

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

**CHAMBER SUMMONS NO.94 OF 2017
IN
COMMERCIAL SUIT NO.119 OF 2014**

Urban Infrastructure Venture Capital Ltd.)....Plaintiffs

V/s.

Neelkanth Soham Developers Pvt. Ltd & Ors.)....Defendants

Dr.V.V.Tulzapurkar & Mr.Navroz Seervai, senior Advocates a/w Mr.Firdosh Pooniwala and Mr.Arif Doctor i/by Junnarkar & Associates for plaintiffs.

Mr.Chirag Balsara a/w Mr.Parimal K.Shroff, Mr.D.V.Deokar and Mr.Sachin Pandey i/by M/s.Parimal K.Shroff & Co. for defendant no.1.

Mr.J.S.Kini i/by Suresh Dubey for defendant nos.2, 4, 5 to 7.

**CORAM : K.R.SHRIRAM,J
DATE : 7.8.2017**

P.C.:-

1 The plaintiffs seek to amend the plaint as well as the Summons for Judgment as per the schedule annexed to the Chamber summons.

2 The plaintiffs have filed the suit claiming sum of Rs.28,77,43,597/- to be the sum due as on 1.4.2014 together with further interest on the principal amount of Rs.14,84,00,000/- @ 24%

p.a. from the date of filing of the suit till payment and/or realization as per the particulars of claim being Exhibit-P to the plaint. Exhibit-P-particulars of claim reads as under :-

"Particulars of Claim"

1. Principal amount lent and advanced : Rs.14,84,00,000/-
By the plaintiff to the Defendant No.1
2. Interest on principal amount at 15% : Rs. 2,16,70,361/-
p.a. upto 7th April 2011
3. Interest on principal amount at 18% : Rs.11,76,73,236/-
p.a. from 8th April 2011 till the date
Of filing of suit

Total -----
Rs.28,77,43,597/-

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4. Further interest on principal amount of Rs.14,84,000/- at 24%
p.a. from the date of filing of the suit till payment and/or
realization."

3 The plaintiffs, as per the proposed amendment, primarily seek to amend the interest mentioned at serial no.4 of particulars of claim and consequential amendment to the plaint and Summons for Judgment with the following :-

"and further interest from the date of filing of the Suit till payment and/or realisation at the rate of 15% per annum with quarterly rests or at such other rate and computed in such manner as the Hon'ble Court deems fit and proper on Rs.26,41,27,905/- (Rupees Twenty Six Crores Forty One Lakhs Twenty Seven Thousand Nine Hundred Five only), which is the amount of Rs.14,84,00,000/- together with interest at the rate of 15% per annum with quarterly rests from the date of disbursement till the date of filing of the suit."

4 It is the case of the plaintiffs that there has been an inadvertent error in claiming interest by the plaintiffs in the suit and the plaintiffs inadvertently have claimed further interest after the date of filing of the suit on the amount of Rs.14,84,00,000/- instead of such further interest being claimed on the aggregate unpaid amount of Rs.14,84,00,000 and interest due as on the date of filing of the suit. According to the plaintiffs, correctly, further interest ought to be calculated @ 15% p.a. with quarter rests with such rates and in such manner as this Court may deem fit and proper on the unpaid amount of Rs.14,84,00,000/- together with interest @ 15% p.a. calculated with quarter rests from the date of disbursement till the date of filing of the suit. According to the plaintiffs unpaid interest is merged with unpaid principal amount and interest from the date of filing of the suit is the total principal amount due to the plaintiffs as on the date of filing of the suit.

5 The defendants are opposing the Chamber summons on the ground that the defendants had already filed an affidavit in reply to the summons for judgment in which the defendants had raised various issues which would be considered as triable issues by the Court and unconditional leave to defend could have been granted. According to Mr.Balsara appearing for defendant no.1, the plaintiffs are seeking amendment after considering the defence put forth by

the defendants to the Summons for Judgment and therefore, amendment application should not be permitted.

6 In my view, the only factors which require to be considered as settled in various authorities, basically are whether the proposed amendment changes the nature and character of the suit or whether there is any malafides in the amendment application or whether amendment is required for the effective adjudication of the suit and whether the amendment is barred by limitation.

7 I am satisfied after hearing the counsel and also considering the affidavit in support and reply that the proposed amendment does not change the nature and character of the suit. What is being claimed by this amendment is that the interest pendente lite is only required to be tweaked because there was an inadvertent error in the claim of the interest. I cannot also see any malafides on the part of the plaintiffs and certainly amendment is required for effective adjudication of the suit.

8 Coming to the issue of limitation, the plaint has been lodged on 3.4.2014 whereas the Chamber summons has been lodged on 6.1.2017. Therefore, even if I consider the 3 years limitation, it will still be within limitation.

9 In the circumstances, I am inclined to allow the Chamber summons and the same is allowed in terms of prayer clause-(a) and accordingly disposed.

10 Amendment to be carried out and amended plaint and summons for judgment to be served within 2 weeks from today. Further affidavit in reply to the summons for judgment to be filed and copy served within 2 weeks thereafter. Defendants may raise all points that they are entitled to in law in the additional affidavit in reply to the summons for judgment. Rejoinder if any, to be filed within one week of receiving the additional reply.

11 Summons for Judgment be listed for hearing on 18.9.2017.

(K.R.SHRIRAM,J)