

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ADMIRALTY AND VICE-ADMIRALTY JURISDICTION**

**CHMBER SUMMONS NO. 866 OF 2017
IN
ADMIRALTY SUIT NO. 49 OF 2016**

The Board of Trustees of the
Port of Mumbai

... Applicant.

In the matter between

The Board of Trustes of the
Port of Mumbai

... Plaintiff.

V/s.

The sale proceeds of the Vessel
Magnum-V Ex. Seabulk Plover & Ors

... Defendants.

Mr. Ajai Fernandes a/w. Ms. Sneha B. Pandey I/b. Motiwalla & Co.
for the Plaintiff.

Mr. Mayur Agarwal a/w. Mr. Rahul P. Jain I/b. Alpha Chambers for
Defendant No.5.

CORAM : K.K. TATED, J.

DATE : NOVEMBER 6, 2017

P.C.:

1. Heard learned counsel Mr. Ajai Fernandes for the plaintiff and Mr. Mayur Agarwal for defendant no.5.
2. By this chamber summons, the applicant-plaintiff is seeking to carry out amendment in the plaint.
3. The learned counsel for the applicant submits that, the matter

appeared on board before this Court (Coram: K.R. Shriram, J.) on 01st August, 2017 for framing issues. At that time, this Court noticed that plaintiff failed to make out/disclose any cause of action against defendant no.5. At that time, this Hon'ble Court granted liberty to the applicant to prefer appropriate proceedings within two weeks for carrying out amendment.

4. The learned counsel for applicant submits that pursuant to the liberty granted by this Court by order dated 01st August, 2017, they preferred the present chamber summons. He submits that in the interest of justice, this Hon'ble Court be pleased to permit plaintiff to carry out amendment in the plaint. He submits that, the suit is at the stage of framing issues only. Till today, the affidavit of evidence is not filed either by the plaintiff or by defendants. He submits that unless and until the present chamber summons is allowed it will be difficult for the plaintiff to proceed with the present suit against all the defendants.

5. Hence, in the interest of justice this Hon'ble Court be pleased to allow the applicant to carry out amendment.

6. On the other hand, learned counsel Mr. Mayur Agarwal appearing on behalf of the defendant no.5 vehemently opposed the present chamber summons. They have filed their affidavit in reply

dated 23rd August, 2017. Counsel for the defendant no.5 submits that, the applicant has not made out any case for carrying out amendment. He further submits that even the prayer clause (a) of the plaint is defective. He submits that by prayer clause (a) plaintiff is claiming the entire amount from all the defendants therefore, there is no question of allowing the applicant to carry out amendment as requested by the applicant.

7. I have heard both the sides at length. The present chamber summons is preferred by the applicant as per the liberty granted by this Court by order dated 01st August, 2017. The same was filed within stipulated time. In any case, by way of amendment the nature of the suit is not going to change.

8. Considering these facts and averments made by the applicant in affidavit in support of chamber summons, I am satisfied that the applicant has made out a case for allowing this chamber summons.

Hence the following order:

i) Chamber summons is allowed in terms of prayer clause (a) which reads thus:

“a) Applicants/Plaintiffs be given liberty to amend the Plaint as per the Schedule annexed to the chamber summons.”

ii) Amendment to be carried out within four weeks from today,

failing which chamber summons shall stand dismissed without referring back to the Court.

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

iv) Liberty granted to the defendants, if they, so desire to file their additional written statement to the amended copy of the plaint within eight weeks from the date of service of copy of amended plaint.

v) Chamber summons is disposed of accordingly. No order as to costs.

(K.K. TATED, J.)