

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

**CHAMBER SUMMONS NO. 997 OF 2016
IN
SUIT NO. 1042 OF 2007**

M/s.Villayati Ram Mital	...Plaintiff/Applicant
vs.	
Shivshahi Punarvasan Prakaalpa Ltd.	...Defendant

Mr.Chaitanya Bhandarkar for Applicant/Plaintiff.
Mr.Snehal Shah with Mikhail Behl I/b. Kanga & Co. for Defendant.

CORAM : S.C. GUPTE, J.

9 JUNE 2017

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons seeks an amendment of the plaint in accordance with the schedule annexed to the chamber summons. According to the Plaintiff / Applicant, the amendments relate to clarification and supplying of better particulars in respect of various averments already made in the plaint.

3 Learned Counsel for the Defendant opposes the chamber summons. Learned Counsel submits that the trial has already commenced and there is no case made out in the affidavit in support of the chamber summons that in spite of due diligence, the Plaintiff could not raise the matter at any stage before commencement of the trial. Learned Counsel also objects to prayer (a-1) being added in the prayer clause of the suit. Learned Counsel submits that such a prayer would be clearly beyond limitation, the suit having been filed claiming damages for breach of contract in the year

2007 and the amendments now sought to be made in 2017.

4 The Plaintiff submits that the averments are made on the basis of documents in relation to the contract, which were not traceable on the record of the staff as the old staff of the Plaintiff, who was handling the matter, had left the services of the Plaintiff before filing of the suit and as a result, various vital documents, which have only been recently traced, could not be handed over to the Plaintiff's Advocates at the time of drafting of the plaint. It is submitted that the averments and material sought to be introduced by way of present amendment of plaint are necessary to determine real controversy between the parties.

5 If one has regard to the schedule of amendment, most of the amendments are by way of clarifying, or submitting better particulars in respect of, various averments already to be found in the suit. There does not appear to be any attempt to alter the cause of action as a result of these amendments. Non-availability of the documents earlier when the plaint was drafted by the Plaintiff's Advocate appears to be a sufficient ground in support of the Plaintiff's case that he could not have raised the matter prior to the commencement of trial. Besides, in this case, though the Plaintiff has filed his affidavit of evidence, the cross-examination has not commenced as yet. No serious prejudice is likely to be caused to the Defendant as a result of these amendments being allowed. The Defendant, of course, will have to file an additional written statement and also will have to await filing of the supplementary affidavit of evidence on the part of the Plaintiff before the trial could really commence. The Defendant can be relieved of the rigors of this inconvenience by appropriate order for payment of costs.

6 As far as the Defendant's objection to the introduction of the new prayer is concerned, the apprehensions of the Plaintiff can be allayed by providing that the relief now sought to be introduced shall not relate back to the date of the filing of the suit and shall be treated as having been claimed as at the time of filing of the chamber summons. Learned Counsel for the Plaintiff has no objection to the date of claim being treated as the date of the filing of the chamber summons.

7 The chamber summons is, accordingly, allowed in terms of prayer clauses (a) and (b). Amendment to be carried out within two weeks from today. The Plaintiff shall pay costs of the chamber summons quantified at Rs.50,000/-. Amended plaint to be served on the Defendant within a week of carrying out the amendment. The Defendant is at liberty to file additional written statement dealing with the amended plaint within a period of four weeks thereafter. The suit to appear on board after eight weeks for directions. The Plaintiff is permitted to correct the figure appearing in prayer clause (a). That amendment to be carried out forthwith.

8 The Plaintiff has taken out a notice of motion under Order 12 Rule 6 of the CPC for a partial decree on admission. Let that motion, i.e. Notice of Motion No.1687 of 2016, be shown on board on 11 July 2017.

(S.C. Gupte, J.)