

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO.310 OF 2017
IN
COMMERCIAL APPEAL NO.79 OF 2017
IN
ARBITRATION PETITION NO.684 OF 2016

Niraj Cement Structurals Limited ... Applicant

In the matter between

Niraj Cement Structurals Limited ... Appellant

Vs.

Raghu Infra Private Limited ... Respondent

Mr. Aseem Naphade a/w. Ms Anchal Singh, Mr. R. A. Shah and Debashree
Mandpe i/b. Mansukhlal Hiralal & Co. for Applicant.
Mr. Anirudh Ganu for Respondent.

**CORAM : NARESH H. PATIL &
R. G. KETKAR, JJ.**

DATE : NOVEMBER 29, 2017

P.C. :

Heard Mr. Naphade, learned Counsel for the applicant and
Mr. Ganoo, learned Counsel for the respondent at length.

2. By this Chamber Summons, appellant seeks leave to amend the
appeal memo by introducing additional grounds (i) to (vi) set out in
paragraph 2 of the affidavit dated 10.11.2017 made by Sudhakar Balu
Tandale, the authorized representative of the appellant in support of the
Chamber Summons.

3. Mr. Naphade submitted that grounds (i) to (v) depend upon the
outcome of the Motion taken out by the appellant under Order XLI, Rule

27 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for production of the additional evidence. If that Motion is allowed then only appellant will be in a position to incorporate grounds (i) to (iv) of paragraph 2 of the affidavit. In so far as grounds (v) and (vi) are concerned, they are independent of outcome of the Motion. By ground (v), the appellant intends to contend that the respondent has been awarded damages without actually furnishing proof of loss suffered by them. By ground (vi), the appellant intends to contend that it is settled law that damages cannot be awarded as a matter of course and in a mechanical manner. The respondent failed to furnish the material particulars of the actual loss suffered by them, despite that they have been awarded damages. Mr. Naphade, therefore, submitted that the Chamber Summons may be allowed.

4. On the other hand, Mr. Ganu has taken us through the affidavit dated 22.11.2017 made by Koneru Raghu Kiran, Director and Authorized Signatory of the respondent.

5. By our separate order passed today, we have dismissed the Motion taken out by the appellant under Order XLI, Rule 27 of C.P.C. for producing additional evidence. In view thereof, appellant cannot be permitted to amend the appeal memo in terms of grounds (i) to (iv) of paragraph 2 of the affidavit. Appellant is permitted to amend the appeal memo by incorporating grounds (v) and (vi). The question whether appellant can agitate these grounds is expressly kept open and shall be examined at the time of hearing of the appeal. Chamber Summons is partly made absolute in the aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)

(NARESH H. PATIL, J.)