

of Defendant No.1. The Chamber Summonses seek amendments to bring on record the facts concerning these new recoveries, all of which are admittedly subsequent to the filing of the suits and incorporate suitable claims towards the recovery of amounts paid for the principal borrower, i.e. Defendant No.1. Since the recoveries arise out of the same transaction, namely, loan advanced by Defendant No.2 to Defendant No.1, and guarantee given by the Plaintiff for repayment of this loan, it is in the interest of justice to permit the Plaintiff to amend his suits to include new reliefs in respect of recoveries made during the pendency of the suits.

3 There are two objections raised by Defendant No.1 to the Chamber Summonses. The first is that, the trial of the suit having been commenced, no amendment ought to be permitted. Learned Counsel for Defendant No.1 relies on the case of **Vidyabai Vs. Padmalatha**¹ to submit that once issues have been framed and a trial has commenced, no amendments can be permitted by the Court. No doubt, issues have been framed in the suits and even an affidavit of evidence in lieu of examination in chief is tendered by the Plaintiff, though the Court has not as yet applied its mind to such evidence. Be that as it may, it is not that whenever a trial has commenced, amendments would not be allowed under any circumstances. Amendments can be allowed even after such commencement, if the Court finds that inspite of due diligence, the party could not have raised the matter before commencement of the trial. This application is of course on the footing that trial is yet to commence and that is not quite correct, but considering overall circumstances and particularly, considering the fact that the amended claims themselves have arisen after the suits were filed and

1 AIR 2009 Supreme Court 1433

infact some of the claims do arise after the trial has commenced, it is in the interest of justice, to allow the application. It cannot be said at least as regards the claims which have arisen after a formal commencement of the trial that there was no due diligence on the part of the Plaintiff in raising the matter earlier, i.e. before the commencement of the trial.

4 As far as the second objection, namely, the bar of limitation is concerned, it is submitted that these amendments seek recovery of dues which are sought to be introduced by way of the present Chamber Summonses, which date back to the year 2010 and are accordingly barred by the law of limitation. This is of course a matter of merit, which will be considered appropriately in the course of the trial. As of now, there should be no objection to allowing of the amendments subject to the question of limitation being kept open and also on the footing that the amendments do not relate back to the date of the filing of the suit, but would be reckoned as at the date of filing of the Chamber Summonses for the purposes of limitation.

5 In the premises, the Chamber Summonses are allowed in terms of prayer clause -(a) thereof. The amendments to be carried out within two weeks from today.

6 All contentions of the parties on merits are kept open.

7 Costs to be costs in the cause.

(S.C. GUPTE, J.)