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

WRIT PETITION NO.1693 OF 2012

Ramesh Sanathara	...	Petitioner
V/s.		
M/s Kotak Mahindra Finance Ltd and ors	...	Respondents

Mr. S. K.Chinchlikar, for the Petitioner.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 23rd August, 2011, passed by City Civil Court, Mumbai, thereby rejecting the Chamber Summons No.6 of 2011 filed by the petitioner in Summary Suit No. 4853 of 1995.
- 3] By this Chamber Summons, the petitioner has sought amendment in the plaint to claim further relief of declaration that the petitioner is the owner in respect of suit share certificate No.171512 distinctive Nos. 17116101 to 17116200 of M/s Kotak Mahindra Finance Ltd. The contention of the Petitioner is that he has filed this

suit for declaration that respondent No. 1 be directed to issue duplicate shares in respect of the suit share certificate. Further he has also sought the relief of permanent injunction restraining respondent No.1 from transferring the said share certificate in the name of third party and also from transferring bonus shares allotted on share certificate, in favour of any third party. However, at the time of filing of the suit, petitioner has not prayed for the relief of declaration that petitioner be declared as owner of the suit share certificate. According to petitioner, due to bonafide mistake, the said relief remained to be claimed in the suit and he realized the said mistake for the first time at the time of recording his oral evidence in the Court and hence immediately thereafter he has filed this Chamber Summons for seeking additional relief of declaration that he is owner of the said share certificate.

4] The trial Court, however, rejected the said application accepting the contention raised by respondent No.1 that by way of proposed amendment, the petitioner is introducing new cause of action, which is not permissible. The trial court further held that at the time of filing the suit, no leave was sought under Order II, Rule 2 (3) of the Code of Civil Procedure for omitting such relief. Hence, the present application for amendment cannot be maintainable.

5] While challenging this order of the trial Court, submission of learned counsel for the petitioner is that petitioner is not introducing any new cause of action and not asking for any new relief as such, but only consequential relief of declaration as the relief of permanent injunction, which the petitioner is seeking in the suit, cannot be granted unless the petitioner is declared to be the owner of the suit share certificates and hence the impugned order passed by the trial Court needs to be quashed and set aside.

6] The notice of this petition was duly served on the respondent No.1, who is contesting party. Respondent No.1, appeared through learned Counsel Ms. Nipa Shah. However, since last few dates, learned counsel for respondent No.1 is absent. As per order passed by this Court on 11th December, 2017, fresh notice was issued to learned counsel for respondent No.1 informing her that the petition is fixed on 10th January, 2018, for final hearing. However, yesterday and today also learned counsel for respondent No.1 is absent.

7] The perusal of the impugned order passed by the trial Court goes to show that the trial Court has rejected the petitioner's application, mainly on the ground that while filing suit simpliciter of injunction, the petitioner has not sought leave of the court while omitting to claim the relief of declaration. However, as rightly

submitted by learned counsel for the petitioner, relief of permanent injunction, which the petitioner is claiming in the present suit and further relief of direction to respondent No.1 to issue duplicate share certificate in respect of suit shares, cannot be granted unless the petitioner is declared to be the owner of suit share certificate. As a matter of fact, for granting relief of declaration and injunction as sought in the plaint, the trial Court has to consider whether the petitioner is the owner of the said share certificate. Therefore, there is no question of petitioner introducing any new cause of action by way of proposed amendment. The learned trial Court should have, hence allowed this application for amendment. The order passed by the trial Court, thus, cannot be sustained in law and therefore it is set aside.

8] The Writ Petition is allowed.

9] The impugned order passed by the trial Court is set aside and the Chamber Summons No. 6 of 2011 in Suit No.4853 of 1995 filed by the petitioner is allowed.

10] The petitioner to carry out necessary amendment within two weeks from the date of this order.

11] The parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]