

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 389 OF 2017

IN

CHAMBER SUMMONS NO. 633 OF 2016

Veena Vijaykumar Oza

...Appellant

Versus

M/s.Sharan Shelters Pvt.Ltd And Ors.

...Respondents

with

NOTICE OF MOTION NO.143 OF 2018

Mr.H.J.Thacker, Senior Advocate i/b. Eventa A.Gonsalves and Reyden L.Gonsalves, for the Appellant.

Mr.Samantaray with Mrs.Khyati Amit Kanani i/b.Kanani & Co., for Respondent No.3.

Mr.Vyom Shah with Mr.Sachin Mahagaonkar with Mr.J.Shah i/b. Divya Shah Associates, for Respondent no.1.

**CORAM: NARESH H.PATIL AND
G.S.KULKARNI, JJ**

DATED: 19th June, 2018

P.C.:

1. The appeal is directed against the order dated 25 October 2016 passed by the learned Single Judge in the Chamber Summons taken out in a suit.

2. We have perused the order passed by the learned Single Judge on 25th October,2016 and the order dated 9th October,2016.

3. The learned Counsel for the appellant submits that as the issue of limitation has already been framed by the learned Single Judge by an order dated 9th October,2015, there is no requirement in law and in facts to frame the said issue as a preliminary issue which was not a plea of the defendant in Chamber Summons no.633 of 2016 filed by the plaintiff for amendment of plaint. The learned Counsel further submits that there is no challenge to the order passed by the learned Single Judge framing the issue of limitation by the order dated 9th October,2015.

4. The learned Counsel for the respondents supports the order of the learned Single Judge and submits that no prejudice would be caused to the appellant if the limitation issue is framed as a preliminary issue. The learned Counsel submits that he has filed a notice of motion in the year 2014 to consider the issue of limitation as preliminary issue.

5. Perused the impugned order and the record placed before us. We have considered the submissions advanced. We find that in the plaintiff's Chamber Summons for amendment, the defendant's prayer for

framing issue of limitation as a preliminary one ought not to have been granted. The issue of limitation was already framed by the court by order dated 9/10/2015.

6. The learned Senior Counsel appearing for the appellant is right in his contention that there was no such application pending before the learned Single Judge in respect of grant of interim relief while the impugned order was passed.

7. We are of the view that the Chamber Summons for amendment is required to be heard and decided by the learned Single Judge on its own merits.

ORDER

1. The appeal is allowed.
2. The impugned order dated 25 October 2016 is quashed and set aside.
3. Chamber Summons No.633 of 2016 be heard on its own merit.
4. All contentions of the parties are kept open.
5. In view of disposal of the appeal, pending notice of motion no.143 of 2018 does not survive, it is disposed of.

(G.S.KULKARNI, J.)

(NARESH H. PATIL, J.)