

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.858 OF 2015
IN
SUIT NO.2541 OF 2012**

Manish Textiles Pvt. Ltd. & Anr.)....Plaintiffs/Applicants
V/s.

Atlas Exporters (paper division) & Ors.)....Defendants

Mr.R.R.Sharma a/w Mr.Surya Das for plaintiffs/Applicants.

Mr.Sanjay Kothari i/by A.V.Joshi for defendant nos.1, 2 & 4.

**CORAM : K.R.SHRIRAM,J
DATE : 11.7.2017**

P.C.:-

1 This Chamber summons is taken out for leave to amend the plaint as per the schedule annexed to the Chamber summons.

2 At the outset, it should be noted that even issues are yet to be settled.

3 It is settled law that the Courts are generally liberal in granting pre-trial amendment. The factors to be considered in an amendment application can be found in paragraph-63 of ¹M/s.Revajeetu Builders & Developers Vs. M/s. Narayanaswamy & Sons which reads as under :-

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE
DEALING WITH APPLICATIONS FOR AMENDMENTS:

1 (2009) 10 SCC 84

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.

4 Considering the proposed amendment, I do not find that it changes the nature and character of the suit. Even the additional prayer does not appear to be time barred.

5 At the same time, Mr.Kothari appearing for defendant nos.1, 2 & 4 states that the amendment application smacks of dishonesty. Mr.Kothari submits that the plaintiffs have approached with this application on the ground that they came to know that the earlier tenant Anjali Automobile had vacated the premises in the 3rd

week of April-2015 and is relying upon a letter dated 21.4.2015. According to him plaintiffs were already aware that Anjali Automobile had vacated and therefore statement made in the affidavit in support is incorrect.

Mr.Kothari also submitted that the defendants have filed written statement of which page nos.240 and 244 are copies of correspondence from which it is quite obvious that plaintiffs were aware that Anjali Automobile had vacated.

6 It is settled law that the Courts do not go into the merits of the amendment application at this stage. Exfacie, I am unable to come to a conclusion that there is any malafide in the amendment application.

7 Therefore, Chamber summons is allowed in terms of prayer clause-(a).

Plaint to be amended and copy of the amended plaint to be served within two weeks. Additional written statement to be filed within 2 weeks of receiving the amended plaint.

8 Suit be listed for issues on 22.8.2017.

(K.R.SHRIRAM,J)