

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

**CHAMBER SUMMONS NO. 772 OF 2017
IN
SUIT NO. 2320 OF 1996**

Mahaveer Meghawatt & Another ... Applicants

In the matter between

Ridiv Investments Private Ltd ... Plaintiff.

V/s.

Hemal V. Thakkar & Anr ... Defendants.

Ms. Snehal K. Shah a/w. Ms. Trivini Jani a/w. Adv. D.V. Deokar a/w. Ms. Priyanka Saraswat a/w. Ms. Jayalaxmi Gaud a/w. Ms. Jasmine Upadhye a/w. Ms. Ankita Roy I/b. Parimal Shroff & Co. for the Applicants.

Mr. Dinesh Purandare a/w. Mr. Akshay Puranik a/w. Mr. Naishadh Bhatia I/b. Crawford Bayley & Co. for Plaintiff in Suit No. 2320/1996.

CORAM : K.K. TATED, J.

DATE : NOVEMBER 6, 2017

P.C.:

1 Heard learned counsel for the parties.

2 The learned counsel Ms. Snehal K. Shah appearing on behalf of the applicants-third party submit that, they have already served both the respondents. Despite the service no one appeared on behalf of them when the matter was called out.

3 By this chamber summons, the applicants are seeking order directing plaintiff in Suit No. 2320 of 1996 to join them as defendant nos. 4 and 5.

4 The learned counsel Ms. Snehal K. Shah for the applicants submit that the plaintiff filed the Suit No. 2320 of 1996 for specific performance of Letter of Confirmation dated 02nd February, 1994. He submits that plaintiff averred in the plaint that defendant nos.1 and 2 agreed to sell Flat No. 1001 admeasuring 1724 sq. ft. carpet area in a building known as Juhi Jewel situated at 208 Walkeshwar Road, Mumbai-400 006 by the said Letter of Confirmation. He submits that the plaintiff also claimed damages as an alternate prayer. He submits that following are the prayers in Suit No. 2320 of 1996.

“(a) That the Defendants be ordered and decreed by this Hon'ble Court to execute a formal agreement for sale/letter of confirmation in terms of the said letter of confirmation being Exhibit “H” hereto;

(b) That the Defendants be ordered and decree by this Hon'ble Court to specifically perform and carry out their obligations under the said agreement as per the terms and conditions contained in the letter of confirmation (being Exhibit “H” hereto) and interalia further directed to:-

(i) construct the said building on the said plot of land;

(ii) to register the said society and to convey

the land the building in its favour;

(iii) to hand over to the Plaintiffs vacant and peaceful possession of a Flat admeasuring 2500 sq. ft on the 11th floor of the said building together with the amenities set out in the Exhibit F hereto;

(iv) to do all such other acts, matters and deeds as may be necessary in this behalf.

(c) In the alternative to prayers (a) to (b) above, and in the event of this Hon'ble court not granting the reliefs set out in prayers (a) and (b) above, the Defendants be ordered and decreed by this Hon'ble Court to pay to the Plaintiff -

(i) a sum of Rs.1,75,00,000/- together with interest thereon at the rate of 30% per annum as per the particulars of claim annexed hereto and marked Exhibit "Q" hereto;

(ii) a sum of Rs.4,75,00,000/- as and by way of damages together with further interest thereon at the rate of 30% per annum from the date of the suit till realisation as per the particulars of the claim annexed hereto and marked Exhibit "R" hereto.

(d) That pending the hearing and final disposal of the present suit, Court Receiver, High Court, Bombay or any other fit and proper person be appointed Receiver of the said property as set out in Exhibit "A" hereto with all powers under Order 40 Rule 1 of the Civil Procedure Code, 1908;

(e) That pending the hearing and final disposal of the present suit, the Defendants their servants and agents, be restrained by an order and injunction of this Hon'ble Court from in any manner disposing of, transferring, alienating, encumbering the said property or from parting with possession thereof in favour of any person other than the Plaintiff herein and other members of the proposed society;

(f) That pending the hearing and final disposal of the present suit, the Defendants be restrained by

an order and injunction of this Hon'ble Court from in any manner dealing with the said property otherwise then for the purpose of constructing the proposed building and in accordance with terms of the letter of Confirmation being Exhibit "H" hereto.

(g) that pending the hearing and final disposal of the suit:

(i) the Defendants be ordered and directed to disclose on with the accounts for the use of the said sum of Rs.1,75,00,000/- and the persons/businesses/parties to which the said sum of Rs.1,75,00,000/- has been diverted;

(ii) the said sum of money is Rs.1,75,00,000/- or such part as is available be attached in the hands of such persons/businesses/parties as aforesaid; and

(iii) that the assets of such persons/businesses/parties purchased from the said sum of Rs.1,75,00,000/- or otherwise, as are sufficient to cover the aforesaid amounts be attached by and under orders of this Hon'ble Court.

(h) Interim and Ad-interim reliefs in terms of prayer (d), (e), (f) & (g) above;

(i) For costs; and

(j) For such further and other reliefs as the nature and circumstances of the case may require.

5 The learned counsel for the applicants submits that in Suit No. 2320 of 1996, plaintiff preferred notice of motion for various reliefs including injunction and appointment of court receiver, in respect of the suit property. He submit that this Court by order dated 14th August, 1996 granted ad-interim injunction in terms of prayer clause

(b) and (c) of that notice of motion. He submits that by order dated 14th August, 1996, this Court recorded that if the defendants refund the sum of Rs. 2,47,50,000/- to the plaintiff within a period of six months, then ad-interim relief shall stand vacated. The operative part of the said order reads thus:

Order

“Ad-interim injunction in terms of prayer clause (b) and (c) of the Notice of Motion. In case the defendants refund the amounts as agreed to the plaintiff, the ad-interim injunction would stand vacated i.e. Rs. 2,47,50,000/- within a period of 6 months from today i.e. by 31/1/97.”

6 The learned counsel for the applicants submits that thereafter the defendants again moved to this Court for extension of time for payment and this Court by order dated 05th February, 1997 extended time to make the payment of Rs. 2,47,50,000/-. He submits that thereafter the said notice of motion appeared on board for hearing on 24th September, 1997. At that time this Court by order dated 24th September, 1997 granted further time to refund the said amount to the plaintiff and notice of motion was disposed of.

7 The learned counsel for the applicants submits that during that course, the suit property was acquired by the applicants by conveyance dated 31st January, 1995. As soon as they learnt about these facts, they filed Suit No. 1317 of 1998 against the plaintiff as

well as the defendants for various reliefs including to hold that the letter of confirmation dated 02nd February, 1994 as void ab-initio. In that suit the applicants made following prayers:

“(a) that this Hon'ble Court be pleased to declare that the document produced by Defendant No.1 a copy of which is annexed as EXHIBIT “M” hereto is void and non-est and creates no rights in favour of the Defendant No.1 in respect of the property described in Exhibit “A” hereto or proposed construction thereon of which the Plaintiffs are Chief Promoters and that the said so-called document is not binding on the Plaintiffs.

(b) that this Hon'ble Court be pleased to declare that so called transaction of lending of moneys by Defendant No.1 to Defendant Nos.2 and 3 of a sum of Rs.1,75,00,000/- as propounded by Defendant No.1 in their suit no.2320 of 1996 are not the transactions in respect of the said property described in Exhibit “A” hereto or proposed construction thereon, of which the Plaintiffs are Chief Promoters and it creates no rights in favour of Defendant No.1 or any obligations and liabilities against the Plaintiffs in any manner whatsoever.

(c) that this Hon'ble Court be pleased to declare that the Defendant No.1 has no right whatsoever in respect of the said property described in Exhibit “A” hereto or proposed construction thereon by the Plaintiff and Defendant Nos.2 and 3 have no more any right in respect thereof.

(d) that pending the hearing and final disposal of this suit the operation, implementation, enforcement of the orders dated 14th August 1996, 5th February 1997 and 24th September 1997 copies of which are annexed as Exhibit “J” “K” and “L” hereto and passed in Notice of Motion No.277 of 1997 in Suit No.2320 of 1996 be stayed.

(e) that pending the hearing and final disposal of the suit the Defendants be restrained by an order in Injunction of this Hon'ble Court from in any manner holding out as having any right in respect of the said property described in EXHIBIT "A" hereto or proposed construction thereon in any manner whatsoever.

(f) that pending the hearing and final disposal of the suit the Defendants by themselves or by their servants, agents and subordinates be restrained by an order and injunction of this Hon'ble Court from in any manner dealing with the said property or proposed construction thereon in any manner whatsoever.

(g) Ad-interim reliefs in terms of prayers (d) (e) and (f) hereto;

(h) For costs of this Suit;

(i) For such further and other reliefs as the nature and circumstances of the case may require."

8 The learned counsel for the applicants submits that applicants also preferred Notice of Motion No. 1102 of 1998 in their Suit No. 1317 of 1998 for various reliefs. He submits that at the time of hearing no one appeared on behalf of defendant nos. 1 and 2. He submits that the plaintiff was represented through his counsel. He submits that after hearing both the sides, this Court by order dated 16th April, 1998 directed the applicants to deposit a sum of Rs. 1,75,00,000/- with 9% interest from December 1994 in the registry of this Court and also vacated the orders dated 14th August, 1996, 05th February, 1997 and 24th September, 1997. He particularly relies

on para 4 and 5 of that order dated 16th April, 1998 which reads thus:

“4. I have considered the contentions and the submissions made by the learned counsel for the parties. It would be seen that the present defendant no.1 filed the suit before this Court against the present defendant nos. 2 and 3 which was registered as Suit No. 2320 of 1996 seeking specific performance of the agreement of sale with regard to flat on 10th floor and two parking spaces. In the said suit the present defendant no.1 (plaintiff therein) stated that it paid a sum of Rs. 1,75,00,000/- to the defendant nos. 2 and 3 herein (purchaser in interest of the present plaintiffs). In the said suit a notice of motion was taken out by the present 1st defendant (plaintiff therein) and by the order dated 14.8.1996 this Court ordered that in case the present defendant nos. 2 and 3 refund the amount of Rs. 2,47,50,000/- to the 1st defendant herein (plaintiff therein) the ad-interim injunction shall stand vacated otherwise ad-interim injunction in terms of prayer clause (b) and (c) of the notice of motion shall remain operative. The payment of Rs. 2,47,50,000/- was not made in time despite extension and ultimately by the order dated 24.9.1997 this Court ordered that if the defendant nos. 2 and 3 herein do not pay the amount of Rs. 2,47,50,000/- with interest at 18% per annum from 1.2.1997 till the date of payment on or before 30.3.1998, the Receiver shall take forcible possession of the property. In the present suit filed by the plaintiffs who are successors in the interest of defendants 2 and 3 herein it is prayed by them that the document produced by defendant no.1 herein (Exhibit “M” to the plaint) be declared void and nonest and it be declared that it creates no rights in favour of the defendant no.1 in respect of the property described in Exhibit “A” to the plaint or proposed construction thereon of which the plaintiffs are Chief Promoters. It is also prayed that it be declared that the amount of Rs. 1,75,00,000/- allegedly paid by the 1st defendant

herein to defendant nos. 2 and 3 was a transaction of lending of money between them and plaintiffs are not bound by any liability in respect thereof. In the notice of motion taken out by the plaintiffs it is prayed that the orders passed by this Court on 14.8.1996, 5.2.1997 and 24.9.1997 be stayed and defendants be restrained by an order and injunction from in any manner holding out as having any right in respect of the property described in Exhibit "A" to the plaint.

5. The facts which have come on record clearly demonstrate that the defendant nos. 2 and 3 herein by an agreement for sale dated 27.4.1994 purchased and acquired the land with building having structures at Walkeshwar details of which have been given in the plaint. By conveyance dated 31.1.1995 the sale of the said property was completed in favour of defendant nos. 2 and 3 herein as promoters of the said society. The present plaintiffs are the successors in interest and title of the said property. The present 1st defendant had filed a suit for specific performance of the transaction of sale of flat of 2500 sq. ft on 10th floor of the proposed building to be developed by defendant nos. 2 and 3 herein and two parking spaces and had paid the sum of Rs. 1,75,00,000/- towards consideration. In the suit filed by the 1st defendant registered as Suit No. 2320 of 1996 and the notice of motion taken out therein this Court directed the present defendant nos. 2 and 3 to make payment of Rs. 2,47,50,000/- to the 1st defendant within time granted by this Court and when the said amount was not deposited the Court Receiver has been directed to take forcible possession of the property in question. Prima facie, it appears that the present 1st defendant paid a sum of Rs. 1,75,00,000/- to the present defendant nos. 2 and 3 towards the flat and parking spaces. The defendant nos. 2 and 3 herein were directed to pay a sum of Rs. 2,47,50,000/- to the present defendants within particular time which has not been done. In the circumstances, and after taking into consideration the submissions of the learning counsel for the parties, in my view, the interest of justice would be sub-served by the following order:-

(i) The Plaintiffs deposit before this Court a sum of Rs. 1,75,00,000/- alongwith 9% interest from December 1994 till the deposit is made. This deposit is to be made by the Plaintiffs with the Prothonotary and Senior Master of this Court in no event later than 4 months from today.

(ii) Upon such deposit being made by the Plaintiffs, it would be open to the 1st defendant to withdraw the amount of Rs. 1 crore along with 9% interest thereon from December 1994 till the date of deposit made by the Plaintiffs.

(iii) The remaining amount shall be invested by the Prothonotary and Senior Master in fixed deposit with any nationalized Bank initially for a period of one year to be renewed thereafter every year if necessary.

(iv) In case the aforesaid amount is deposited by the Plaintiff in time, the orders passed by this Court on 14.8.1996, 5.2.1997 and 24.9.1997 shall stand vacated. In the event of Plaintiffs not depositing the said amount as directed above, the Court Receiver shall take action in accordance with the order passed by this Court on 24.9.1997.

(v) Till the amount is deposited by the Plaintiffs as directed above, the order of injunction passed by this Court on 14.8.1996 shall remain operative.

(vi) Upon deposit of the aforesaid amount, the Plaintiffs would be free to deal with the disputed property and development made thereon in the manner they like.”

9 Learned counsel for the applicants submit that, pursuant to the order dated 16th April, 1998, they deposited a sum of Rs. 1,75,00,000/- with interest in the registry of this Court. He further submits that the plaintiff has also withdrawn a sum of Rs. 1,33,00,000/- from the registry of this Court and the remaining

amount is lying in the registry.

10 The learned counsel for the applicants submits that this Court (Coram: A.S. Oka, J.) by order dated 17th November, 2009 directed to hear both the suits i.e. Suit No. 1317 of 1998 filed by the applicants and Suit No. 2320 of 1996 filed by the plaintiff- Ridiv Investments Private Limited to be heard together. He submits that both the suits appeared before this Court on 13th June, 2017 for framing issues. At that time, no one appeared on behalf of defendant nos. 1 and 2. This Court framed following issues in both the suits:-

Issues in Suit No. 2320 of 1996

- “1. Whether the Defendants prove that the reliefs claimed render the Suit not maintainable?*
- 2. Whether the Defendants prove that the Suit is bad for non-joinder of a necessary party?*
- 3. Whether the plaintiff proves that an agreement for the sale of the flat in the proposed building was concluded as between the Plaintiff and the Defendants?*
- 4. If the answer to (3) above is affirmative, whether the Plaintiff proves that the Defendants have performed/are in breach of their obligations under the agreement?*
- 5. If the answer to (3) above is affirmative, whether the Plaintiff proves that the agreement is liable to be specifically performed by the Defendants?*
- 6. If the answer to (5) above is not affirmative, whether the Plaintiff proves that it has suffered any loss as a result of the non-performance/breach, if any,*

of the agreement by the Defendants? If so, what is the amount of such loss?

7. Whether the amounts, if any, paid by the Plaintiff in furtherance of its obligations under the subject agreement are liable to be repaid? Whether the Plaintiff is entitled to any interest on such amount and, if so, at what rate and for what period?

8. What amounts, if any, are due and payable by the Defendants to the Plaintiff?

9. What decree? What orders?

Issues in Suit No. 1317 of 1998

1. Whether Plaintiffs prove that the Suit is within limitation?

2. Whether the Plaintiffs prove that the Suit and the reliefs claimed thereunder are maintainable?

3. Whether the Plaintiffs prove that on 16th January, 1996 the Defendant Nos. 2 and 3 resigned from the post of Chief Promoters of said society and they had no authority to act on behalf of Neelam Co-op. Housing Society ltd. (Proposed) ?

4. Whether the Plaintiffs prove their appointment as the Chief Promoter of the said proposed Society on 16th January, 1996?

5. Whether the Plaintiffs prove the execution of Declaration-cum-Indemnity and subsequent Supplemental Declaration by the Defendant Nos. 2 and 3 on 17th January, 1996 and on 26th February, 1996 respectively and whether these are admissible?

6. Whether the Plaintiffs prove that the purported Declaration-cum-Indemnity shows that Defendant Nos. 2 and 3 had not entered into agreements for the sale of flats?

7. Whether the Plaintiffs prove that the statements made in the Declaration-cum-Indemnity purportedly issued by Defendant Nos. 2 and 3 can absolve Defendant Nos. 2 and 3 and/or Neelam co-op. Housing Society (Proposed) from the obligations,

which arise under the agreement for sale of a flat, if any, entered into by and between Defendant No.1 and Defendant Nos. 2 and 3 (acting on behalf of Neelam Co-op Housing Society (Proposed)).

8. Whether the Plaintiffs prove execution of Power of Attorney dated 26th February, 1996 by Defendants Nos. 2 and 3 in favour of the Plaintiffs?

9. Whether the Plaintiffs prove that there was a concluded Agreement executed in respect of the purported claim made by the Defendant No. 1?

10. Whether the Plaintiffs prove that at the time of alleged Letter of Confirmation the Plans sanctioned in respect of development of the larger property were only for construction of a Building consisting of ground+seven upper storeys?

11. Whether Defendant No.1 prove that amounts from Defendant No.1 were paid to and/or utilized by the proposed Neelam Co-operative Housing Society?

12. Whether the Plaintiffs prove that the entire transaction of payment of Rs. 1,75,00,000/- by Defendant No. 1 to the accounts of Neelam Co-operative Housing Society and/or Thakker Developers is a finance transaction and totally unrelated and unconnected with the Suit property or sale of any Flat in the proposed Building?

13. Whether the Defendant No.1 proves that the purported Letter of Confirmation was for purchase of a Flat on the 10th floor of the proposed Building?

14. Whether the Defendant No.1 proves that the plaintiff is bound and liable to honour the obligations of the proposed Society under the said purported Letter of Confirmation?

15. Whether the Defendant No.1 proves that the payment of Rs. 1,75,00,000/- was towards the consideration for purchase of Flat on 10th floor in the proposed?

16. What decree? What orders?"

11 The learned counsel for the applicants submits that, thereafter while preparing the Evidence Affidavit and Compilation of Documents, the applicants were advised to move an Application in this suit for their impleadment as party defendants to protect their interest. He submits that from the conduct of the defendants it is clear that the defendants are neither attending the above suit diligently nor bringing the crucial facts on record. He submits that applicants have reason to believe that there is collusion between plaintiff and defendants. He submits that if any adverse order is passed in Suit No. 2320 of 1996, the same is going to affect the applicant's rights and also nothing will survive in the suit filed by them i.e. Suit No. 1317 of 1998.

12 The learned counsel for the applicants submits that in any case both the suits are in respect of the same property as described in letter of confirmation dated 02nd February, 1994. He further submits that challenge in both the suits are in respect of the same letter of confirmation i.e. dated 02nd February, 1994. Therefore, in the interest of justice, this Hon'ble Court be pleased to direct the plaintiffs to join the applicants as defendant nos. 3 and 4 in Suit No. 2320 of 1996. He submits that considering the pleadings in both the suits and the reliefs claimed, the applicants are necessary party in

Suit No. 2320 of 1996. Therefore, in the interest of justice, this Hon'ble Court be pleased to allow the present chamber summons with direction to the plaintiff to join the applicants as defendant nos.3 and 4 in Suit No. 2320 of 1996. He submits that, if the chamber summons is not allowed irreparable loss would be caused to the applicants.

13 On the other hand, the learned counsel appearing on behalf of the plaintiff vehemently opposed the present chamber summons. Plaintiffs filed their affidavit in reply dated 21st August, 2017.

14 The learned counsel for the plaintiff submits that, in view of Order VI Rule 17 of the Code of Civil Procedure, the present chamber summons itself is not maintainable and same is required to be dismissed with costs. He submits that in the present suit issues are framed on 13th June, 2017 that means the trial has already started. He submits that the Apex Court in the matter of “**Vidyabai Vs. Padmalatha**” reported in 2009 S.C. 1433 held that amendment cannot be allowed if a trial is commenced. Para 8 of the judgement which reads thus:

“8. From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfil the said pre-condition.

The question, therefore, which arises for consideration is as to whether the trial had

commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'."

He submits that in view of these facts, authority of the Apex Court in the matter of “**Vidyabai Vs. Padmalatha**”, chamber summons is required to be dismissed.

15 The learned counsel for the plaintiff submits that apart from specific performance of letter of confirmation dated 02nd February, 1994, the plaintiff is claiming damages to the tune of Rs. 4,75,00,000/- with interest at the rate of 30% p.a. from the date of filing of the suit. He further submits that they also claimed refund of sum of Rs. 1,75,00,000/- together with interest thereon at the rate of 30% p.a. from defendant nos. 1 and 2. He submits that if the applicant is made party defendant in the present suit, there is no question of passing a decree against them in terms of prayer clause (c) of the plaint. He submits that, the applicants have already filed Suit No. 1317 of 1998 for protecting their rights. Therefore, there is no question of allowing present chamber summons.

16 The learned counsel Mr. Dinesh Purandare for the plaintiff

further submits that, there is a delay of more than 20 years on the part of the applicants to prefer the present chamber summons. He submits that on account of delay and laches on the part of applicants, the present chamber summons ought to be dismissed with costs.

17 I have heard both the parties at length. It is to be noted that, after hearing both the sides, the point involved in the present chamber summons is “whether the applicants are necessary party in Suit No. 2320 of 1996.” It is to be noted that, on bare reading of the prayers in both the suits it can be seen that in both the suits challenge is in respect of the letter of confirmation dated 02nd February, 1994 in respect of Flat No. 1001. Apart from that, this Court by order dated 16th April, 1998 vacated the orders passed in plaintiff's notice of motion dated 14th August, 1996, 05th February, 1997 and 24th September, 1997 and directed the applicants to deposit a sum of Rs. 1,75,00,000/- with interest. In any case, if any decree is passed in the present suit it will affect the applicant's right, title and interest in respect of the suit property, therefore the applicants are necessary party in the present suit.

18 The objection raised by the Advocate for the plaintiff on the basis of order VI Rule 17 of the Code of Civil Procedure is not

maintainable. It is to be noted that if Court comes to the conclusion that a particular third party is a necessary party in litigation to decide an issue on its merits, Court can pass an order for joining third party as a party in a litigation. In the present proceedings, the issue involved in both the suits is similar i.e. challenge to the letter of confirmation dated 02nd February, 1994 in respect of the Flat No. 1001. Hence, objection raised by the plaintiff is not maintainable.

19 About delay the applicants, in paragraph 7 of affidavit in support of their chamber summons have specifically stated that as soon as they learnt that defendant nos. 1 and 2 were not taking any interest in the present suit, they immediately preferred the present chamber summons. The said submission is also correct because no one has appeared on behalf of defendant nos.1 and 2 when issues were framed by this Court on 13th June, 2017 and today before this Court. Hence, authority cited by plaintiff is not applicable in facts of the present case.

20 Considering the above mentioned facts, I am of the opinion that the applicants have made out a case for allowing this chamber summons. Hence the following order:

- i) Chamber summons is allowed in terms of prayer clause (a), (b) and (c) which reads thus:

“(a) That the delay, if any, in taking out the above Chamber Summons be condoned;

(b) that the Applicant be impleaded as party Defendants in the above suit.

(c) That the Plaintiffs be directed to carry out the amendment to the Plaint by impleading the Applicant as party Defendants as per the schedule of amendment annexed hereto as letter “A”.”

ii) Amendment to be carried out by the plaintiff in Suit No. 2320 of 1996 within four weeks from today and amended copy to be served on other side.

iii) If amended copy of the plaint is served on the applicants, the plaintiff to file their written statement within eight weeks from the date of service with copy to other side.

iv) If amendment is not carried out by the plaintiff within stipulated time as stated above, applicants are permitted to carry out amendment.

v) No order as to costs.

vi) Chamber summons stands disposed of accordingly.

(K.K. TATED, J.)