

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

**CHAMBER SUMMONS NO.457 OF 2016
IN
SUIT NO.658 OF 2014**

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders	Court's or Judge's orders
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Mr.Viral Shukla i/b M/s.Shukla and Associates for the plaintiff

Mr.Sandeep Dadwal a/w Mr.Prakash Mahadik for the defendant

**CORAM : K. K. TATED, J.
DATE : NOVEMBER 21, 2017**

P.C.:

1. Heard the learned counsel for the parties.
2. By this Chamber Summons, applicant plaintiff is seeking permission to carry out amendment in the plaint and also place on record certain documents. It is the case of the plaintiff that initially they filed Suit on 20.6.2014 for an order and decree against the defendant to pay to the plaintiff sum of Rs.1,85,57,670.88 as per particulars of claim marked as Exhibit-'K' to the plaint.
3. The learned Counsel for the applicant submits that in the present proceeding, defendant

preferred Notice of Motion No.455 of 2015 for referring the matter to the International Court Arbitration in Reggio Emilia in terms of Arbitration Agreement dated 16.12.2000 Exhibit-'A' to the plaint. On the basis of affidavit in support of Notice of Motion, plaintiff preferred present Chamber Summons for carrying out amendment in the plaint.

4. The learned Counsel for the applicant submits that from defendants Notice of Motion No.455 of 2015 they learnt that it is necessary to place on record the subsequent agreement dated 28.12.2010 between the parties. He submits that initially plaintiff filed the Suit on the basis of Agreement dated 18.12.2000 between the parties. He submits that after expiry of the period of that agreement, plaintiff and defendant entered into new agreement dated 28.12.2010.

5. The learned Counsel for the plaintiff submits that paragraph 13 of the plaint is also required to be deleted. He submits that the present Suit is filed by Sangauss India and not Sangauss Traders. He submits that entire paragraph 13 of the plaint is based mainly on minutes of meeting held on 11.2.2012. He submits that in view of these facts, applicant plaintiff may be permitted to delete paragraph 13 of the plaint also along with other amendments. He submits that nature of the Suit is not going to change if present Chamber Summons

is allowed to carry out amendment in the plaint. He further submits that till today, defendants have not filed their written statement in the Suit. On the basis of these submissions, the learned Counsel for the applicant submits that in the interest of Justice, this Hon'ble Court be pleased to allow the applicant to carry out amendment in plaint as per Schedule 'A' to the Chamber Summons at page 3.

6. On the other hand, the learned counsel for the defendant vehemently opposed the present Chamber Summons. He submits that by this Chamber Summons, applicant plaintiff wants to bring new facts on record. He submits that initially the plaintiff filed a Suit on the basis of agreement dated 18.12.2000. He submits that now by way of amendment, plaintiff want to bring on record the agreement dated 28.12.2010 to show that they have to recover the entire amount in view of the subsequent agreement only. He further submits that in agreement dated 18.12.2000, it is specifically stated for international arbitration. He submits that on the basis of the said specific arbitration agreement dated 18.12.2000 for appointment invoking international arbitration, they preferred Notice of Motion No.34 of 2016 and same is pending with following reliefs:

“(a) That this Hon'ble Court be please to refer the parties to the present suit to Arbitration to be held in accordance with the Rules and Procedure of the International Court of

Arbitration in Reggio Emilia in terms of Arbitration Agreement dated 16.12.2000 (Exhibit-C).

(b) For costs of this Notice of Motion.

(c) For such other and further reliefs as this Hon'ble Court may deem fit and proper under the facts and circumstances of this case.”

7. The learned Counsel for the defendant further submits that if plaintiff is permitted to delete the paragraph 13 of the plaint then nothing will survive in the Notice of Motion No.34 of 2016. Hence, in the interest of Justice, this Hon'ble Court be pleased to dismiss the present Notice of Motion.

8. I have heard both the sides at length.

9. It is to be noted that by way of this amendment, plaintiff wants to bring on record additional document i.e. agreement dated 28.12.2010 and averments to that effect in the plaint. It is the case of the plaintiff that they have to recover sum of Rs.1,85,57,670.88/- on the basis of agreement dated 28.12.2010 also. It is to be noted that plaintiff has filed the present Suit on 20.6.2014. The contention of applicant that it remained on their part at the time of filing the Suit to place on record the agreement dated 28.12.2010 cannot be rejected.

10. It is to be noted that by this amendment, plaintiff wants to delete paragraph 13 of the plaint which is mainly based on Exhibit-'C' i.e. Minutes of Meeting held on 11.2.2012 between defendant and

one Sangauss Traders. It is to be noted that on the basis of paragraph 13 only the defendant's Notice of Motion No.34 of 2016 is pending for hearing and final disposal on its own merits. In any case, the plaintiff has made reference about the said transaction in paragraph 13 of the plaint between plaintiff and defendant. Hence, there is no question of allowing the plaintiff to delete paragraph 13 of the plaint.

11. On the basis of these observations and the submission made by both the parties, I am satisfied that plaintiff has made out a case for partly allowing the Chamber Summons to carry out amendment. Hence, following order is passed:

A) Chamber Summons is allowed in terms of prayer clause (a) except paragraph 3 of Schedule 'A' which reads thus:

“3. Delete paragraph 13 of the plaint.”

B) Amendment be carried out within four weeks from today, failing which Chamber Summons shall stand dismissed without referring back to the court.

C) If amendment is carried out within stipulated time as stated hereinabove applicant plaintiff to serve amended copy of plaint on defendants.

D) Chamber Summons stands disposed of accordingly.

At this stage, the learned Counsel for the defendant seeks stay of this order.

It is to be noted that this court has granted four weeks time to the plaintiff to carry out amendment. Hence, there is no question of granting any stay.

(K.K.TATED, J.)