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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 763 OF 2016
IN
SUIT NO. 2197 of 2008

Surindra Engineering Co Ltd & Anr ...Plaintiffs
Versus
Mandeep Ahluwalia Pahwa & Ors ...Defendants

Mr E Sasidharan, *with Khokawala, i/b Nankani & Associates, for the Plaintiffs.*
Mr Randeep Rai, Senior Advocate, *with Hemant Sethi, i/b Hemant Sethi & Co., for Defendants Nos. 1 and 2.*
Mr Shriniket Deshpande, *i/b Naik Naik & Co., for Defendant No. 5.*
Ms Madhuri Raibagkar, *for Defendant No. 7.*
Mr Aditya Khanna, *for Defendant No. 8.*

CORAM: G.S. PATEL, J
DATED: 11th December 2018

PC:-

1. Heard.

2. I have before me the Plaintiffs' Chamber Summons for amendment. Written Statements have been filed. The suit has not yet proceeded to trial and issues are yet to be framed. The amendments sought are in several distinct parts.

3. The first part relates to a change in name of Defendant No. 7. The name of Defendant No. 7 is now sought to be amended to “Aditya Birla Fashion and Retail Limited”. I will permit this amendment.

4. Clause II of the schedule seeks to insert paragraph 78(I) to the Plaint with a narrative about a compromise deed dated 5th January 2011 that is *inter alia* concerned with the subject matter of the present suit. This is a subsequent event and I will permit that for completeness.

5. The other paragraph sought to be inserted stands on a somewhat different footing. By proposed paragraph 78K, part of clause III of the schedule, the Plaintiffs seek to deal with a contention raised by Defendants Nos. 3 and 4 in their Written Statement. There is no procedure known to our system of jurisprudence where a Plaintiff can constantly counter the averments and pleadings in the Written Statement by amending the Plaint. At that rate, no suit will ever go to trial. That contention taken in the Written Statement will undoubtedly be addressed at the trial. It is not required to be pleaded in the Plaint.

6. Clause III of the schedule then seeks to add paragraph 82A and this is what it says:

“82A. In the alternative and without prejudice to what is stated hereinabove and if and only if this Hon’ble Court comes to a conclusion that the reliefs sought hereinabove cannot and/or ought not to be granted, then it is just, equitable, necessary, convenient, expedient and in the

interest of justice that this Hon'ble Court be pleased to order and decree the Defendants No. 1 to 4 to jointly and/or severally, pay to Plaintiff No. 1 an amount of Rs. 7,49,00,000/- being the balance consideration for the suit property payable by Defendants No. 3 and 4 together with the interest accrued thereon till payment and/or realization as per the particulars of claim annexed hereto and marked as **Exhibit "N"**.

7. This is to be read with the next proposed addition of Prayer (S-1) and the proposed insertion as Exhibit "N", particulars of a monetary claim. Prayer (S-1) reads thus:

"(S-1) In the alternative and without prejudice to prayer clauses (a) to (s) above, this Hon'ble Court be pleased to order and decree the Defendants Nos. 1 to 4, to jointly and/or severally, pay to Plaintiff No. 1 an amount of Rs. 7,49,00,000/- together with the interest accrued thereon till payment and/or realisation as per the particulars of claim being Exhibit "N" to the Plaint;"

8. In my view, these amendments are unsupported by any reference to Section 55 of the Transfer of Property Act 1882. Although seemingly worded in the alternative and without prejudice they clearly introduce an entirely different cause of action and irrevocably alter the nature of the suit at least to the extent of making it, though possibly only in the alternative, a suit for recovery of balance consideration. This was never the ambit of the suit as originally filed. Prayers (a) to (j) of the Plaint make it clear that the Plaintiffs sought a declaration of title and an invalidation of an indenture or conveyance.

9. The proposed Paragraph 82A and proposed prayer (S-1) are not so much in the alternative but run in the face of the cast of the Plaint. These are clearly not related to any subsequent events. In fact, the narrative in Paragraphs 55 and 58 of the Plaint makes it clear that these are reliefs that could have been sought at the inception but, for reasons best known to the Plaintiffs, were not sought at any time.

10. This delay is not inconsequential. On the basis of the plaint as it stood without amendment the Plaintiffs filed Notice of Motion No. 2661 of 2008. That came up for final hearing before KR Shriram J who by his elaborate order of 30th October 2014 dismissed the Notice of Motion and he did so with costs of Rs. 50,000/-, not in the aggregate but individually to Defendants Nos. 1, 2, 3, 4, 5, 6, 7, and 8. The learned Judge came to this conclusion holding that there was no case in equity made out by the Plaintiffs and no justification for the reliefs sought in the Notice of Motion. KR Shriram J's conclusion was one based not only in equity but also on a fair reading of the Plaint and the Notice of Motion. That order of 30th October 2014 sets out in the clearest possible terms what, according to the learned Judge, the suit is for and what the Plaintiffs intended. The present amendment in Paragraphs III and IV of the schedule seeks to undo all that and to introduce what is clearly impermissible.

11. I do not think that the reliance on the well-known judgments of the Supreme Court in *Pankaja & Anr v Yellappa (Dead) By LRS & Ors*¹ and *Abdul Rehman & Anr v Mohd Ruldu & Ors*² are of the

1 (2004) 6 SCC 415.

2 (2012) 11 SCC 341.

slightest assistance. It goes without saying that if any application for amendment is made, it must be made bona fide and it is not one that can be granted for the asking.

12. Thus, the Chamber Summons is allowed only in respect of Clauses I and II of the schedule to the Chamber Summons, i.e., change of name and introduction of Paragraphs 78(I). The Chamber Summons is rejected in respect of other proposed amendments.

13. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

14. Additional Written Statements, if any, are to be filed and served on or before 1st February 2019.

(G. S. PATEL, J)