

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL CHAMBER SUMMONS NO.47 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION NO.1578 OF 2018
IN
COMMERCIAL SUIT NO.867 OF 2017**

Jaya R. Shekhawat and Ors.Applicants

IN THE MATTER BETWEEN :

Pragati Enterprises through its
Proprietor Ashok Raghunandan AgrawalPlaintiff

Vs.

Sahakar Corp and Ors.Defendants

Mr. Amarendra Mishra for plaintiff.
Mr. Anil D. Yadav for applicant in CHSCD/47/2018.
Mr. A.R. Shaikh I/b. ASD Associates for defendant no.1.

**CORAM : K.R.SHRIRAM, J.
DATE : 4th DECEMBER 2018**

P.C.:

COMMERCIAL CHAMBER SUMMONS NO.47 OF 2018

1 This chamber summons is for leave to transpose original defendant nos.2,3 and 4 as plaintiff nos.2,3 and 4. Plaintiff has no objection.

2 Plaintiff and applicants (defendant nos.2,3 and 4) had filed a suit bearing no.913 of 2017 before the City Civil Court at Dindoshi, Mumbai against defendant no.1 for reliefs as prayed for therein, more particularly seeking declaration that the termination dated 14th March 2017 was effective and binding upon defendant no.1. Further reliefs by way of permanent injunction against defendant no.1 from alienating, disposing or

creating third party rights in respect of the suit property was also prayed for. At the time of hearing the application for interim relief, it is stated in the affidavit in support that the Court was of the view that as the disputed Deed of Conveyance was executed for total consideration amount of Rs.14 Crores, there was insufficient court fees paid. It seems the Court also had expressed a view that the pecuniary jurisdiction would be the High Court and not the City Civil Court. Therefore, on 27th July 2017 plaintiff and applicants herein were granted leave by the City Civil Court to withdraw the suit with liberty to file fresh suit. Defendant no.1 had expressed no objection for the same as recorded in the order.

3 Based on that liberty granted, to which defendant no.1 had no objection, plaintiff filed this suit. Applicants did not join plaintiff and therefore, applicants were made as defendant nos.2,3 and 4 to this suit. Now defendant nos.2,3 and 4, viz., applicants have decided to join hands with plaintiff and prosecute this suit as plaintiffs.

4 Under Order I Rule 1 of the Code of Civil Procedure 1908, all persons may be joined in one suit as plaintiffs where any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative and if such persons brought separate suits, any common question of law or fact would arise.

5 Mr. Shaikh submits that as provided in Order XXIII Rule 1 (A) of the Code of Civil Procedure 1908, defendant can apply to be transposed as plaintiff only if plaintiff withdraws a suit or abandoned the suit under Rule 1 of Order XXIII and in this case, plaintiff has not made any statement that he is inclined to withdraw the suit or wishes to abandon the suit, the application cannot be allowed. I do not agree with Mr. Shaikh since Order XXIII Rule 1 (A) only deals with a situation where defendant may apply to be transposed but does not come as an absolute bar against defendants with the consent of plaintiff getting transposed as plaintiffs. It is also well settled that the Court has power under Order I Rule 10(2) of the Code of Civil Procedure, 1908 to transfer a defendant to the category of plaintiffs and where plaintiff agrees, such transposition should be made. The Supreme Court in *Kiran Tandon v/s. Allahabad Development Authority and another*¹ held as follows :

"4. It is well settled that the Court has power under Sub-rule (2) Order 1, Rule 10, CPC to transfer a defendant to the category of plaintiffs and where the plaintiff agrees, such transposition should be readily made. This power could not be exercised by the High Court in the appeal, if necessary, suo motu to do complete justice between the parties. The principle was laid by the Privy Council in Bhupendra Narayan Sinha v. Rajeshwar Prasad, AIR 1931 PC 162 and has been consistently followed by all the Courts.

6 The Karnataka High Court has also followed the above said Supreme Court decision in *Irapawwa alias Irawwa and Ors. v/s.*

1. 2004 AIR SCW 2089

Channabasawwa and Ors.² and permitted transposition in given circumstances by observing as follows:

"12. It is well established that the Court has power under Order 1, Rule 10(2) of the C.P.C., to transpose a defendant to the category of plaintiffs. The Court can by sou motu or on the application of any of the defendants may transpose a defendant as plaintiff. Transposition can be made to do complete justice between the parties and with a view to avoid multiplicity of proceedings. I am of the view that for a complete and effectual adjudication upon the question involved in the suit and to avoid multiplicity of proceedings, the trial court has allowed the applications transposing 7th defendant as co-plaintiff. The trial Court was also right in allowing the application for amendment of the plaint."

Even the Madras High Court in **P.S. Mohan Sha and Ors. v/s.**

P.S. Parameswaran Sham and Ors.³ supports this view.

7 I have to also note that defendant no.1 had consented before the City Civil Court for applicants to withdraw the suit and file a fresh suit. Plaintiff and applicants have no conflicting interest. The nature and character of the suit will also not get altered. It would also not cause any harm to defendant no.1. If this chamber summons is disallowed, it will not prevent applicants from filing a fresh suit against defendant no.1 on the same cause of action and for the same reliefs which are prayed for in this suit. If the chamber summons is allowed, that will also avoid multiplicity of proceedings.

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

2. AIR 2005 KARNATAKA 84

3.2009 SCC Online Mad 787

9 Amendment to be carried out and copy of the amended plaint to be served within two weeks from today.

(K.R. SHRIRAM, J.)