

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

**CHMBER SUMMONS NO. 832 OF 2017
WITH
NOTICE OF MOTION NO. 1029 OF 2010
IN
SUIT NO. 480 OF 2010**

Rajesh Khilnani ... Applicant.

In the matter between

Rajesh Khilnani ... Plaintiff.

V/s.

Zahid Hussein Khan & Anr ... Defendants.

Mr. Rajendra Pai a/w. Mr. Siddhant Joshi a/w. Mr. Akshay R. Pai
I/b. Neuty Thakkar for the Applicant/Plaintiff in CHS/832/2017.
Mr. Rakesh D. Komar a/w. Mr. Laxminarayan Shukla I/b. M/s. MKS
Legal Associates for Defendants.

**CORAM : K.K. TATED, J.
DATE : NOVEMBER 6, 2017**

P.C.:

1. Heard learned counsel for the parties.
2. By this chamber summons, the applicant-plaintiff is seeking permission to carry out amendment in the plaint by raising their claim towards mesne profit under Order XX Rule 12 of the Code of Civil Procedure, 1908.

3. The learned counsel Mr. Rajendara Pai for the applicant submits that they have filed Suit No. 480 of 2010 for peaceful possession of the Suit Flat No. 901 on the 09th Floor, B-wing, of the building known as Jawaharabad, situated at 09th Road, Professor Almeida Park, Bandra-(West), Mumbai-400 050. He submits that inadvertently it remained on their part to make appropriate averments and prayer for mesne profit under Order XX Rule 12 of the Code of Civil Procedure, 1908.

4. Hence, they have preferred the present chamber summons.

5. 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 the plaint as per Schedule for Amendment in Exhibit-A to the chamber summons. He submits that if the chamber summons is not allowed irreparable loss would be caused to the applicant-plaintiff.

6. The learned counsel appearing on behalf of the defendants vehemently opposed the present chamber summons. He submits that, by this chamber summons the applicant-plaintiff also wants to bring on record subsequent events i.e. order dated 25th March, 2010 in Notice of Motion No. 1029 of 2010. He submits that the said order is part and parcel of present proceedings therefore, there is no

question of allowing the applicant to carry out amendment.

7. The learned counsel for the defendants submits that in a similar way the applicant is seeking to bring on record the subsequent events by way of Para-8A i.e. payment of society charges upto 31st March, 2016 and also subsequent letter dated 15th June, 2017. He submits that, there is no question of allowing the applicant to bring the subsequent documents on record. Hence, there is no substance in present chamber summons and the same ought to be dismissed with costs.

8. I have heard both the sides at length. It is to be noted that the present suit is filed by the applicant-plaintiff for possession of Suit Flat No. 901. It is the case of applicant that defendants are in unlawful possession of the suit flat. If this Court comes to the conclusion that the plaintiff is entitled for possession of the suit flat, then they may claim mesne profit as per Order XX Rule 12 of the Code of Civil Procedure, 1908. There is no question to allow the applicant to bring on record subsequent events and/or documents.

9. In view of these facts, I am of the opinion that the applicant has made out a case for partly allowing the present chamber summons. Hence, the chamber summons is partly allowed as under:

A) Applicant is permitted to carry out amendment of plaint as per Schedule of Amendment Exhibit-A to the chamber summons excluding the bracketed portion in red ink. Applicant to carry out amendment as under:

“a) (8A) Admittedly the Defendants have been in possession of the suit property from 02/10/2009 when the Plaintiff was wrongfully dispossessed from the suit property, without following the due process of law. The Plaintiff had acquired the suit flat vide registered Agreement for sale dated 09/05/2007 from the Original builder/developer viz. M/s. Grace Property Development Corporation, who had put the Plaintiffs in possession thereof on 01/06/2009. It is demonstrable that the said Society has been issuing routine maintenance bills to the Plaintiff in respect of the suit flat being B-901. These maintenance charges are for actual use and occupation of the suit flat.”

“b) (8C) In these circumstances, the Defendants continues to be in unlawful and unauthorized possession of the suit flat since 02/10/2009 as demonstrated hereinbefore which is being used for residence by him along with his family members. The suit flat is in a prime locality, the Plaintiff could have easily earned high market rent except for the unlawful and unauthorized acts of the

Defendants. Hence it is respectfully submitted that it is just equitable and necessary that this Hon'ble Court undertake an inquiry under Order XX Rule 12 of the Code of Civil Procedure, 1908 and direct the Defendant to pay mesne profits from the date of the unlawful occupation of the suit flat by the Defendant viz. 02/10/2009 or from the date of the suit and future mesne profits from the date of the decree at the rate of 24% p.a. till payment or realization thereof.”

“c) (a.1) That this Hon'ble Court be pleased to undertake an inquiry under Order XX Rule 12 of the Code of Civil Procedure, 1908 and direct the Defendant to pay mesne profits from the date of the unlawful occupation of the suit flat by the Defendant viz. 02/10/2009 or from the date of the suit and future mesne profits from the date of the decree at the rate of 24% p.a. till payment or realization thereof.”

B) Amendment to be carried out within four weeks from today, failing which, this chamber summons shall stand dismissed without reference to the Court.

C) If amendment is carried out within stipulated time as stated above, the applicant to serve amended copy of the plaint on defendants immediately thereafter.

D) Defendants are permitted to file their additional written statement, if any, on the basis of amended copy of plaint within eight weeks from the date of service with copy to other side.

E) No order as to costs.

(K.K. TATED, J.)