

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

**CHAMBER SUMMONS NO.1283 OF 2016
IN
SUIT NO.832 OF 2013**

Anirudh S.Tapuriah & Ors.Applicants

IN THE MATTER BETWEEN :

Anirudh S.Tapuriah & Ors.Plaintiffs

V/s.

Sushil Tapuriah & Ors.Defendants

Mr.Kirti Munshi a/w Mr.Ish Jain i/by Kiran Jain & Co. for
plaintiffs/applicants.

Mr.Shashank N.Fadia for the defendant no.9.

**CORAM : K.R.SHRIRAM,J
DATE : 2.2.2017**

P.C.:-

1 This chamber summons is taken out for leave to amend the plaint. The suit primarily is for partition. One of the defendant i.e., defendant no.9 is a bank. It is stated in the affidavit in support that certain facts have come to light subsequently which requires to be incorporated in the plaint. It is also stated that certain facts already mentioned in the plaint requires further elaboration because the plaintiffs got details after filing the plaint.

2 I have considered the amendment sought. It does not change the cause of action or the nature and circumstances of the

case. There is one prayer which the plaintiffs want to be added which again prima facie is not hit by limitation. Considering the proposed amendment, I cannot even conclude that the application is mala fide.

3 Order 6 Rule 17 of the Code of Civil Procedure reads as under :-

***“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 :*

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.

4 Barring defendant no.9, nobody else has even filed written statement. Mr.Munshi for the plaintiffs/applicants on instructions states that not only the writ of summons and the plaint but even copy of this chamber summons have been served on all the defendants. Mr.Munshi states that within one week from today the plaintiffs will file affidavit of service. Statement accepted.

5 The Apex court in ¹***M/s.Revajeetu Builders & Developers V/s. M/s.Narayanaswamy & Sons.*** in paragraph no.63

1 (2009) 10 SCC 84

has laid down the factors to be considered while hearing an application for leave to amend, which read as under :-

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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 im-perative 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.

6 Since I am satisfied that there is no malafide, the nature and circumstances of the case does not change and the amendment sought cannot be hit by limitation, I am inclined to allow the chamber summons in terms of prayer clause-(a).

7 Chamber summons accordingly is allowed in terms of prayer clause-(a). Amendment to be carried out and amended plaint to be served within 3 weeks from today.

8 Mr.Fadia for the defendant no.9 presses for cost. Considering the nature and circumstances of the case, cost to be costs in the suit.

(K.R.SHRIRAM,J)