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

IN ITS COMMERCIAL DIVISION

CHAMBER SUMMONS NO. 86 OF 2017
IN
COMMERCIAL SUIT NO. 87 OF 2012

The State Trade Corporation of India Ltd. ..Applicant

In the matter of :

Standard Chartered Bank Ltd. & Anr. .. Plaintiffs
Vs.
ICICI Lombard General Insurance Company Ltd. .. Defendant

Mr.Kevic Setalwad, senior advocate a/w. Ms. Sneha Munj and Ms. Neha Karnik i/b Tejaswita Nalawade for plaintiffs/applicant.

Mr.Venkatesh Dhond, senior advocate a/w. Mr.Shyam Kapadia, Mr.Naval Sharma, Mr.Keanan Nagpurwala and Mr.Aditya Gupte i/b Tuli and Co. for defendant.

CORAM : K.R.SHRIRAM, J.
DATE : 9TH AUGUST 2017

P.C.

1 At the outset, Mr.Setalwad for applicant/plaintiffs seeks leave to amend the schedule. Leave to amend granted. Amendment to be carried out forthwith.

2 Applicant herein, plaintiff no.2, had earlier moved a chamber summons to be added as party to the plaint as co-plaintiff, which application

was allowed by an order pronounced on 10th August 2015. At that stage, applicant had prayed to direct plaintiff no.1 to amend the plaint to add applicant as plaintiff no.2 in the cause title and paragraph 1A describing applicant. Very minor consequential amendments were made to make *'plaintiff'* as *'plaintiffs', 'has'* as *'have' and 'is'* as *'are'* . No other amendments were made.

3 Plaintiffs have now realized that certain averments are required to be included in the plaint to explain how plaintiffs together are entitled to pursue this action. There were detailed averments in the affidavit in support of the earlier chamber summons. In the amendment proposed in the present chamber summons, applicant basically wants the earlier averments to be included. At the same time, applicant also wants to be called a party to whom the rights of plaintiff no.1 has been subrogated.

4 Brief background is as under :

Applicant operates, *inter-alia*, as an intermediary or a cannalising agent for sale and marketing of gold jewelery and to facilitate and promote its export with foreign buyers. Applicant is a Government of India Enterprise, operating under Union Ministry of Commerce and Industry.

5 Applicant had entered into an agreement with one Masumi Overseas Pvt. Ltd., whereby Masumi Overseas was to obtain export orders for gold jewelery from prospective buyers in the name of applicant and applicant would export the jewelery. Pursuant to this arrangement, documents would be raised upon applicant and applicant would get paid based on the bills raised. Pursuant to that arrangement, applicant approached plaintiff no.1 to discount invoices issued by applicant in favour of the foreign buyers and to pay 90% of the value invoiced to applicant following the discounting. Plaintiff no.1 agreed and executed a receivables purchase agreement dated 25th March 2008 with applicant. To cover the risk of the foreign buyers defaulting in payment for the goods supplied by applicant, applicant along with plaintiff no.1 approached defendant for an insurance cover. Defendants, pursuant to insurance policy dated 14th June 2008 agreed to insure the receivables of applicant/plaintiff no.1 from the foreign buyers. Subject to the terms and conditions of the policy, defendant agreed to indemnify the insured viz., applicant and plaintiff no.1 in the event the foreign buyers fail to remit the insured debt. Under the agreement between plaintiff no.1 and applicant, plaintiff no.1 had a right of recourse against applicant, inasmuch as, if the foreign buyers did not pay, plaintiff no.1 could look to applicant to return the money which plaintiff no.1 has paid by discounting the invoice. Under the insurance policy issued by defendant read with its amendments, it

is provided that plaintiff no.1 will have an insurable interest under the policy to the extent that plaintiff no.1 finances specific insured debts. Therefore, plaintiff no.1 will be entitled to claim under the policy only such amount which plaintiff no.1 has paid to applicant under the receivables discounting agreement.

6 Since some of the foreign buyers defaulted in making payment of their respective payments plaintiff no.1 lodged a claim with defendant under the insurance policy on 7th July 2010. Defendant rejected the claim on 23rd August 2010. This suit, therefore, came to be lodged on 9th October 2010. The claim in the suit is for a principal amount of Rs.33,27,95,654.51 with interest thereon at 12% p.a.

7 Before plaintiff no.1 filed the suit, plaintiff no.1 had, under its receivables purchase agreement dated 25th March 2008 also called upon applicant to pay the amount which is being claimed in the present suit. Applicant did not pay and hence, plaintiff no.1 filed an application under the Recovery of Debts Due to Banks and Financial Institutions Act. Though applicant initially opposed the claim made by plaintiff no.1 against applicant in Debt Recovery Tribunal, New Delhi, applicant and plaintiff no.1 filed consent terms on 6th September 2013. As per the consent terms, applicant

paid to plaintiff no.1 a sum of Rs.23,29,56,958.15. This constituted 70% of the principal amount. It was also agreed between applicant and plaintiff no.1 that upon receipt of the said sum of Rs.23,29,56,958.15, the suit filed by plaintiff no.1, being the present suit, will be prosecuted by applicant and applicant would be joined as co-plaintiff. It was also agreed that if applicant cannot be joined as co-plaintiff, plaintiff no.1 will give such authority to applicant as required, to prosecute the present suit by applicant in the name of plaintiff no.1. It was also agreed that the balance of 30% of the amount, if applicant succeeds by getting a decree in the present suit, shall be shared between plaintiff no.1 and applicant, whereby applicant will pay 30% of the principal amount aggregating to a sum of Rs.9,98,38,696.36 or 30% of the decretal amount, whichever is lower.

8 Applicant having paid that amount to plaintiff no.1, had taken out the earlier chamber summons, praying to be impleaded as co-plaintiff in this suit and now as plaintiff no.2 for leave to amend the plaint as per the schedule annexed to this chamber summons.

9 This is a summary suit and plaintiffs are yet to take out summons for judgment. Therefore, question of written statement filing at this stage also does not arise.

10 Shri Dhond, counsel for defendant strongly opposed the chamber summons on the ground that (a) the proposed amendment is changing the nature and character of the suit; (b) plaintiff no.2 earlier came on board as a co-insured and in the amendments now proposed, plaintiff no.2 claims to be subrogated to the rights of plaintiff no.1 which is not permissible as it changes the cause of action; and (c) the chamber summons is barred by limitation.

11 On all the three grounds of objection, I am not in agreement with Mr.Dhond. Applicant was joined subsequently as plaintiff no.2 pursuant to an application taken out by applicant. Naturally, as to how plaintiff no.2 is entitled to join and maintain this action with plaintiff no.1 has to be explained in the plaint. Yes, applicant, who is plaintiff no.2, could have sought this amendment when they moved the earlier chamber summons but did not. Mr.Dhond submitted that plaintiff no.2 earlier came to this Court saying that plaintiff no.2 is a co-insured and therefore entitled to maintain the suit along with plaintiff no.1. But from the amendments proposed, plaintiff no.2 is now stating that they having paid Rs.23,29,56,958.10 under the consent terms which was also the case earlier, has now been subrogated the rights of plaintiff no.1 and in such capacity, plaintiff no.2 is prosecuting the summary suit. Mr.Dhond states that therefore, the entire cause of action

has changed because first, plaintiff no.2 claimed that it is entitled to prosecute the suit as co-insured but now they are saying that they are prosecuting the suit in the capacity of a subrogee of plaintiff no.1.

12 It is true that in the earlier chamber summons, applicant did not say it is subrogated to the rights of plaintiff no.1, but still that does not change the cause of action against defendant. The cause of action against defendant remains the same, which is, plaintiffs are entitled to be paid for the loss under Insurance Policy issued by defendants because the loss was caused due to an insured risk.

13 So far as limitation is concerned, Mr.Dhond submitted that the chamber summons is dated 6th September 2013 and therefore, this chamber summons should have been taken out within three years. Mr.Dhond, however, did not explain under which provision of law that this chamber summons is time barred as it had to be taken out within three years. Therefore, this objection also cannot be accepted. It should also be noted that in the proposed amendment, applicant is not seeking any additional prayer to be added.

14 The stage we are in today, as stated earlier, is even the summons for

judgment has not been taken out. Whether the suit claim itself is barred by limitation or not can be raised in the application for leave to defend or in the reply to the summons for judgment.

15 When one considers the proposed amendment, it only explains how plaintiff no.2 has come on board. Since this is a pre-trial amendment and having concluded that it does not change the nature and character of the suit and having observed that the chamber summons is not barred by limitation, I am inclined to allow the chamber summons.

16 In the circumstances, the chamber summons is allowed in terms of prayer clause (a) and disposed accordingly.

17 Amendments to be carried out and the amended plaint to be served within two weeks from today. Within two weeks of serving the amended plaint, plaintiffs shall also take out summons for judgment and serve a copy thereof upon defendant.

18 Plaintiffs have to be put to terms because these amendments could have been introduced when they filed the earlier application. Plaintiff No.2 to pay a sum of Rs.1,00,000/- as costs of this chamber summons to

defendant. This amount to be paid within four weeks from today by way of cheque drawn in favour of the Advocate on record for defendant.

(K.R. SHRIRAM, J.)