

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

**CHAMBER SUMMONS NO.281 OF 2017
IN
SUIT NO.174 OF 2014**

Uday Narendra Shah

....Plaintiff

V/s.

Narendra Amritlal Shah
& Suraj Narendra Shah & Ors.

)
)....Defendants

Ms.Megha Chandra a/w Ms.Jinal Gogri and Ms.Smruti Kanade i/by
Negandhi Shah & Himayatullah for the plaintiff/applicant.

Ms.Rehea Mehta i/by Gaurang R.Mehta for the defendant.

Ms.Shobha Pawar for the respondent.

**CORAM : K.R.SHRIRAM,J
DATE : 29.3.2017**

P.C.:-

1 This chamber summons is for leave to amend the plaint.

At the outset, it should be noted that even issues are yet to be framed. Order 6 Rule 17 of the Code of Civil Procedure reads as under :-

***"17. 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."

2 The Apex court in ¹M/s.Revajeetu Builders & Developers Vs. M/s. Narayanaswamy & Sons in paragraph-63 laid down the facts and circumstances to be considered for considering the application for leave to amend the plaint and the same reads 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.

3 It is stated in paragraph-3 of the affidavit in support that the proposed amendment has become necessary in view of the statements made in the written statement and the plaintiff was not

1. (2009) 10 SCC 84

aware about the same prior thereto. Ms.Mehta appearing for the defendant and Ms.Shobha Pawar for the respondent state that the plaintiff was already aware about the letter dated 19.12.2003 and the plaintiff should have moved for the amendment earlier. Ms.Mehta states that the amendment sought is barred by limitation.

4 Going through the pleadings, I am not inclined to come to a conclusion that the amendment being sought can ex-facie be said to be barred by limitation. The suit is for administration of the estate of the deceased who was the mother of the plaintiff and the wife of the defendant. It is a pure family fight and there are catena of judgments where, in family disputes, special equities are also to be considered. I also do not find that the proposed amendment changes the nature and character of the suit. I also do not find anything to say that the amendment proposed is malafide.

5 Considering the facts and circumstances of the case and keeping open the rights and contentions of the defendant and the respondent to be taken in the written statement, the Chamber summons is allowed in terms of prayer clause-(a).

Amendment to be carried out and amended plaint to be served within two weeks.

6 The defendant and the newly added defendant to file written statement/additional written statement within four weeks of receiving the amended plaint. Statement of Mr.Pawar appearing for the respondent that they waive service of the writ of summons is also noted.

(K.R.SHRIRAM,J)