

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL CHAMBER SUMMONS NO.57 OF 2016
IN
SUMMARY SUIT NO.716 OF 2014

UCO Bank	... Applicant
and	
Universal Medicare Pvt.Ltd.	... Plaintiff
v/s	
UCO Bank	... Defendant

Mr Sameer Pandit i/b M/s Wadia Ghandy and Co. for Plaintiff.
 Mr O.A. Das with Mr Prem Das for Defendant.

CORAM : B.P. COLABAWALLA, J.

DATE : OCTOBER 4, 2017

P.C.:

1. This Chamber Summons has been filed by the Applicant (Original Defendant) viz. UCO Bank seeking amendment of their written statement as per the schedule annexed to the Chamber Summons. In the affidavit in support of the Chamber Summons, the Defendant has stated that even though they have filed their written statement on 24th August 2015, certain important points, factual and legal, were left out to be incorporated in the written statement. It is

in this light that the amendment is sought.

2. In paragraph 17 of the affidavit in support, it is further stated that the Defendant's previous Advocate was to prepare the written statement after due diligence, but it seems that due to oversight and inadvertence that points sought to be raised by virtue of the amendment could not be incorporated in the written statement as originally filed. It is in these circumstances that Mr Das, learned counsel appearing for the Defendant submits that this Chamber Summons be allowed and the Defendant be permitted to amend the written statement as per the schedule to the Chamber Summons.

3. On the other hand, Mr Sameer Pandit, learned counsel appearing on behalf of the Plaintiff, submitted that in the facts of the present case, issues have already framed and settled. This being the case, the trial of the Suit is deemed to have commenced and hence unless the Defendant was to establish that in spite of due diligence, the Defendant could not have raised the matter before the commencement of the trial, this Court would have no jurisdiction to allow the amendment. In this regard, Mr Pandit placed reliance on the proviso to Order 6 Rule 17 of the CPC. In support of this proposition, Mr Pandit also relied upon the judgments of the Supreme

Court in the case of

- (1) Kailash v/s Nanhku and others, reported in (2005) 4 SCC 480;
- (2) Ajendraprasadji N. Pandey v/s Swami Keshavaprakeshdasji N. and others, reported in (2006) 12 SCC 1 and
- (3) Vidyabai and others v/s Padmalatha and another, reported in (2009) 2 SCC 409.

4. I must state here that Mr Pandit very fairly brought to my attention a Division Bench decision of this Court in the case of Mahadeo Maruti Bhanje v/s Balaji Shivaji Pathade and another, reported in (2012) 5 Bom C.R. 777 wherein the earlier Supreme Court decisions referred to above have been duly considered by the Division Bench of this Court. After considering these three Supreme Court decisions, the Division Bench was of the view that the trial of the Suit commences from the date of filing of the affidavit in lieu of examination-in-chief and that the proviso to Order 6 Rule 17 of the CPC will come into play only after the stage of filing of the affidavit in lieu of examination-in-chief.

5. Mr Pandit, however, was at pains to point out that this interpretation of the Division Bench is clearly contrary to the decision of the Supreme Court in the case of Ajendraprasadji N. Pandey's case

(supra) wherein in paragraph 60 of the decision, the Supreme Court has clearly held that the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence. The same view has also been taken by the Supreme Court in the case of Vidyabai's case (supra). I am unable to accept this submission for the simple reason that these judgments have been duly considered by the Division Bench of this Court and thereafter the Division Bench has come to the conclusion that the trial is deemed to commence once the affidavit in lieu of examination-in-chief is filed. It is now well settled that even a mis-interpretation of the judgment of the superior Court would be binding on me and I cannot ignore a binding precedent on the ground that it has misinterpreted a decision of the Supreme Court. I am therefore unable to accept the submission of Mr Pandit that the Division Bench of this Court mis-interpreted the earlier decisions of the Supreme Court and therefore the Division Bench judgment in the case of Mahadeo (supra) would not be binding on me.

6. In the facts of the present case, admittedly the affidavit in lieu of examination-in-chief has not yet been filed. In the light of what is stated in the case of Mahadeo Maruti Bhanje v/s Balaji Shivaji

Pathade and another (supra), it clearly shows that the trial has not commenced. This being the case and looking at the facts of the case, I am inclined to allow the Chamber Summons. However, considering that the written statement has been filed bar back in August 2015, and this Chamber Summons has been filed on 7th December 2016, the Chamber Summons is allowed in terms of prayer clause (a) subject to the Defendant paying costs to the Plaintiff quantified at Rs.20,000/- within a period of four weeks from today. If the costs are paid within the aforesaid period, amendment to be carried out within a period of two weeks thereafter and the amended copy of the written statement be served on the Advocates for the Plaintiff within a further period of two weeks. Needless to clarify that if the costs are not paid, Chamber Summons stands dismissed without further reference to the Court. The Chamber Summons is accordingly disposed off.

(B.P COLABAWALLA, J.)