

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO.199 OF 2016****IN****SUIT NO.786 OF 2012****WITH****CHAMBER SUMMONS NO.418 OF 2016****IN****SUIT NO.786 OF 2012**

MMTC Ltd. ... Plaintiff

Versus

Millennium Wires (P) Ltd. And 6 Ors. ... Defendants

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Mr. Rajiv Narula, a/w. Ms. Naseem Patrawala, i/b. Malvi Ranchoddas & Co., for the Plaintiff.

Ms. Khushboo Agarwal, i/b. M.V. Kini & Co.,for Defendant No.2.

Mr. Rajesh Patil, i/b. Ms. Meghana Kadam, for Defendant No.5

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CORAM : S.C.GUPTE, J.**DATED : 25 SEPTEMBER 2018****P.C.:**

. Heard learned Counsel for the parties. This chamber summons seeks amendment of the plaint necessitated by events, which have transpired since the filing of the present suit. The suit is filed by the Plaintiff, who acted as a facilitator for imports by Defendant No.1. It is the Plaintiff's case that the transaction of imports was vitiated by fraud where Defendant Nos. 3 and 4 knowingly and willingly issued fabricated, false and concocted bill of lading to falsely demonstrate and establish the shipment of the consignment, which in fact did not take place. It is

submitted that Defendant No.1 was working hand in gloves with Defendant No.4 for defrauding the Plaintiff. The plaintiff sought a perpetual injunction restraining Defendant Nos. 3, 4 and 5 from taking any action under the letter of credit, Defendant No.2 from honouring the letter of credit and Defendant No.5 from making any payment under the letter of credit. The Plaintiff applied for an interim injunction in terms of the perpetual injection sought. The injunction initially granted in favour of the Plaintiff was vacated by the appeal court and the appellate order was confirmed by the Supreme Court. It is claimed that Defendant No.5 has now parted with the amount due under the letter of credit. As a result of this development, the Plaintiff now seeks to amend his plaint. It is the case of the Plaintiff that the subsequent events clearly suggest that there was collusion and connivance between Defendant No.5 on the one hand and Defendant Nos. 3 and 4 on the other. The Plaintiff, in the premises, seeks to add prayers for a suitable declaration and reimbursement of the amount paid under the letter of credit. The Plaintiff wants to add an alternative prayer for a joint and several decree against Defendant Nos. 1, 3, 4 and 5 for the amount of the letter of credit, which the Plaintiff would be liable to pay to Defendant No.2 as a result of the facts recounted above.

2. Defendant No.5 opposes the chamber summons. It is the case of Defendant No.5 that as the negotiating bank, Defendant No.5 was entitled to make payment to Defendant No.3 upon being satisfied that the documents presented by them comply with the terms of the letters of credit, without having to wait for the Plaintiff to accept the documents. Learned Counsel for Defendant No.5 supports the action of Defendant No.5 as a matter of law. The contentions of Defendant No.5 in this behalf are a

matter of trial, the question before the Court is whether or not the amendment should be allowed so that the parties can go to trial on the amended claim. The matter in dispute, which is sought to be brought in by way of the present amendment application, arises out of the same transaction between the parties. The Plaintiff has relied upon the very same clauses of the purchase contract, in pursuance of which the letter of credit was opened, to support its case on Defendant No.5 being liable under the agreement of indemnity contained in the contract as also as a party to the fraud perpetrated by Defendant Nos. 3 and 4. The amendment is necessary to bring out the real matters in controversy between the parties. As for merits, all contentions of the parties may naturally be debated by the parties at the trial of the suit. The chamber summons is accordingly allowed in terms of prayer clause (a). Amendment to be carried out within two weeks from today. The Plaintiff is permitted to amend the schedule annexed to the chamber summons. The chamber summons is disposed of in the above terms.

3. The companion notice of motion, Notice of Motion No.418 of 2016, shall come up for hearing after four weeks. In case any further pleadings are to be filed in the notice of motion as a result of the amendments allowed today, the parties may do so and exchange copies within two weeks.

(S.C.GUPTE, J.)