.

11 Mr. Dwarkadas, senior counsel for the defendant nos. 1,3,4 and 6 relied upon Section 31 of the Specific Relief Act and also submitted that any person who has reasonable apprehension that if an instrument is left outstanding it may cause him serious injury, the court may, in his discretion, order it to be delivered up and cancelled

2. 2015 SCC Online P&H 3549
3. 1959 ILR (Madras) 929

but for that he has to make out a case and in this case no case has been made out and therefore, the amendment should not be permitted.

12 The issue as to whether an instrument, if left outstanding, may cause injury or not goes beyond the scope of Order 6 Rule 17. It is settled law that while considering an amendment application courts do not consider the merits of the proposed amendment sought. Courts only decide whether the amendment proposed is necessary to decide the real controversy between the parties or imperative for proper and effective adjudication of the case. If it is so, the amendment will be allowed and if it is not, the amendment will be refused.

13 Mr. Kamat, counsel for the plaintiffs relied upon the judgment of the Apex Court in the matter of ***Rajesh Kumar Aggarwal and Ors. vs. K.K. Modi and Ors.***[4] to submit that if it was permissible for the plaintiffs to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

14 This is a well settled proposition but it is subject to the basic test, i.e., whether such an amendment is necessary to decide the

4. 2006 (4) SCC 385

real dispute between the parties and whether the prayers as proposed to be introduced is required to be decided for the plaintiffs to get their main relief – defendant no.6 should return 3,46,96,250 equity shares of BHL to defendant no.1 or pay damages. In my view, the answer is no.

15 Therefore, in my view, the entire proposed amendments are not necessary for the purpose of determining the real questions in controversy between the parties. I am inclined to allow only such part of the proposed amendments which are narration of facts.

16 Paragraphs 5.4 to 5.7 that are sought to be introduced being narration, the plaint to that extent can be permitted to be amended and hence, this chamber summons to that extent is allowed. I have bracketed in the Schedule to the chamber summons, the portion that is permitted. The proposed amendments sought to be introduced in paragraphs 5.9, 5.10, 5.11 and the contents of the entire paragraphs 2 and 3 of the proposed amendments are not allowed.

17 The chamber summons accordingly stands disposed.

18 Amendment to be carried out and amended plaint to be served upon defendants within four weeks from today. Additional

written statement to be filed and copy served within two weeks of receiving the copy of the amended plaint.

19 Suit be placed for directions/issues on 5^{th} December, 2016.

(K.R.SHRIRAM,J)