

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

**CHAMBER SUMMONS NO.693 OF 2011
IN
APPEAL NO.523 OF 2009
IN
SUIT NO.1336 OF 1988**

Rizvi Builders Appellant
versus
Arun Subrao Prabhu & Others ... Respondents

**WITH
CHAMBER SUMMONS NO.1599 OF 2011
IN
APPEAL NO.523 OF 2009
IN
SUIT NO.1336 OF 1988**

Rizvi Builders Appellant
versus
Dr.Arun Prabhu & Others ... Respondents

.....

- Mr.Shailesh Shah, Senior Advocate i/b. Ravi Thankaian, for Applicant in Ch/s No.693/11 and for Respondents in Ch/s No.1599/11.
- Dr.Veerendra V. Tulzapurkar, Senior Advocate, a/w Karl Shroff, a/w Ms.Kyati Pandit, i/b. Dhru & Co., for Applicant in Ch/S No.1599/11 & for Respondent in Ch/s No.693/11.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 29th NOVEMBER, 2017.**

P.C. :

1. The above Chamber Summons No.1599/11 has been filed by the Original Plaintiffs seeking the amendment in the

plaint. In so far as description of the Defendant No.1 in the plaint is concerned, the said amendment is sought as per the schedule annexed to the Chamber Summons. In the schedule the Defendant No.1 is sought to be sued through its sole proprietor Mr.Akhtar Hasan Rizvi.

2. Insofar as the Chamber Summons No.693/11 is concerned, the said Chamber Summons has been filed by the Original Defendant/Appellant seeking leave to amend the Written Statement as per the schedule annexed to the Chamber Summons. One of the amendments sought is the introduction of the averments as regards the maintainability of the suit on the ground of misjoinder of parties inasmuch as description of the Defendant No.1 is described as a partnership firm in the plaint, as originally filed though the Defendant No.1 was a proprietorship concern of Mr.Akhtar Hasan Rizvi. Insofar as the Chamber Summons No.1599/11 is concerned, in effect the applicant i.e. the Original Plaintiff desires to correct the description of the Defendant No.1 in the plaint as originally filed from a partnership firm to a proprietorship concern.

3. In the said context, it is required to be noted that in terms of the Order 30 Rule 10 any person carrying on business in a name or style other than his own name, may be sued in such name or style as it were a firm name. Hence Order 30 Rule 10 permits the person being issued in the firm name. Hence the filing of the suit against the firm Rizvi Builders can be justified on the touchstone of the Order 30 Rule 10 of the CPC. Hence it cannot be said that the suit as filed was suffering from a serious infirmity or lacuna so as to result in its dismissal on the said ground. In our view, since the suit as originally filed, was maintainable having regard to Order 30 Rule 10 of CPC, the application for amendment sought by the Original Plaintiffs to correct the plaint in so far as to correct the description of the Defendant No.1 is concerned, is a mere formality and therefore can be allowed. Hence in so far as the Chamber Summons No.1599/11 is concerned, the same is allowed and made absolute in terms of prayer clause (a). The amendment to be carried out within one week from date. If the amendment is carried out, the Appeal be listed for final hearing.

4. Now coming to Chamber Summons No.693/11 is concerned, it is required to be noted that the suit summons which was served on the Defendant No.1 as a partnership firm, has been accepted by Mr.Akhtar Hasan Rizvi on behalf of the firm. It is also required to be noted that in the Written Statement filed on behalf of the Defendant No.1, the description of the Defendant No.1 as appears in paragraph No.1 of the plaint namely being a partnership firm, has been accepted as correct. Hence the suit proceeded on the said basis and the parties therefore very well knew as to what they were litigating at and with whom. In our view, therefore, the amendment sought on this point of time in the Written Statement, so as to raise an objection as regards the maintainability of the suit on the ground of mis-joinder/non-joinder, is too late in the day especially having regard to the fact that the Defendant No.1 has suffered a decree in the said suit. Hence no relief can be granted to the Applicant/Appellant in the said Chamber Summons No.693/11. The same is accordingly dismissed.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)