

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CHAMBER SUMMONS NO. 1689 OF 2016****IN****SUIT NO. 540 OF 2016****The Springs Condominium Association
of Apartment Owners****..... Applicant****IN THE MATTER BETWEEN****The Springs Condominium Association
of Apartment Owners & Anr.****..... Plaintiffs****VERSUS****CBRE South Asia Pvt. Ltd. & Ors.****..... Defendants**

Mr.Navroz Seervai, Senior Advocate, a/w.Mr.Ashish Kamat,
Ms.Megha Chandra, Ms.Madhu Gadodia, Mr.Nitesh Agarwal, i/b. Naik
Naik & Co. for the Applicant/Plaintiffs.

Mr.Sanjay Jain, a/w. Mr.Sheelang Shah, Ms.Kanizz Munjee, i/b. LJ
Law for the Defendant nos. 3 to 7.

CORAM : R.D. DHANUKA, J.**DATE : 13th DECEMBER, 2018****P.C.**

By this chamber summons, the applicant, (original plaintiff) seeks condonation of delay in filing chamber summons and seeks amendment to the plaint as per the schedule appended to the chamber summons.

2. The applicant has filed a suit on 7th June, 2016 *inter alia* praying for permanent and/or perpetual injunction restraining the defendant nos. 1 and 2 and/or their servants, officers, agents and/or any other

person/s claiming through and/or under defendant nos. 1 and 2 from in any manner directly or indirectly entering upon and/or exercising any functions in relation to the suit building and land and restraining the defendant nos. 3 to 7 from in any manner directly or indirectly making any appointments, exercising any functions in relation to and/or otherwise interfering with, obstructing and/or disrupting the plaintiff's peaceful and lawful possession, management and/or administration of the suit building and land for various other reliefs.

3. The applicant had also filed a Notice of Motion (L) No.9 of 2016 *inter alia* praying for various interim reliefs. The matter appeared before Shri S.J.Kathawalla, J. on 13th June, 2016. During the course of the arguments, the defendant no.6 pointed out that there was an incorrect statement made by the applicant in the plaint that the representatives of the M/s. My Aashiana had tried to enter in the suit premises on 1st June, 2016 when amongst others, the defendant nos. 3 to 7 obstructed them from taking charge of their duty.

4. In view of this submission of the defendant no.6, this court enquired whether the statement made to the effect that the representatives of M/s. My Aashiana had visited the suit premises on 1st June, 2016 and were obstructed by the defendant nos. 3 to 7, learned senior counsel for the plaintiffs on instruction informed the court that the incident had not taken place on 1st June, 2016. This court refused to grant any *ad-interim* relief and issued various directions. The applicant thus filed a chamber summons on 14th July, 2016 *inter alia* praying for various amendments as per the schedule appended to the

chamber summons and for condonation of delay in filing chamber summons.

5. Mr.Seervai, learned senior counsel for the applicant invited my attention to some of the averments made in the plaint and the proposed amendment described in the schedule appended to the chamber summons. He also invited my attention to the reasons recorded in the affidavit in support of the chamber summons as to why the amendments were necessary to the plaint and the purpose of seeking such amendment. He also invited my attention to some of the averments made in the affidavit in rejoinder and would submit that all these amendments proposed by the applicant in the chamber summons are either incorporating the past events to support the averments already made by the applicant in the plaint or to bring the subsequent events on record. It is submitted that certain errors had crept in the plaint which was hurriedly filed by the plaintiff. When such error was pointed out by the defendant no.6 at the time of hearing of the notice of motion, the applicant immediately filed this chamber summons for seeking amendment to the plaint.

6. It is submitted by the learned senior counsel that the amendment sought by the applicant would not change the cause of action in the plaint filed by the applicant. It is submitted that all these amendments being the nature of pre-trial amendment, the court shall take liberal approach while considering this application for amendment.

7. Mr.Jain, learned counsel for the defendant nos. 3 to 7 on the

other hand would submit that there are no reasons recorded in the affidavit in support of the chamber summons as to why such substantial amendments were proposed to be carried out by the applicant. In support of this submission, he invited my attention to the three paragraphs of the affidavit in support of the chamber summons and would submit that the alleged inadvertent error mentioned in the affidavit in support is only in respect of the paragraph 2.10(xviii) and not in respect of the other paragraphs sought to be deleted. It is submitted that the almost entire plaint is sought to be replaced by the proposed amendment by the plaintiffs. Learned counsel submits that by the proposed amendment, the applicant seeks to introduce several new facts. The applicant seeks to delete several paragraphs and also some of the documents annexed to the plaint. There is no explanation rendered in the affidavit in support as to why such deletion of several paragraphs of the plaint was necessitated including the deletion of some of the documents.

8. Learned counsel submits that his clients have already filed a Notice of Motion bearing no. 2702 of 2016 on 15th June 2016 *inter alia* praying for dismissal of the suit and for initiation of appropriate proceedings against the plaintiff no.2 for having committed an offence of perjury under various provisions of Indian Penal Code, 1860 and for various other reliefs. He submits that only after effecting service of the notice of motion upon the applicant's advocate, the applicant deliberately filed this chamber summons *inter alia* praying for amendment to the plaint. He submits that in view of the false averments made in the plaint, a right is accrued in favour of the

defendant nos. 3 to 7 to seek dismissal of the suit and for initiation of the action of perjury against the applicant. Learned counsel invited my attention to the order dated 13th June, 2016 passed by Shri S.J.Kathawalla, J. in Notice of Motion (L) No. 9 of 2016 and would submit that the applicant had completed their arguments through their learned senior counsel at the stage of making an application for *ad-interim* relief at the great length. The applicant never pointed out before this court during the course of their arguments that there was an alleged inadvertent error in various paragraphs of the plaint. He submits that the chamber summons filed by the applicant is as and by way of afterthought and to cause prejudice to the defendant nos. 3 to 7 in the notice of motion filed by the applicant and also notice of motion filed by the defendant nos. 3 to 7 for perjury filed by his client.

9. Learned counsel placed reliance on the (1) judgment of Hon'ble Supreme Court in case of ***Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others, (2009) 10 SCC 84*** and more particularly paragraphs 12, 59, 63, 64, (2) the judgment of Supreme Court in case of ***Usha Balasaheb Swami and others vs. Kiran Appaso Swami and others, (2007) 5 SCC 602***, (3) the judgment of Supreme Court in case of ***M/s.Modi Spinning & Weaving Mills Co. Ltd. and another vs. M/s.Ladha Ram & CO., (1976) 4 SCC 320*** and more particularly paragraphs 9 and 10.

10. Relying upon the aforesaid judgments, it is vehemently submitted by the learned counsel that this court cannot allow the applicant to change the cause of action in the plaint completely. He

submits that the serious prejudice would be caused to the defendant nos. 3 to 7 if the application as prayed is allowed by this court. Learned counsel submits that since the application filed by the applicant for seeking amendment is not *bonafide* application and is filed with an *malafide* intention, this court cannot allow such amendment.

11. Mr.Seervai, learned senior counsel for the applicant in rejoinder submits that within few days of the order passed by this court in the notice of motion on 13th June, 2016, the applicant has already filed chamber summons in view of the inadvertent error pointed by the defendant no.6 before this court. He submits that however before such chamber summons could be filed, defendant nos. 3 to 7 immediately filed notice of motion *inter alia* praying for dismissal of the suit and for seeking action of perjury against the applicant. He invited my attention to the affidavit in reply filed by the applicant in the Notice of Motion bearing no. 2702 of 2016 stating as to how there was an inadvertent error occurred in some of the paragraphs of the plaint. He submits that the plaintiffs had to file a suit hurriedly. Such an error occurred unintentionally. He submits that immediately thereafter the applicant filed this chamber summons for amendment of the plaint.

12. A perusal of the plaint indicates that the applicant has prayed for various reliefs against the defendant nos. 1 and 2 and mostly against defendant nos. 3 to 7. The substantial cause of action alleged in the plant is regarding incident having taken place on 3rd June, 2016. Large number of paragraphs are devoted to summarize the said incident

allegedly having taken place on 3rd June, 2016.

13. It is the case of the applicant that the documents annexed to the plaint also would indicate that the incident took place on 3rd June, 2016 and not on 1st June, 2016. No sooner the said inadvertent error was pointed out by the defendant no.6 before this court on 13th June,2016, the applicant at the earliest point of time filed this chamber summons.

14. A perusal of the plaint indicates that the incident had allegedly taken place on 3rd June, 2016. The plaint was filed within few days by the applicant for appropriate reliefs and also filed notice of motion for seeking interim reliefs. I am inclined to accept the submission of Mr.Seervai, learned senior counsel for the applicant that there was an inadvertent error in the plaint.

15. A perusal of the schedule appended to the chamber summons indicates that the some of the paragraphs sought to be added in the original plaint are in respect of the events allegedly transpired before the date of filing suit. Some of the paragraphs of the proposed amendment would indicate that the applicant seek to bring subsequent events having transpired from the date of filing suit till date of filing chamber summons.

16. A perusal of all these proposed amendments would indicate that there is no additional prayer sought to be included in the plaint by the applicant. The applicant has sought to bring certain additional facts to advance the case of the applicant in support of the averments already

made in the plaint. I do not find any change of cause of action as sought to be canvassed by the defendant nos. 3 to 7. It is not in dispute that the trial has not commenced. The Hon'ble Supreme Court and this court in *catena* of decisions has held that while considering an application for pre-trial amendment, court has to take liberal view.

17. Insofar as submission of the learned counsel for the defendant nos. 3 to 7 that certain paragraphs are sought to be deleted without explanation is concerned, a perusal of the affidavit in support of the chamber summons indicates that the applicant has indicated as to why these paragraphs were sought to be deleted as setout in the schedule. An inadvertent error was already admitted by the applicant when it was brought to the notice by the defendant no.6 to the plaintiffs at the stage of hearing on 13th June, 2016. I am thus not inclined to accept the submission of Mr.Jain, learned counsel for the defendant nos. 3 to 7 that the chamber summons was with an intention to take away the alleged rights of the defendant nos. 3 to 7 or was not *bonafide* or was *malafide*.

18. Insofar as the deletion of some of the exhibits sought in the schedule appended in the chamber summons is concerned, learned senior counsel pointed out that except one exhibit, none of the other exhibits are sought to be deleted. Those exhibits which are mentioned in the schedule to the chamber summons are re-inserted by way of amendment. There is thus no substance in this submission of the learned counsel for the defendant nos. 3 to 7.

19. Insofar as alleged right accrued in favour of the defendant nos. 3 to 7 in respect of which they have filed notice of motion for seeking dismissal of the suit and for initiation of action of perjury against the applicant is concerned, a perusal of the notice of motion indicates that before the applicant could promptly take steps to apply for amendment from the date of inadvertent error pointed out by the defendant nos. 3 to 7, the defendant nos. 3 to 7 hurriedly filed notice of motion for seeking such relief. Even at that stage, the applicant had already set out clearly in the affidavit in reply to the said notice of motion that there were few inadvertent errors in the plaint for which the applicant had already proposed to file chamber summons for seeking amendment.

20. Be that as it may, such notice of motion filed by the defendant nos. 3 to 7 can be independently heard by this court on its own merits and to be heard without being influenced by the observations made by this court in this order.

21. Insofar as judgments of the Hon'ble Supreme Court relied upon by Mr. Jain, learned counsel for the defendant nos., 3 to 7 are concerned, there is no dispute about the principles of law laid down by the Supreme Court in the said judgments. However, since this court is of the view that the application for amendment was *bonafide* and not *malafide*, in my view, those judgments relied upon by the defendant nos. 3 to 7 would not advance the case of the defendant nos. 3 to 7.

22. I, therefore, pass the following order :-

(a) Chamber Summons No. 1689 of 2016 is made absolute in terms of prayer clauses (a) and (b).

(b) Amendment to be carried out within two weeks from today.

(c) Amended copy of the plaint shall be served upon the defendants' advocate within two weeks from the date of carrying out amendment.

(d) It is made clear that merely because the amendment as sought are allowed, defendant nos. 3 to 7 have not admitted the contents of such amendment.

(e) All contentions on merits of those amendments are kept open.

(f) It is made clear that defendant nos. 3 to 7 would be at liberty to point out contradiction, if any, in the plaint as well as in the amendment at the stage of final hearing of the suit. No order as to costs.

[R.D. DHANUKA, J.]