

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

CHAMBER SUMMONS NO.860 OF 2016

IN

SUIT NO.1980 OF 2010

Mulraj Khatau and Sons Limited

....Applicant/Plaintiff

Vs.

Mr. Shahjahan Ahmed Matin Sheikh and Ors.

....Defendants

Mr. Vishal Talsania a/w. Mr. Aditya Raut I/b. Desai Desai Carrimjee and Mulla for applicant/plaintiff.

Mr. Baloni M.B. I/b. G.S. Bhat for defendant no.1.

CORAM : K.R.SHRIRAM, J.

DATE : 30th OCTOBER 2018

P.C.:

1 This chamber summons is for leave to amend the plaint. Issues have been settled but even though directions have been passed to file affidavit in lieu of examination in chief as well as documents, the same are yet to be complied with by plaintiff.

2 It is stated in the affidavit in support that plaintiff had in its possession only a photocopy of the Deed of Confirmation dated 25th February 2008 which is the subject matter of the suit. Plaintiff while gathering the documents to be filed alongwith the evidence, applied to the Sub Registrar of Assurances, Borivali No.6 for certified copy of the Deed of Confirmation dated 25th February 2008. According to plaintiff, in the certified copy they found certain documents which were not part of the photocopy that was given to plaintiff by defendant no.2. According to

plaintiff, this has necessitated the amendment application.

3 Mr. Talsania, counsel for applicant, on instructions states that all defendants have been served and undertakes to file affidavit of service within one week from today. Only defendant no.1 is represented in Court today but none of the defendants have filed any affidavit in reply opposing the chamber summons. Therefore, none of the averments in the affidavit in support of the chamber summons has been controverted. From the proposed amendment, I also do not find any malafides. The amendment does not change the character of the suit and in my view, is necessary for effective adjudication of the suit.

4 In the circumstances, chamber summons is allowed and accordingly disposed in terms of prayer clause – (a).

5 Plaintiff is allowed to amend the plaint as per the schedule annexed to the chamber summons. Amendment to be carried out and copy of the amended plaint to be served on or before 15th November 2018. Additional written statement to be filed and copy served by 4th December 2018.

6 Suit be listed for issues on 17th December 2018 on which date 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 also exchange statement of admission and denial with reasons for denial.

7 It is made clear that if the above timetable is not strictly complied with, the order granting amendment will stand recalled without further reference to this Court.

(K.R. SHRIRAM, J.)