

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

**CHMBER SUMMONS NO. 773 OF 2017
IN
SUIT NO. 1317 OF 1998**

Mahaveer Meghawatt & Anr ... Applicants.

In the matter between

Mahaveer Meghawatt & Anr ... Plaintiffs.

V/s.

Ridiv Investments Private
Ltd & Ors ... 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 Defendants in Suit No.
1317/1998.

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

P.C.:

1 Heard learned counsel for the parties.

2 The learned counsel Mr. Dinesh Purandare submits that he
has duly served defendant nos. 2 and 3. He submits that he
undertakes to file affidavit of service within two weeks from today.

Statement is accepted.

3 By this chamber summons, the applicants-original plaintiffs are seeking to carry out amendment in the plaint of Suit No. 1317 of 1998, in view of subsequent developments. He submits that, applicants filed the present suit for declaration that, the letter of confirmation dated 02nd February, 1994 in respect of Flat No. 1001 between defendant nos. 1, 2 and 3 is void and non-est and creates no rights in favour of defendant no.1 and not binding on the plaintiffs.

4. The learned counsel for the applicants submits that defendant no.1 filed a Suit No. 2320 of 1996 against defendant nos. 2 and 3 for specific performance of letter of confirmation dated 02nd February, 1994 in respect of the same flat i.e. Flat No. 1001. He submits that defendant no.1 preferred notice of motion in his suit. He submits that this Court passed order of injunction restraining defendant nos. 2 and 3 from creating any third party rights, title and interest in respect of the suit flat. He further submits that, even this Court appointed the Court Receiver in respect of the suit flat. He submits that as soon as they learnt these facts, they immediately preferred notice of motion in the present suit. He submits that this Court by order dated 16th April, 1998 directed the applicant to

deposit a sum of Rs. 1,75,00,000/- with interest and vacated the orders passed in favour of the defendant no.1 in his suit. He submits that all these facts are required to be brought on record in the present suit. Hence they preferred the present chamber summons for placing subsequent events/facts. Hence in the interest of justice this Hon'ble Court be pleased to allow the present chamber summons. He submits that if the chamber summons is not allowed irreparable loss would be caused to them.

5 On the other hand, learned counsel appearing on behalf of defendant no.1 vehemently opposed the present chamber summons. He submits that, by this chamber summons, the applicants-plaintiffs want to bring new facts on record. He further submits that there is no question of allowing the applicants to add Para (xvi) of Exhibit-A, Schedule of Amendments in the present suit. He submits that by this paragraph the applicants are seeking declaration that the suit filed by defendant no. 1 i.e. Suit No. 2320 of 1996 becomes infructuous. He submits that, these facts are required to be proved by the applicants on its merits. Therefore, this Hon'ble Court should not allow the applicants to bring on record Para (xvi) of Exhibit-A of the chamber summons.

6 The learned counsel for the defendant no.1 further submits

that in Para (xv) of Exhibit-A, the applicants are seeking to add averments to the effect that defendant no.1 have no right to claim specific performance of letter of confirmation dated 02nd February, 1994 in their Suit No 2320 of 1996. He submits that whether the defendant no.1 is entitled for specific performance of the said letter of confirmation or not is required to be decided on its own merits. There is no question of allowing the applicants to bring these averments in the plaint and therefore there is no substance in the present chamber summons and the same is required to be dismissed with costs.

7 I heard both the sides at length. It is to be noted that Advocate for defendant no.1 rightly pointed out that plaintiffs-applicants have no right to bring on record Para (xvi) by carrying out amendment in the plaint. Advocate Ms. Snehal K. Shah appearing on behalf of applicants fairly stated that they are ready to delete Para (xvi) from the amendment. Apart from that Advocate for defendant no.1 rightly pointed out that there is no question to place on record the averments to the effect that defendant no.1 is not entitled for specific performance.

8 In view of the subsequent developments, the applicants can be permitted to bring on record the subsequent developments/facts.

There is no question of allowing them to bring on record their submissions. Hence, I am of the opinion that the applicants cannot be permitted to bring on record the bracketed portion in red ink in Para (xv) on record. Other facts stated by the applicants are nothing but subsequent development in suit matter. That can be permitted to bring on record. Hence, I am of the opinion that the applicants have made out a case for partly allowing the present chamber summons.

9 The applicants are permitted to bring on record Para (xii), (xiii), (xiv) and part of Para (xv) excluding bracketed portion in red ink of Exhibit-A Schedule of Amendments which reads thus:

A) “(xii) The Plaintiffs state that after filing the above Suit the Plaintiffs herein took out Notice of Motion No. 1102 of 1998 and in which ultimately Order came to be passed on 16th April, 1998 whereby Hon'ble Mr. Justice R.M. Lodha directed the Plaintiffs herein to deposit Rs. 1,75 Crores along with interest @ 9% from December, 1994 till deposit with liberty to the Defendant No.1 herein to withdraw an amount of Rs. 1 Crore along with 9% interest from December, 1994 till deposit by the Plaintiffs and remaining amount to be invested by Prothonotary and Senior Master of this Hon'ble Court in Nationalised Bank. Hereto annexed and marked as

EXHIBIT “L-1” is the copy of the Order dated 16th April, 1998. The Plaintiffs state that by the said Order earlier Orders date 14th August, 1996, 5th February, 1997 and 24th September, 1997 passed in the Suit No. 2320 of 1996 stood vacated and upon deposit of the amounts, the Plaintiffs became entitled to free to deal with and dispose of the property and development in any manner as they like fit.”

“(xiii) The Plaintiffs state that pursuant to the said Order dated 16th April, 1998, the Plaintiffs herein deposited Bankers Cheque in the sum of Rs. 2,33,33,973/- inclusive of interest bearing No. 017725 drawn by Indusind Bank, Opera House Branch dated 13th August, 1998 and drawn in favour of the Prothonotary and Senior Master vide a Praecipe dated 13th August, 1998. Hereto annexed and marked as **EXHIBIT “L-2”** is the copy of the Praecipe dated 13th August, 1998 along with the Photostat copy of the Pay Order.”

“(xiv) The Plaintiffs state that it appears that on 29th August, 1998 the Defendant No.1 herein and the Plaintiff in Suit No. 2320 of 1996 received a Cheque in the sum of Rs. 1,33,36,164/- (Rs. 1,00,00,000 plus 9% interest) bearing No. 58999 dated 29th August, 1998 from the Prothonotary & Senior Master as per directions passed in the Order dated 16th April, 1998. The Plaintiffs crave

leave to refer to and rely upon the record of this Hon'ble Court maintained in the above Suit as well as Suit No. 2320 of 1996.”

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

C) If amendment is carried out within stipulated time as stated above, the applicants/plaintiff is directed to serve an amended copy of the plaint on defendants.

D) Liberty granted to the defendants to file their additional written statement, if any, to the amended plaint within eight weeks from the date of service of amended copy to the other side.

E) No order as to costs.

F) Chamber summons stands disposed of as partly allowed.

(K.K. TATED, J.)