

IN THE HIGH Court OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.387 OF 2015
IN
SUIT NO.1379 OF 2009

Rajesh Construction Co. Ltd. Applicant/
Plaintiff

In the matter between

Rajesh Construction Co. Ltd. Plaintiff

Vs.

Mehul Ravilal Dedhia & Ors. Defendants

And

M/s Amit Talati Builders & Promoters Respondents
Pvt. Ltd.

Mr. Rajesh Kachare i/by Tamhane & Co. for the applicant/plaintiff.

Mr. Durgesh Kulkarni i/by Lex Firmus for defendant no.1.

Mr. M.P. Vora i/by Pramodkumar & Co. for defendant nos. 3 and 4.

Ms. Ria Lulla i/by Vimadalal & Co. for defendant no. 5.

Coram : R.D. DHANUKA, J.

Date : 7th November, 2017

P.C. :

1 By this Chamber Summons, the plaintiff seeks to add
the respondent as the defendant no. 6 in the suit filed interalia

praying for specific performance of the agreement entered into between plaintiff and other defendants. Heard the learned counsel.

2 Learned counsel appearing for the applicant invited my attention to the affidavit-in-support to the Chamber Summons. It is submitted that his clients came to know about the agreement for joint Development Agreement entered into with original defendant nos. 1 to 3 and the proposed defendant on 24th February, 2015. After obtaining copy of the said agreement from the office of Sub-Registrar of Assurances. He submits that since defendant nos. 1 to 3 have created third party rights in favour of the proposed defendants in this suit, which was for specific performance, the proposed defendants would be the necessary party.

3 The learned counsel for the proposed defendant on the other hand submits that defendant nos.1 to 3 have given indemnity bond in favour of his client at the time of execution of the

development agreement. He submits that the applicant has not disclosed in the affidavit as to why he was required to obtain copy of the joint development agreement from the office of Registrar Assurances in the month of February, 2015. He submits that there was delay in filing of this application and thus no such relief shall be granted.

4 Learned counsel invited my attention to the averments made by the proposed defendant in the affidavit-in-reply and would submit that after the applicant's lis pendente with the office of Sub-Registrar was recorded, the proposed defendants have entered into the joint development agreement with original defendant nos. 1 to 3. He submits that presence of the respondent in the suit would be necessary for proper adjudication and for passing an effective decree by this court in this suit for specific performance.

5 A perusal of the affidavit-in-reply filed by the proposed defendant indicates that the proposed defendant was fully aware of

filing of lis pendente notice. The proposed defendant however entered into an agreement with defendant nos. 1 to 3 in respect of the suit property. Neither defendant nos. 1 to 3 nor proposed defendant gave any notice to the applicant before entering into such third party rights during the pendency of the suit. I am thus inclined to accept the plea of the applicant in the affidavit-in-support to the Chamber Summons that the applicant came to know about such joint development agreement dated 31st October, 2009 recently. The party would claim rights in the suit property through the parties in the suit who were parties to the agreement between them and the applicant would be proper party for the purpose of passing an effective decree and atleast proper adjudication of dispute. I, therefore pass following order.

ORDER

The Chamber Summons is made absolute in terms of prayer clauses (a) and (b). Amendments to be carried out within two weeks from today. Amended copy shall be served upon the

defendants including newly added defendants within one week from the date of carrying out amendments.

(**R.D. DHANUKA, J.**)