

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

**CHAMBER SUMMONS NO.854 OF 2017
IN
SUIT NO.894 OF 1986**

Sanjeev Builders Private Ltd. & Ors.)....Applicants

IN THE MATTER BETWEEN :

Sanjeev Builders Private Ltd. & Ors.)....Plaintiffs
V/s.

Life Insurance Corporation of India)....Defendant

Ms.Deepti Panda a/w Mr.M.Janardhanan and Ms.Akshita Patil I/by
Narayanan and Narayanan for plaintiffs/applicants.

Ms.Snehal Paranjpe a/w Mr.J.P.Kapadia and Mr.O.Mohandas I/by
Little and Co. for defendant.

CORAM : K.R.SHRIRAM,J

DATE : 11.9.2018

P.C.:-

1. At the outset, Plaintiffs permitted to delete plaintiff no.3 in the cause title to this Chamber summons.

2. This Chamber summons is for leave to amend the plaint as per the schedule annexed to the Chamber summons. During the course of making submissions, Ms.Panda for applicants on instructions stated that the contents of proposed paragraph 12A are already there in the plaint and therefore, is not pressing for adding proposed paragraph 12A. Therefore, proposed paragraph 12B in the schedule to

be read as paragraph 12A.

3. The amendment basically is to enhance the alternative claim for damages in the event the court holds that plaintiff is not entitled to specific performance of the agreement dated 8.6.1979. In paragraph-12 of the plaint it is averred “..... *plaintiffs submit that by reason of the breach committed of the said agreement by the defendants the plaintiff no.1 have suffered loss and damages which they estimate at Rs.1,01,00,000/- as per particulars of claim.....*”.

Prayer clause-b(v) reads as under :-

“That the defendants be ordered and decreed to pay to the plaintiff the said sum of Rs.1,01,00,000/- or such other sum as this Honourable Court may deem just and proper with interest at the rate of 18% from the date of the suit till payment and/or realisation as and by way of damages for breach of the said agreement for sale”

(emphasis supplied)

It is the case of the applicant as submitted by Ms.Panda that while filing the suit, plaintiffs quantified the estimated damages likely to be caused to them by reason of non performance at Rs.1,01,00,000/- The value of the suit property increased during the pendency of the suit. According to plaintiffs' estimate, the value of the property today can be estimated to be Rs.400,01,00,000/- and if the

court is not inclined to grant specific performance, then the damages which plaintiffs would suffer on account of non performance by the defendants under the agreement should be Rs.400,01,00,000/-. Therefore, there is already claim for damages but what plaintiffs are seeking today is only enhancing the claim, of course subject to provisions of Section 73 of the Contract Act.

4 Ms.Paranjape submitted that after 30 years, this application is filed for enhancement and therefore, *ex-facie* the increased amount is barred by limitation. Ms.Paranjape submitted that though the settled position in law is that courts are generally liberal with pre-trial amendment, when *ex-facie* claim appears to be barred by limitation, the court should not permit the amendment.

5 What one should keep in mind is this figure of Rs.400,01,00,000/- can tomorrow go up or go down. Plaintiffs are only estimating it to be the amount which according to plaintiffs, is the loss which they would suffer. Whether that is the right estimate can be decided only at the time of trial. Even in para 12 of the plaint plaintiff has stated “.....suffered loss and damages which they estimate at.....” In prayer clause-(b)(v) plaintiff pray “..... or such other sum as this Honourable Court may deem just and proper.....”

Further, if this figure of Rs.1,01,00,000/- is not amended as prayed in this Notice of Motion, defendant will object the attempt of plaintiff to claim more as damages saying plaintiff cannot go beyond what is averred in the plaint. Due to situation beyond the control of plaintiff, this suit has remained pending for almost 32 years. Chances of suffering greater prejudice is more if the amendment is not allowed. It is clarified that plaintiff will still have to prove every penny it is claiming as damages.

6. Further, a Division Bench of this Court in ¹***Kahini Developers Pvt. Ltd. Vs. Mukesh Morarji Panchamatia & Ors.*** has, while considering section 22 of the Specific Relief Act 1963, held that the legislature has contemplated that an amendment within the meaning of proviso to section 21(5) and section 22(2) of the Specific Relief Act 1963 can be made at any stage of the proceeding and such an amendment would not be barred by limitation. Paragraph-11 of the said Judgment reads as under :-

“11. Since the Court is informed that an appeal has been filed against the judgment of the learned Single Judge in Harinarayan G. Bajaj (supra), we are not expressing any opinion on the correctness of that decision. We are, however, of the view that since the legislature has contemplated that an amendment within the meaning of the provisos to section 21(5) and section 22(2) of the

1 2013(3) Mh.L.J.440

Specific Relief Act 1963 can be made at any stage of the proceeding, such an amendment would not be barred by limitation. Even as a matter of first principle, an application for amendment must be distinguished from the cause of action which is sought to be set up by the amendment. As a matter of general principle, though an application for amendment is allowed, the question as to whether the cause of action is within limitation would have to be determined and adjudicated upon. While allowing an amendment, it is always open to a Civil Court to direct that the amendment shall not relate back to the institution of the proceeding. The Court would therefore have to determine at trial whether the cause of action is within limitation or is barred. Where the legislature has contemplated that the plaint can be amended at any stage of the proceeding as stipulated in the provisos to section 21(5) and section 21(2). Such an amendment of the nature contemplated by those provisions can indeed be brought about at any stage of the proceedings.”

7. A full bench of the Madras High Court in ²***M/s.Hi Sheet Industries Vs. Litelon Limited and Ors.*** has also held that an amendment of pleading on damages when a plaintiff is seeking to claim enhancement of the amount of compensation/damages could be entertained notwithstanding the fact that amendment is sought for beyond the period of limitation. Of course, the court has also said that it would depend on facts and circumstances of each case.

8 Admittedly, the trial is yet to begun though issues have been framed long ago.

2 2007- 1 Law Weekly 32

9. In the circumstances, keeping open rights and contentions of defendants to raise the issue of limitation which the court will decide at the time of trial, Chamber summons allowed in terms of prayer clause-(a) and accordingly disposed.

10 Paragraph-12(B) in the schedule to be corrected to read as 12(A) and the amendment as mentioned in (I), (III), (IV) & (V) in the schedule are permitted.

11 Plaintiffs to pay sum of Rs.25,000/- as costs by way of donation to Chief Ministers Distress Relief Fund, Account No.:67319948232, Bank: State Bank of India, Branch : City Branch, Thiruvananthapuram, IFSC : SBIN0070028, Pan : AAAGDO584M, Account type : Savings, Swift Code : SBININBBTO8, within two weeks from today under advise to defendants' Advocate.

12. Amendment to be carried out and amended plaint to be served within two weeks. Further written statement to be filed and copy served within one week thereafter.

13 Ms.Paranjape seeks stay of two weeks of this order. Stay

refused.

14. Stand over to 8.10.2018 for issues.

(K.R.SHRIRAM,J)

Jahagirdar
Kiran
Ganesh

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signed by
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Kiran Ganesh
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2018.09.18
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