

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO.1138 OF 2016****IN****SUIT NO.522 OF 2015**

Prashant Raj

...Applicant/Plaintiff

Versus

Arunabh Kumar And 2 Ors.

...Defendants

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Mr. V. Sreedharan, Senior Advocate, a/w. Mr. Anil Jarial, i/b. Legal Associates, for the Plaintiff.

Mr. J.P. Sen, Senior Advocate, a/w. Mr. Vindu Prakash Pandey, Mr. Pramod Kumar Pandya and Mr. Vivek Tripathi, i/b. Mr. Vindu Prakash Pandey, for Defendant No.1.

Mr. Digajmaan G. Mishra, a/w. Mr. Atavarish Varshi, i/b. Mr. Rohan Munj, for Defendant No.2.

Mr. Mangesh Bhonde, a/w. Mr. Yashmaan Mishra, i/b. Synemarke Legal, for Defendant No.3.

Mr. Dinyar Madon, Senior Advocate, a/w. Mr. Siddharth Ranade, Ms. Shivani Garg, and Mr. Prakshal Jain, i/b. Trilegal, for the proposed Defendant.

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CORAM**: S.C.GUPTE, J.****DATED****: 24 OCTOBER 2018****P.C.:**

. After the chamber summons is heard at some length, learned Counsel for the Plaintiff/Applicant seeks leave to withdraw the chamber summons with liberty to file a fresh chamber summons for amendment

claiming inter alia impleadment of the proposed defendant. This is on the footing that presently there is no relief claimed in the amendment schedule against the defendant proposed to be added. Learned Counsel for the proposed defendant, who shows cause to the present chamber summons, has no objection to the chamber summons being withdrawn but objects to any liberty being granted to the Plaintiff/Applicant to take out a fresh chamber summons. Learned Counsel submits that any impleadment of his client, even if reliefs were to be claimed against him, would be clearly barred by law, since Section 19 Clause (e) of the Specific Relief Act bars enforcement of a contract, which is what this suit is all about, against a company yet to be incorporated. Learned Counsel submits that his client was incorporated much after the filing of the present suit. The present suit seeks a specific performance of a contract between the Plaintiff and Defendant No.1 and such contract cannot be enforced against a company, which was yet to be incorporated as at the date of the contract, on the basis of the promoter's commitment, since the contract is required to be adopted by the company upon its incorporation before its enforcement could be claimed against the company. These arguments are open to be advanced as and when a chamber summons is made. It is the case of the Applicant/Plaintiff that the proposed defendant is nothing but an *alter ego* of Defendant No.1 himself. It is submitted that the proposed defendant has been incorporated only with a view to defeat the rights, which the Plaintiff had against Defendant No.1 and which could be enforced in respect of Defendant No.3, the earlier incorporated company. Learned Counsel submits that the chamber summons is, accordingly, being withdrawn with liberty only because, though the Plaintiff/Applicant has made the requisite averments, there are no appropriate prayers sought in the schedule of

amendment against the proposed defendant and that his client would like to remedy the situation and file a fresh chamber summons. The mistake, learned Counsel submits, is through oversight and an inadvertent one. That appears to be a plausible explanation and a reasonable request. Liberty to file a fresh chamber summons cannot be refused.

2. Learned Counsel for the Respondent (proposed defendant) prays for costs. As I have observed above, the error appears to be bona fide and inadvertent. It does not call for any punitive or compensatory measure. The chamber summons is disposed of with no order as to costs.

(S.C.GUPTE, J.)