

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8848 OF 2017

Yasmeen Amir Bux d/o. Amir Rahim Bux Shaikh & Ors.	...	Petitioners
V/s.		
Haji Mohammed Oomar s/o. Haji Inayatulla Qureshi & Ors.	...	Respondents

- Ms.Mahek Bookwala Shetty i/b. Zohair & Co. for the Petitioners.
- Ms.Priya Rita i/b. Disha Kanambar & Associates for Respondent Nos.1 to 8.
- Mr.Pramod Bhosle i/b. Ms.Kavita Shinde for Respondent No.9.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th MARCH, 2018.

P.C. :

- 1] Heard learned counsel for both the parties.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 1st July 2016 passed by Judge, City Civil Court, Mumbai, thereby dismissing the Chamber Summons No.1340 of 2015 filed in Short Cause Suit No. 9781 of 1991.
- 3] The said Chamber Summons was taken out by the Petitioners who are the Original Plaintiffs under Order 6 Rule 17 of the

Civil Procedure Code to carry out an amendment in the plaint, in view of the subsequent events that had taken place in the litigation.

4] This Chamber Summons was strongly resisted by learned counsel for Respondent No.9, who is the Original Defendant No.3. The reliance was placed on the judgment of the Hon'ble Supreme Court in the case of *Khatri Hotels Private Limited & Another V/s. Union of India & Another*, AIR 2011 SC 3590, to submit that the proposed amendment being time barred, the Petitioners/Plaintiffs cannot be permitted to carryout the said amendment.

5] The trial Court has, after considering the facts which were brought to its notice that the Petitioners/Plaintiffs were aware about the Deed of Assignment, Plaintiff No.1 being the signatory thereto; whereas, as regards the Deed of Conveyance dated 5th February 2010, the Petitioners were aware of the same in the year 2011 itself, held that the proposed amendment is barred by limitation and accordingly, rejected the Chamber Summons.

6] However, as pointed by learned counsel for the Petitioners, Respondent No.9 i.e. Original Defendant No.3 was joined in the suit only in pursuance of the order passed in the Chamber Summons No.2225 of 2013 for his impleadment and the said order was passed by

the trial Court on 13th September 2014, and it was confirmed by this Court in Writ Petition (St.) No.25968 of 2014 on 10th October 2014, keeping open all the contentions raised by the parties to be decided at the time of the trial. Therefore, it follows that, only after Respondent No.9 was impleaded as party in the suit in 2014, the cause of action arose to the Petitioners/Plaintiffs to challenge those documents as those documents are pertaining to him. Hence, the Chamber Summons is filed for carrying out necessary amendment in the plaint.

7] Having regard to this sequence of events, at this stage, it would not be proper to dismiss the said Chamber Summons merely because the documents were executed much earlier or they were in the knowledge of the Petitioner in the another proceeding.

8] In my considered opinion, it would be proper in such situation to allow the said Chamber Summons, especially when the suit before the trial Court is yet at the stage of “issues” and the trial has not commenced. However, interest of justice would be served, if the issue of limitation is expressly left open to be decided at the time of final hearing of the suit or at any subsequent stage of proceeding.

9] Accordingly, the Writ Petition is allowed. The impugned order passed by the trial Court is set-aside. The Chamber Summons

No.1340 of 2015 is allowed. The Petitioner to carry out necessary amendment in the plaint within two weeks from the receipt of the copy of this order by the trial Court.

10] It is clarified that all the contentions of both the parties relating to the plea of limitation are expressly left open.

[DR.SHALINI PHANSALKAR-JOSHI, J.]