

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 948 OF 2017
IN
SUIT NO. 1673 OF 1998**

Shailesh H Bajaj	...Plaintiff
<i>Versus</i>	
Creative Garments Pvt Ltd & Anr	...Defendants

Ms Sonal, *i/b DAS Associates, for the Plaintiff/Applicant..*
Mr Sharan Jagtiani, *with Nirman Sharma, i/b Girish Kedia, for the*
Defendants.

CORAM: G.S. PATEL, J
DATED: 29th January 2018

PC:-

1. Heard.

2. The Chamber Summons seeks to recast issues framed on 9th May 2012. Ms Sonal does not, at this stage, press the portion of the prayer that seeks deletion of the old issues Nos. 3, 9, 10 and 12. She is, of course, at liberty to make that submission at any stage since these issues can be recast any time.

3. What I do expressly reject are the proposed additional issues at page 10, which read thus:

"1) Whether when Defendant No. 1 filed Summary Suit No. 5217/99, a sum of Rs.25,01,750/- was not due by the Plaintiff to Defendant No. 1?

2) Whether the Summary Suit No. 5217/99 filed by the Defendant No. 1 against the Plaintiff was false, frivolous and a fraud played upon the Plaintiff and this Honorable Court?"

4. There is mischief behind this submission. The Summary Suit of which these two proposed issues speak was filed by the 1st Defendant against the Plaintiff and resulted in a decree that was confirmed all the way to the Supreme Court. I cannot possibly in the guise of Issue No. 1 enter in to the controversy whether the amount of Rs.25,01,750/- was not in fact due by or from the Plaintiff, since the Plaintiff has already suffered a decree in that amount. It does not end at that. The decree was executed. The amount is actually paid.

5. The second proposed issue makes matters worse, because it seeks that the Trial Court should in the guise of deciding this issue set aside the 1st Defendant's decree — one that has attained finality even in execution — by saying that it was a fraudulent. No such issue can ever arise in this suit.

6. The Chamber Summons is dismissed. Mr Jagtiani presses for costs, and, in my view, with considerable justification. However, just this once, I will let that aspect of the matter pass.

(G. S. PATEL, J)