

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

**APPEAL NO. 103 OF 2016
IN
NOTICE OF MOTION NO. 1543 OF 2014
IN
SUIT NO. 2411 OF 2009**

WITH

**APPEAL NO. 108 OF 2016
IN
CHAMBER SUMMONS NO. 1257 OF 2015
IN
CHAMBER SUMMONS NO. 1129 OF 2014
IN
SUIT NO. 2411 OF 2009**

M/s. Shilpa Shares and Securities & Ors.	...Appellants
<i>Versus</i>	
The National Cooperative Bank Limited & Ors.	...Respondents

Mr. Bharat Merchant, for the Appellants.

Mrs. Aruna Pathak, i/b M/s. S. Pathak & Co., for the Respondents No. 1 to 3.

Mr. R. Shirsikar, for the Respondent No. 6 & 7.

Mr. V.P. Sawant, a/w Mrs. N.R. Patankar, for the Respondent No. 8.

Mr. Joel Carlos, for the Respondents No. 9 and 10.

**CORAM : A.S. OKA &
A.A. SAYED, JJ.
DATE : 20th June 2016**

PC. :

1. Both these Appeals are preferred by the original Plaintiffs. Chamber Summons No. 1129 of 2014 was taken out by the Appellants for amendment of the Plaint. The said Chamber Summons was filed for amendment of the Plaint after framing of Issues and just before the Affidavit in lieu of Examination-in-Chief and affidavit of documents were filed by the Appellants. By order dated 14th August 2015, the said Chamber Summons was disposed of. The Chamber Summons was for drastic amendment in the Plaint of impleading 22 additional parties and incorporating several additional prayers. The Plaint as its originally stands contains a prayer for damages. The learned Single Judge, by the said order, permitted amendment to the extent of enhancement of the amount of damages. However, rest of the prayers were rejected.

2. The Plaint was originally filed against two Defendants. The 1st Defendant is the National Cooperative Bank Limited and the 2nd Defendant is Ex-Chairman and Director of the said Bank. The contention raised in the Plaint is that recovery proceedings initiated by the 1st Defendant Bank were illegal. The only prayer in the Plaint as originally filed was for damages in the sum of Rs. 11,46,11,343/-

against the 1st Defendant Bank for the negligence, bias, malafide, vindictive and non banking/non commercial considerations/actions by the 1st Defendant Bank.

3. Chamber Summons No. 1257 of 2015 was taken out by the present Appellants. In the said Chamber Summons, the prayer was for recall of the order dated 14th August 2015. There is a detailed Affidavit in Support filed by the 2nd Appellant/2nd Plaintiff. In the Affidavit in Support, he has recorded what allegedly transpired in the Court at the time of hearing of the Chamber Summons No.1129 of 2014 and what were the submissions made by 2nd Appellant. The learned Single Judge by the impugned order dated 27th October 2015 rejected the said Chamber Summons No. 1257 of 2015 on the ground that the same was not maintainable.

4. Notice of Motion 1543 of 2014 was taken out by the present Appellant for grant of interim relief against the parties shown as the proposed Defendants in Chamber Summons No. 1129 of 2014. By order dated 27th October 2015. The learned Single Judge dismissed the said Notice of Motion.

5. Appeal No. 103 of 2016 has been taken out by the Appellants for challenging the order dated 27th October 2015 by

which the Chamber Summons No. 1257 of 2015 for recall of order dated 14th August 2015 passed in Chamber Summons No. 1129 of 2014 was dismissed. Appeal No. 108 of 2015 is directed against both the said orders dated 27th October 2015 and 14th August 2015.

6. Learned Counsel appearing for the Appellants has taken us through the proposed amendment sought to be incorporated by way of Chamber Summons No. 1129 of 2014 and the reasons recorded by the learned Single Judge. The submission is that the cause of action which arose against 22 Defendants proposed to be added has been set out in the original Chamber Summons No. 1129 of 2014. He pointed out that 22 parties sought to be added were necessary and proper parties especially in the light of prayers (b2) to (b7) which were sought to be added by way of amendment. He submitted that the Chamber Summons was taken out before actual commencement of the hearing and therefore, entire amendment ought to have been allowed.

7. We have considered the submissions. We have already narrated earlier as to what is the substantive prayer in the Suit as originally filed. The allegations in the Plaint as originally filed are against the 1st Defendant National Cooperative Bank Limited of the

various alleged illegalities associated in execution of the recovery certificate obtained by the Bank under Section 101 of the Maharashtra Cooperative Societies Act, 1960. We must note here that from the perusal of the order dated 14th August 2015, it appears that the 2nd Appellant Mr. Hemant R. Sapale appeared in person and argued the Chamber Summons. The learned Single Judge has specifically recorded in paragraph 16 of the order dated 14th August 2015 that the Chamber Summons was argued by the 2nd Appellant/2nd Plaintiff. Even in paragraph 25, learned Single Judge has noted that the 2nd Plaintiff personally appeared in the Court and argued the Chamber Summons.

8. In his Affidavit in Support of Chamber Summons No. 1257 of 2015 filed for recall of the order dated 14th August 2015, it is stated by the 2nd Appellant that appeared in person at the time of hearing of the Chamber Summons No. 1129 of 2014 before the learned Single Judge. In paragraphs 3 and 4 of the Affidavit in Support he has set out what was argued by him. In paragraph 5, he has noted the queries made by the learned Single Judge.

9. Therefore, the order dated 14th August 2015 cannot be recalled on the ground that without hearing the Appellants/original

Plaintiffs, the Chamber Summons was disposed of.

10. We have perused the contents of the proposed amendment in Chamber Summons No. 1129 of 2014. In addition to the aforesaid Bank and its Director who were parties to the Suit filed by the Appellants, the prayer was for impleading 22 additional parties which include the General Manager of Reserve Bank of India, the Reliance Infrastructure Limited, Officers of the Mumbai Municipal Corporation, the Principal of the Sardar Patel College of Engineering at Mumbai, various individuals and a Company by one name Barindra Overseas Private Limited. The Appellants apart from seeking amendment for incorporating a prayer for damages of Rs. 33,81,77,811/- instead of the original claim of Rs. 11,46,11,343/-, prayed for incorporating a relief of decree of possession in respect of building Parvati Niwas, relief regarding furnishing the information regarding the electrical connection and consumption bills of the property Parvati Niwas, for permitting carrying out of repairs to the said building, for taking action under various provisions of the Mumbai Municipal Corporation Act, 1888 and certain prayers for seeking enquiry against the Defendants by the Mumbai Municipal Corporation Vigilance, Anti Corruption Bureau and Central Vigilance

Commission.

11. The learned Single Judge allowed amendment for enhancement of claim for damages. Considering the frame of original Suit, it is not necessary to record a detailed reasons for agreeing with the learned Single Judge when she declined to allow impleadment of 22 additional Defendants and for incorporation of diverse substantive reliefs. We concur with the reasons recorded by the learned Single Judge for rejecting part of the amendment.

12. We are not deciding the issue of maintainability of an Appeal for challenging an order by which amendment was partly allowed. Suffice to say that even on merits, the learned Single Judge was fully justified in rejecting the Chamber Summons for amendment except for the prayer for enhancement of quantum of damages.

13. By order dated 14th August 2015 the Chamber Summons taken out by the Appellants was decided on merits. Hence, learned Single Judge was justified in rejecting the Chamber Summons No. 1257 of 2015 for recall of order dated 14th August 2015. There is no reason to interfere with the order of dismissal of Notice of Motion wherein the prayer for interim relief was against the 22 proposed Defendants whose impleadment was not permitted.

14. We must note here that the learned Counsel for the Appellants states that ground (e) in Appeal No. 108 of 2016 is not pressed by the Appellants. We accept the statement.

15. We find no merit in both the Appeals and the same are dismissed.

[A.A. SAYED, J.]

[A.S. OKA, J.]