

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

CHAMBER SUMMONS NO.1464 OF 2016

IN

SUIT NO.417 OF 2015

WITH

NOTICE OF MOTION NO.23 OF 2016

Reliance Media Works Ltd.

And Another

Versus

Nehru Memorial Museum And

Library And Others

... Applicants/Plaintiffs

... Respondents/Defendants

.....

Dr. Birendra Saraf a/w Mr. Himanshu Vidhani and Varun Mansinghka I/b M/s Khaitan And Co. for the Applicants/Plaintiffs in Chamber Summons No.1464 of 2016.

Mr. Mayur Khandeparkar a/w Mrs. Gauri Memon and Ms. Aanchal Aggarwal I/b Nankani And Associates for the Applicant/Defendant No.1 in Notice of Motion No.23 of 2016.

Ms. Jyotsna N. Pandhi for Defendant Nos.2 and 3.

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CORAM : S.C. GUPTE, J.

DATE : 21 SEPTEMBER 2018

Order :

. Heard learned Counsel for the parties.

2 These two miscellaneous applications, namely, Notice of Motion No.23 of 2016 taken out by Defendant No.1 and Chamber Summons No.1464 of 2016 taken out by Plaintiffs, respectively, seek rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure 1908 ("the

Code”) and for amendment of the plaint under Order 6 Rule 17 of the Code so as to avoid rejection of the plaint. To understand the controversy the following few facts are required to be noted.

3 The Suit has been filed by the two Plaintiffs, who *inter alia* seek a decree against the Defendants in the sums of about Rs.5.01 crores together with interest (for Plaintiff No.1) and about Rs.62.25 lacs (for Plaintiff No.2). There is some controversy between the parties as to whether these two reliefs can be combined. Learned Counsel for Defendant No.1 submits that the two causes of action, i.e. the one which is pleaded by Plaintiff No.1 and the other by Plaintiff No..2, are distinct causes of action, though claimed against the same set of Defendants. For two independent plaintiffs cannot combine their individual causes of action in this manner. That, however, is not the controversy before the court at the moment, though it may have some consequences even for the present matter, if the Defendants were right in their submission that their application under Order 7 Rule 11 of the Code ought to be heard before the Plaintiffs' amendment application is taken up for hearing. As I have discussed later, this submission has no merit and hence, the objection concerning combining of the two causes of action need not be considered or dealt with at this stage.

4 The claim of the Plaintiffs arises out of an agreement executed between Plaintiff No.1 and Defendant No.2 for digitization and restoration of black & white films belonging to Defendant No.1. It is the case of Plaintiff No.1 that it carried out the digitization and restoration work, for which Defendant No.2 had agreed to pay in accordance with the invoices

raised between 30 June 2010 and 31 March 2011. There is also a plea of part payment as on 21 July 2010 in the plaint as originally framed and filed on 28 March 2015. On these facts, it is the case of Defendant No.1 that the suit, as filed, was, on the face of it, barred by the law of limitation, since it was filed more than three years after the raising of the last of the invoices and even after the alleged part payment. It is submitted that no exclusion of time is pleaded in the suit as originally filed. On the other hand, it is the case of the Plaintiffs that there have been several facts, supported by documents, which make out a case of exclusion of time, but that due to organizational restructuring and internal policy issues of the Plaintiffs' company around the time and for reasons beyond the control of the Plaintiffs, these important documents were not available with the Plaintiffs at the time of filing of the present suit and as a result, these facts could not be brought out in the plaint. It is submitted that only recently, i.e. a little before taking out the present chamber summons, these documents including minutes and letters exchanged between the parties during the course of performance of the contract work were found out. It is submitted that the Plaintiffs should be permitted to amend the plaint by pleading these facts and producing these documents as part of the plaint.

5 Learned Counsel for Defendant No.1 objects to the amendment. Relying on the provisions of Order 7 Rules 1 and 6, and Order 6 Rule 3 read with Appendix-A of the Code, learned Counsel submits that what the court has to see is whether the suit is, at the date of its filing, maintainable and if not, no amendment should be allowed so as to make it maintainable, particularly in the light of an objection raised and a plea made by the defendant for rejection of the plaint under Order 7 Rule 11 of

the Code.

6 There is no merit in the submission of learned Counsel for Defendant No.1. There is no support for this argument either on principle or on authority. The provisions of Order 6 Rule 7 of the Code, referred to by learned Counsel for Defendant No.1, do not by themselves support the argument. What Order 7 Rule 6 requires is that grounds, upon which exception from the law of limitation is claimed, in a case where the suit is instituted after the expiry of the period prescribed by the law of limitation, must be disclosed in the plaint. This is a requirement of pleading. It does not mean that this requirement must be satisfied on the date when the plaint is presented and cannot be pleaded later by amending the plaint. It only means that when the court considers the issue of limitation, the plaint must show the grounds of exception to the law of limitation, in case the suit is instituted after expiration of the limitation period. There is no requirement in law that these grounds cannot be introduced at a later date on an amendment application. Of course, as and when amendment application is made, the court will consider all legitimate objections of the opponent, including objections as to the bona fides of the plaintiff, as to the time as well as the stage at which the amendments are introduced, but subject to all these legitimate objections, which are anyway relevant in any amendment application, there is nothing peculiar about an amendment application, which is preceded by an application for rejection of the plaint under Order 7 Rule 11 of the Code, so far as its maintainability is concerned. Whether or not a suit is otherwise barred by the law of limitation, i.e. without the amendment, or whether or not any application under Order 7 Rule 11 of the Code is moved before the Court to reject the

plaint on such objection, an application for amendment can always be considered subject to the applicant satisfying other requirements of law, which, as we have noticed above, are anyway to be considered in any amendment application.

7 A Division Bench of our court in the case of **Gagamal Ramchand Vs. The Hongkong And Shanghai Banking Corporation**¹ has considered precisely this objection of the defendant. That was a case where the court was considering the plaintiff's application for amendment under Order VI Rule 17 in the face of the defendant's plea for rejection of the plaint under Order VII Rule 11 of the Code. The argument of the defendant before the court was that when the plaintiff came before the court, his plaint did not disclose any cause of action; it was mandatory for the court in the circumstances to reject the plaint and dismiss the suit and not permit the plaint to be amended. In other words, the contention was that Order VII Rule 17 was controlled by Order VII Rule 11 and in cases falling under Order VII Rule 17, the court had no jurisdiction to order amendment of the plaint. Our court, considering the scheme of the Code and in particular, the provisions of Order VI Rule 17 thereof, observed that the provisions were very wide and the power of the court to allow either party to alter or amend his pleadings in order that the real questions in controversy in the matter should be adjudicated upon was extensive; there was no reason whatever why the power of the court to allow amendment of pleadings should in any way be restricted or controlled by the provisions of Order VII rule 11. The court observed that it was perfectly true that it was incumbent upon the court to reject a plaint that did not disclose a cause of

1 1951 Indian Law Reports 364

action, but it did not follow from that requirement that it was not open to the court to allow the plaint to be amended so that it should disclose a cause of action. It was only when a plaint did not disclose a cause of action that the court was called upon to exercise its power under Order VII Rule 11; but the court could well prevent the operation of Order VII, Rule 11, and might save the plaint from being rejected by exercising its power under Order VI Rule 17, and allowing the plaint to be amended. It would, as our court held, indeed be an extraordinary proposition to lay down that if various averments had to be made in a plaint which would go to constitute a cause of action, and through some oversight or mistake the plaintiff failed to make any particular averment, then in that case the plaint must be rejected and the plaintiff could not apply for making the necessary amendment. As much as averments which sustain and make out a cause of action, even matters concerning applicability of the law of limitation and saving of the suit by exclusion of time, may well be introduced by way of an amendment. They are no different from averments reflecting on the maintainability of the suit on the basis of disclosure of the cause of action.

8 In the premises, there is no merit in the objection to the application for amendment. The Plaintiffs' case that the matters covered by the amendment were not pleaded earlier due to unavailability of the documents resulting from the peculiar circumstances obtaining around the time, is believable. There is no contrary fact or material pointed out to the court to doubt this case or bona fides of the plaintiffs generally in introducing the amendment at this stage.

9 In the premises, the Chamber Summons is allowed in terms of prayer clause-(a). Amendments to be carried out within two weeks. Since after carrying out the amendments, the Suit would be *prima facie*, i.e. on the Plaintiffs' own averments, within time, no case is made out for rejection of the plaint under Order 7 Rule 11 at this stage. The Notice of Motion is accordingly dismissed.

10 The Defendants shall be at liberty to file comprehensive written statement/s dealing with the amended plaint. Such written statement/s may be filed within eight weeks of service of the amended plaint on the Defendants. In case any Defendant/s has/have already filed written statement/s, additional written statement/s may be filed likewise within a period of eight weeks of service of the amended plaint.

(S.C. GUPTE, J.)