

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

**CHAMBER SUMMONS NO.1137 OF 2017
NOTICE OF MOTION NO.184 OF 2010
IN
S.C.SUIT NO.169 OF 2010**

Zahid Hussein Khan & Ors.)....Applicants/Plaintiffs
V/s.

Rajesh Khilnani & Ors.)....Defendants

WITH

**NOTICE OF MOTION NO.1029 OF 2010
IN
SUIT NO.480 OF 2010**

Rajesh Khilnani)....Plaintiff
V/s.

Zahid Hussein Khan & Anr.)....Defendants

WITH

NOTICE OF MOTION NO.378 OF 2012

Mr.Rajendra V.Pai a/w Mr.Akshay R.Pai I/by Neuty Nilesh Thakkar for plaintiff in Suit No.480/2010 and for defendant no.1 in Suit No.169/2010.

Mr.Laxminarayan Shukla a/w Mr.Pranot Pawar I/by MKS Legal Associates for defendant nos.1 and 2 in Suit 480/2010 and for plaintiff in Suit 169/2010 and for applicant in CHS 1137/2017.

CORAM : K.R.SHRIRAM,J

DATE : 23.10.2018

P.C.:-

CHAMBER SUMMONS NO.1137 OF 2017

1. This chamber summons is taken out for leave to amend the plaint as per the schedule annexed to the chamber summons. As per

the affidavit in support, the reason for taking out this application for leave to amend the plaint is because during the pendency of the suit, subsequent changes and development have taken place and the same is required to be brought on record for the proper adjudication of the suit and whatever changes and development have taken place during the pendency of the suit, the same are mentioned in the schedule annexed to the chamber summons.

2. If one considers the proposed amendment, except the proposed amendment in paragraph 16A & 16B, the rest have all happened before the suit was lodged. There is no explanation in the affidavit in support as to why those details have not been mentioned in the plaint when it was lodged. At the outset, counsel for the applicant had stated that the application has become necessary because suit was lodged in a hurry and many of the necessary averments/documents were missed out. That is not the case in the affidavit in support of the chamber summons. Even if I assume the submission of Mr.Laxminarayan Shukla for the applicant is correct, the suit has been lodged on 4.1.2010 and this chamber summons has been taken out on 6.11.2017, almost 7 years after the suit was lodged. Mr.Laxminarayan Shukla thereafter stated that they applied to the Bank for details and they got the details later but the affidavit in support is totally silent

when such an application was lodged and the details were received.

3. In the circumstances, even though the suit is still at pre framing of issues stage and courts are generally lenient in allowing amendment application, in this application, I find for the proposed amendment as paragraph nos.7A,14A, 14B & 14C have details which were certainly available with the applicant when the suit was lodged and no explanation as observed above is found in the affidavit. Therefore, to that extent, I am not inclined to allow the amendment application.

4. Certainly, the contents of paragraph proposed 16A and 16B are events that happened after the suit was lodged. Therefore, chamber summons is allowed partially. Leave to amend the plaint granted in terms of proposed paragraph 16A & 16B. Leave to amend as per proposed paragraph 7A, 14A, 14B and 14C which are bracketed in red ink are excluded. Amendment to be carried out and amended plaint to be served within one week. Additional written statement if any, to be filed within one week thereafter.

5. Chamber summons accordingly stands disposed.

6. Suit be listed on 26.11.2018 for issues at which time, parties shall come with agreed draft issues and a separate list of issues on which they are unable to agree.

In the meanwhile, parties shall also file their respective affidavit of documents, complete discovery and inspection and exchange statement of admission and denial with reasons for denial.

NOTICE OF MOTION NO.184 OF 2010

1. Mr.Pai appearing for defendants states that in view of the ad-interim order that was granted on 25.3.2010, the order be continued as order in the Notice of Motion until the hearing and final disposal of the suit. Therefore, the order passed on 25.3.2010 is confirmed as order in this Notice of Motion and Notice of Motion accordingly disposed.

NOTICE OF MOTION NO.1029 OF 2010

1. In view of the order passed in Notice of Motion No.184 of 2010 in Suit No.169 of 2010, this Notice of Motion does not survive and is accordingly disposed.

2. Mr.Laxminarayan Shukla for defendants states that defendants will not create any 3rd party rights or encumber or dispose

or in any way deal with the suit flat being flat no.901, 9th floor, B-Wing, Jawaharabad, 9th road, Professor Almeida Park, Bandra-West, Mumbai-400 050, or any part thereof and will not allow any 3rd party to enter in or remain in the flat or part thereof except as a visitor or guest who shall not claim any rights in the flat.

3. Notice of Motion accordingly disposed.

NOTICE OF MOTION NO.378 OF 2012

1. Notice of Motion be heard along with the suit.

(K.R.SHRIRAM,J)