

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

**CHAMBER SUMMONS NO.530 OF 2012
WITH
NOTICE OF MOTION NO.4227 OF 2007
WITH
CHAMBER SUMMONS NO.721 OF 2012
IN
SUIT NO.82 OF 2008**

The Brihanmumbai Municipal CorporationPlaintiff

Vs.

Rizvi Education Society and Ors.Defendants

**WITH
NOTICE OF MOTION NO.4364 OF 2008
WITH
NOTICE OF MOTION NO.3687 OF 2011
WITH
CHAMBER SUMMONS NO.722 OF 2012
WITH
NOTICE OF MOTION NO.795 OF 2013
IN
SUIT NO.1878 OF 2006
WITH
NOTICE OF MOTION NO.4365 OF 2008
WITH
NOTICE OF MOTION NO.2948 OF 2009
IN
SUIT NO.166 OF 2008**

Mr. Akash Rebello a/w. Mr. Mahesh Mishra I/b. Mr. Ravi Thankian for applicant in CHS/530/2012, CHS/721/2012 and CHS/722/2012 and for defendant nos.1 to 8 in S/82/2008, for plaintiff in S/1878/2006 and for defendant no.5 in S/166/2008.

Mr. H.C. Pimple I/b. S.H. Ujjainwala and Co. for plaintiff in S/82/2008 and for defendant nos.1 and 2 in S/1878/2006.

Mr. Aloukik Pai I/b. Mr. Ravindra S. Pachundkar for plaintiff in S/166/2008.

Ms. Uma Palsuledesai, AGP for defendant nos.9 and 10 in S/82/2008.

Ms. Geeta Shastri, AGP for defendant no.4 in S/166/2008.

CORAM : K.R.SHRIRAM, J.

DATE : 25th SEPTEMBER 2018

P.C.:

CHAMBER SUMMONS NO.530 OF 2012

1 This chamber summons is taken out on behalf of defendant nos.1 to 8 for leave to amend the written statement and to amend the reply to the notice of motion no.4227 of 2007.

2 Mr. Pimple, counsel for plaintiff states that since the amendment is only to introduce paragraph to state that the suit is barred by limitation, which right plaintiff would have had even without pleadings, he has no objection.

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

4 Amendment to be carried out and copy of the amended written statement to be served within two weeks from today.

CHAMBER SUMMONS NO.721 OF 2012

1 On 30th October 2017 the following order came to be passed :

*FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.4227 OF 2007
WITH
CHAMBER SUMMONS NO.530 OF 2012
WITH
CHAMBER SUMMONS NO.721 OF 2012
IN
SUIT NO.82 OF 2008
WITH*

NOTICE OF MOTION NO.4364 OF 2008
WITH
NOTICE OF MOTION NO. 3687 OF 2011
WITH
NOTICE OF MOTION NO. 722 OF 2012
WITH
NOTICE OF MOTION NO. 795 OF 2013
IN
SUIT NO. 1878 OF 2006
WITH
NOTICE OF MOTION NO. 4365 OF 2008
WITH
NOTICE OF MOTION NO. 2948 OF 2009
IN
SUIT NO. 166 OF 2008

-
- Mr. H. S. Deshpande a/w R. Y. Sirsikar for MCGM.
 - Mr. Rupesh Mandhare I/by. Sean Wassoodew for Defendant No.6 in Suit No. 166 of 2008.

CORAM : K. K. TATED, J.
DATE : OCTOBER 30, 2017.

P.C. :

1. Heard learned Counsel for parties.
2. Liberty is granted to the Corporation to file the reply in Registry with copy to other side within one week from today.
3. The learned Counsel for Plaintiff submits that Chamber Summons No.969 of 2017 in Suit No. 166 of 2008 is pending for hearing on its own merits. The same is not placed on board.
4. Considering these facts, following order is passed.

ORDER

- (a) Office is directed to place the matter along with Chamber Summons No. 969 of 2017 on board for hearing on 8th December, 2017.
- (b) In the meanwhile, parties are permitted to complete their pleadings by filing reply, rejoinder, ser rejoinder with copy to other side on or before 24th November, 2017.
- (c) Stand over to 8th December, 2017.

2 Chamber summons no.721 of 2012 was also listed and Mr. H.S. Deshpande alongwith Mr. R.Y.Sirsikar had appeared for plaintiff. No reply has been filed to the chamber summons till date.

3 Therefore, chamber summons is allowed and accordingly disposed in terms of prayer clauses – (a) and (b) which read as under :

(a) That leave be granted to the Defendant Nos.1 to 8 to take out this Chamber Summons.

(b) That the Defendant Nos.1 to 8 be allowed to amend the Written Statement to the extent shown in the Schedule.

4 Amendment to be carried out and copy of the amended written statement to be served within two weeks from today.

NOTICE OF MOTION NO.1366 OF 2013
IN
SUIT NO.1878 OF 2006

1 Not on board. By consent, taken up for hearing.

2 Mr. Rebello, counsel for plaintiff has no objection to the relief prayed for in this notice of motion by defendants.

3 Therefore, notice of motion is allowed and accordingly disposed in terms of prayer clause – (a).

CHAMBER SUMMONS NO.722 OF 2012

1 This chamber summons is taken out by plaintiff for leave to amend the plaint as per the Schedule annexed to the chamber summons.

2 Defendants have filed an affidavit in reply through Dr. Praveen C. Pahurkar affirmed on 6th October 2017.

3 At the outset, I have to observe that the reply is filed without proper application of mind. This chamber summons is for leave to amend the plaint and the question of seeking any interim or ad-interim relief does not arise nor it is prayed for in this chamber summons. Paragraph 1 of the affidavit in reply, however, states “I say that I am filing the present affidavit in reply for the limited purpose of opposing a grant of any interim or ad-interim reliefs in the chamber summons and I crave leave to file an additional affidavit as and when necessary”. Therefore, I have no hesitation to observe that Dr. Praveen C. Pahurkar, who has affirmed the affidavit in reply, has not even understood what he is filing the reply for.

4 I must now add that I am dealing with this chamber summons without any assistance from anybody appearing for Brihanmumbai Municipal Corporation or others. Mr. Pimple states that he has no instructions in this matter. There is nobody else appearing for defendants. If one reads the affidavit in reply, the defence taken by defendants is that there is a delay which has not been explained and there is no explanation as to why the amendment application was not taken out earlier and plaintiff wants to delay this proceeding.

5 From the Schedule, it is obvious that plaintiff wish to introduce certain developments which have transpired after the suit was filed, particularly, the order passed on 31st October 2011 by the Charity

Commissioner. This chamber summons has been lodged on 4th May 2012.

I do not see any undue delay in the matter. Issues are also yet to be framed.

6 Therefore, chamber summons is allowed and accordingly disposed in terms of prayer clauses – (a) and (b).

7 Amendment to be carried out and copy of the amended plaint to be served within two weeks from today. Additional written statement to be filed and copy served within two weeks of receiving copy of the amended plaint.

GENERAL

All other applications to be listed for hearing on 9th October 2018.

(K.R. SHRIRAM, J.)

Gauri
Amit
Gaekwad

Digitally signed
by Gauri Amit
Gaekwad
Date:
2018.09.27
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