

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

CHAMBER SUMMONS NO.1464/2015

IN
SUIT NO. 299/2014

Amita Jayesh Mehta & Ors. ... Applicants

Amita Jayesh Mehta & Ors. ... Plaintiffs

V/s.

Jaswanti Flat Properties Pvt. Ltd. & Ors. ... Defendants

Mr. Sharan Jagtiani a/w. Ms. Neeta Jain i/b.Kiran Jain for the plaintiff /
Applicant

Mr. Harsh Meghani a/w. Nikita Vardhan i/b. Kanga & Co. for defendant
No.1.

Mr. Kunal Dwarkadas a/w. Suraj Iyer i/b. Ganesh & Co.for respondent
No.3

CORAM: K.K. TATED, J.
DATED : AUGUST 7, 2017

PC. :

1. Heard the learned counsel for the parties. The learned counsel for the applicant submits that the respondents are duly served. He submits that the service was effected in October 2015 by letter dated 19.10.2015. To that effect, the learned counsel for the applicant plaintiff filed Affidavit of service dated 27.06.2017 which is taken on record.

2. The learned counsel for the applicant plaintiff submits that they

are required to carry out appropriate amendment in the Chamber Summons. He submits that the applicant, in their additional affidavit dated 03.07.2017 and 07.08.2017, they have already explained the necessity for carrying out the said amendment in the Chamber Summons. He submits that a copy of both the additional affidavits dated 03.07.2017 and 07.08.2017 are already served on the defendants. The learned counsel for the defendant has no objection if the applicant plaintiff is permitted to carry out amendment in the Chamber Summons.

3. The Chamber Summons is filed by the plaintiff for joining the proposed defendant Nos.8 to 10 as defendants in the suit. The proposed defendant Nos.8 and 9 had also filed Chamber Summons for joining them as party defendant in the suit, which is allowed by this court by an order of even date.

4. By the present Chamber Summons, the applicant is seeking permission to join the Parekh Aluminex Ltd. as a defendant No.10 in the suit.

5. The learned counsel for the applicant plaintiff submits that in the present proceedings, defendant No.1 had stood as a guarantor for the loan to the extent of Rs.150 crores in aggregate taken by the proposed defendant No.10 from South Indian Bank Ltd. as well as Canara Bank by mortgaging the suit flat Nos.201 and 202, "A" Wing, Saanidhya, Shree Radhekrishna Chamber Summons Ltd., 22-A, Walkeshwar Road, Mumbai – 400006.

6. The learned counsel for the applicant submits that by way of amendment, the applicant plaintiff is challenging the mortgage executed by defendant No.1 in favour of the bank as a guarantor as well as amount borrowed by defendant No.10 by way of loan. He submits that as the loan was availed by defendant No.10, they are necessary party in the suit. He submits that to get clear title of the suit, it is necessary to set aside the mortgage deed executed by defendant No.1 in favour of the bank when he stood as a guarantor for the loan availed by defendant No.10. He submits that though proposed defendant No.10 was duly served with the Chamber Summons, till today, they have not filed Affidavit-in-Reply. This itself shows that they have no objection to allow the Chamber Summons. He submits that even if the Chamber Summons is allowed, it is not going to affect the right, title and interest of proposed defendant No.10 because they are going to get a chance to defend the suit on merits. If the Chamber Summons is not allowed, irreparable loss will be caused at the time of taking final decree in the suit with regard to the suit flat as stated hereinabove.

7. On the other hand, the learned counsel for defendant No.1 submits that, if the Chamber Summons is allowed, they may be permitted to file additional written statement.

8. The learned counsel for defendant No.10 vehemently opposed the Chamber Summons. He submits that the plaintiff has not made out any case for joining defendant No.10 as party in the suit. He submits that there is no any transaction between the plaintiff and defendant No.10 so that defendant could be joined as a party. He submits that

defendant No.10 has already availed loan from defendant Nos.8 and 9 Bank whereas the defendant No.1 stood as a guarantor for the said loan. He submits that, in the present proceedings the plaintiff has claimed to cancel the deed of transfer dated 30.04.2011 i.e. Exhibit-B and C to the plaint which is between the plaintiff and defendant No.1. He submits that once the said deed of transfer is set aside, the plaintiff will get clear title to the suit premises. He submits that as defendant No.10 is not a party to those documents, there is no question of joining him as party defendant in the present proceedings under Order I Rule 10 of the Code of Civil Procedure, 1908. He submits that at the most, the plaintiff can call defendant No.10 as a witness for placing on record relevant documents. Therefore, there is no question of allowing the Chamber Summons.

9. During the course of arguments, the learned counsel for proposed defendant No.10 submits that though they have not filed Affidavit-in-Reply, their oral denial may be accepted in respect of the allegations made by the applicant against them in the Chamber Summons.

10. It is to be noted that, for last more than two years, proposed defendant No.10 has not filed his reply to the Chamber Summons, therefore, there is no question of accepting said oral denial.

11. In the present proceedings, the applicant plaintiff has filed suit No.299/2014 for declaration that deed of transfer (Exhibit-B and C of the plaint) executed between the applicant - plaintiff and defendant No.1 were only for security of loan amount and not to be acted upon as

transfer in the property i.e. Flat Nos.201 and 202, “A” Wing, Saanidhya, Shree Radhekrishna Chamber Summons Ltd., 22-A, Walkeshwar Road, Mumbai – 400006 in favour of defendant No.1. It is the case of the applicant that during pendency of the present proceedings, they learnt that defendant No.1 stood as a guarantor for proposed defendant No.10 for the loan of Rs.150 crores and he mortgaged both the flats in favour of the Bank. Therefore, unless defendant No.10 is made a party to the present proceedings, the plaintiff *prima facie* may not get relief of full clear title to the suit property, if he is so entitled. Therefore, in my view, the proposed defendant No.10 is necessary party in the present proceedings.

12. Considering these facts, I am of the opinion that the applicant has made out a case for following order.

a) The applicant to carry out appropriate amendment in the Chamber Summons within a week.

b) The Chamber Summons is allowed in terms of prayer clause (a) which reads thus:

“(a) That the applicant / plaintiff be permitted to amend the above suit and proceedings as per the schedule annexed hereto and marked as Exhibit- A, without prejudice to the pending Notice of Motion No.466/2014.”

c) Amendment to be carried out within four weeks.

d) If amendment is carried out within stipulated time as stated hereinabove, the applicant plaintiff to serve an amended copy of the plaint along with a copy of summons on defendant, immediately thereafter.

e) The defendants are permitted to file their additional written statement/written statement, if any, if they so desire, within 12 weeks from the date of receipt of amended copy of the plaint and summons.

f) The Chamber Summons stands disposed of accordingly.

(K.K. TATED, J.)