

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

CHAMBER SUMMONS NO.869 OF 2016

IN

SUIT NO.1233 OF 2008

M/s. Satyagiri Shipping Company Limited & Anr.Applicants/Plaintiffs

Vs.

The Maharashtra State Road Development
Corporation (MSRDC) and Ors.

....Defendants

Mr. Amrut Mukund Vernekar for applicants/plaintiffs.

Mr. Simil Purohit a/w. Mr. Aditya Sikka and Ms. Priyanka Mitra I/b. Cyril
Amarchand Mangaldas for defendant no.1.

Ms. Tanvii Bagwe I/b. Mr. O.A. Das for defendant no.9.

CORAM : K.R.SHRIRAM, J.

DATE : 30th OCTOBER 2018

P.C.:

1 This chamber summons is for leave to amend the plaint. The suit is still at pre-admission stage. It is settled law that in such situations Courts are generally generous in allowing the application to amend the plaint except where the amendment sought changes the nature and character of the suit or are malafide or *ex-facie* barred by limitation.

Paragraph 63 of *M/s. Revajeetu Builders & Developers V/s. M/s.*

*Narayanaswamy & Sons & Ors.*¹ reads as under :

*FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING
WITH APPLICATIONS FOR AMENDMENTS:*

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is imperative for proper and effective

1. (2009) 10 SCC 84

adjudication of the case?

(2) Whether the application for amendment is bona fide or malafide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

2 Plaintiff in this suit had been, according to plaintiff, awarded Letter of Intent dated 19th June 2004 and Letter of Award dated 19th July 2006 under which plaintiff was permitted to construct jetties and other infrastructure requirements and operate all weather water transport for passengers on build, own, operate and transfer basis. It is plaintiff's case that defendant no.1 arbitrarily, high handedly, illegally and malafidely withdrew and revoked the said Letter of Intent dated 19th June 2004 and Letter of Award dated 19th July 2006. The prayers in the plaint are for declaring the withdrawal as conveyed in letter dated 7th February 2008 as bad in law, null and void and is malafide, arbitrary and bad in law and should be set aside.

3 It is applicants' case that when defendant no.1 filed an additional written statement pursuant to liberty granted by this Court in its

order dated 28th January 2016, for the first time, defendant no.1 disclosed that in the meeting of Empowered Committee on Mumbai Transformation held on 7th March 2015 a decision was taken by the Government of Maharashtra not to pursue the said project, viz., Development of Passenger Water Transport System alongwith the West Coast of Mumbai. According to applicants, even if plaintiff succeed in getting a decree in terms of prayer clauses – (a) and (b), still in view of the decision of the Government of Maharashtra to abandon the project, plaintiff will not be getting effective relief in as much as the amount of Rs.5 Crores by way of bank guarantee will be lost for plaintiff and the amounts incurred by plaintiff in working towards the implementation of the project will also be lost. Therefore, plaintiff is seeking that, in the event of plaintiff succeeding in terms of prayer clauses – (a) and (b), as it appears in the suit, in view of the decision of defendant no.1 to abandon the project, defendant no.1 should be directed to return the bank guarantee amounts and also reimburse plaintiff expenses which according to plaintiff it incurred in the sum of Rs.2,50,00,000/- plus other damages.

4 Mr. Purohit, counsel for defendant no.1 strongly opposed this chamber summons and submitted that (a) the proposed amendment changes the nature and character of the suit and (b) in any event, is barred by limitation.

5 In my view, Mr. Purohit is not correct on both these grounds. Apart from the fact that even issues are yet to be settled in this suit, the amendment has become necessary only because of the policy decision taken by the Government of Maharashtra on 7th March 2015. If plaintiff succeeds in terms of prayer clauses – (a) and (b) in the plaint, then what happens. If the proposed amendment is not granted, plaintiff will not be entitled to get the amounts which defendant no.1 appropriated by invoking the bank guarantee because defendant no.1 has decided to abandon the project. If plaintiff had known about this abandonment of project before the suit was filed, I am sure, plaintiff would have framed the reliefs in the suit differently and perhaps as plaintiff is proposing to add now. Additional prayers sought to be introduced is only consequence of the decision of defendant no.1 to abandon the project. Therefore, in my view, the proposed amendment does not change the nature and character of the suit.

6 As regards limitation, it is a mixed question of law and fact. In my view, the cause of action atleast, *prima facie*, appears to have got triggered on 7th March 2015 when the Government of Maharashtra decided as a policy not to pursue the said project. Otherwise, plaintiff would have been happy to have paid the bank guarantee amount and incurred expenses because under the project plaintiff was accepted to recover all costs by operating the project upto year 2034. Therefore, in my view, the proposed

new prayers do not appear to be, *prima facie*, hit by limitation. Unless *ex-facie* it appears that the additional claim in the suit is barred by limitation, Courts will have to allow the amendment and give a chance to plaintiff to prove its claim. At the stage of hearing of amendment application, the Courts do not consider the merits in the proposed amendment.

7 In the circumstances, chamber summons is allowed and accordingly disposed in terms of prayer clause – (a). All rights and contentions of defendants are kept open to be raised in the additional written statement.

8 Amendment to be carried out and copy of the amended plaint to be served on or before 24th November 2018. Additional written statement to be filed and copy served by 8th December 2018.

9 Suit be listed for issues on 7th January 2019 on which date parties to come with agreed draft issues and a separate list of issues on which they are unable to agree. In the meanwhile, parties to file their respective affidavit of documents, complete discovery and inspection and also exchange statement of admission and denial with reasons for denial. It is made clear that no further time or extension will be granted to comply with the directions given above.

(K.R. SHRIRAM, J.)