

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

**CHAMBER SUMMONS NO. 1111 OF 2014
IN
SUIT NO. 3079 OF 2011**

Rudra Shroff Connal ...Plaintiff
vs.
Sri Lotus Real Estate and Creators (India) Pvt.Ltd. ...Defendant

Mr.Kunal Dwarkadas with Ms.Apurva Manwani I/b. Siddhesh Bhole for Plaintiff.
Mr.Pravin Samdani, Senior Advocate I/b. Maniar Srivastava Associates for Respondent/Newly added Defendant No.2.

CORAM : S.C. GUPTE, J.

9 JUNE 2017

P.C. :

Heard learned Counsel for the parties.

2 This chamber summons seeks an order of amendment of the plaint in accordance with the schedule. The amendment seeks to add the Plaintiff's brother as Defendant No.2 and also seeks to incorporate certain averments dealing with the alleged rights claimed by the proposed Defendant No.2. The amendments are necessitated as a result of a stand taken by the original Defendant in its written statement concerning rights claimed by it through proposed Defendant No.2. The averments sought to be incorporated are necessary to determine the real controversy between the parties. The chamber summons, accordingly, will have to be allowed.

3 Learned Counsel for the original Defendant, whilst opposing the chamber summons, submits that the averments made in the amendment as

also the prayer sought to be added are barred by limitation, since a suit by the Plaintiff's predecessor on the same footing and to which the Plaintiff was a party, was withdrawn as far back as on 7 February 2008 to the knowledge of the Plaintiff. It is submitted that the same cause of action cannot be introduced now by way of the present amendment. It is submitted that the amendments are barred under the provisions of Order 23 Rule 1(4) of the CPC.

4 This court is of the view that the amendments being necessitated as a result of subsequent developments during the pendency of the suit and which developments bear on the controversy between the parties, it is in the interest of justice to allow the amendments. The grievances of the original Defendant can be addressed by keeping his defence to the amendments on the ground of withdrawal of the earlier suit and the bar under Order 23 Rule 1(4) as also the bar of limitation, to be decided in the suit.

5 On this footing, the chamber summons is allowed in terms of prayer clauses (a). Amendments to be carried out within two weeks. Amended copy of the plaint to be served on the original Defendant as also the newly added Defendant. The original Defendant is at liberty to file an additional written statement within four weeks after service of the amended plaint. The newly added Defendant shall also be at liberty to file his written statement within four weeks of service of the amended plaint and writ of summons. The suit to appear on board for directions after eight weeks.

(S.C. Gupte, J.)