

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER NO.546 OF 2019

Ramesh Namdeo Patil ... Appellant
Versus
Raman Pandurang Mhatre and Ors. ... Respondents

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Mr. Shaun Pinto for the Appellant.
Mr. Rakesh M. Pandey a/w Mr. Ashutosh Shukla for respondent
Nos.1 to 5.

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CORAM : M. S. KARNIK, J.
DATE : 7th JUNE, 2019.

P. C.:

1. The Appellant (Original Plaintiff) by this Appeal From Order challenge the order dated 26.04.2017 passed by the Judge, City Civil Court at Dindoshi, Mumbai rejecting the Chamber Summons No.331 of 2015 which was taken out by the appellant seeking an amendment in plaint.

2. The plaintiff had filed a Suit for declaration. An objection was raised that the Trial Court did not have pecuniary jurisdiction to try the Suit. The objection was upheld. The plaint was therefore returned for presentation to the proper Court. Almost after five years the chamber summons was filed for amendment of the plaint thereby enhancing the claim so as to

bring the Suit within jurisdiction of the City Civil Court. The Trial Court was pleased to reject the chamber summons on the ground that once the plaint has been returned, the question of entertaining chamber summons for amending the plaint does not arise as the Suit itself is not in existence before the Court.

3. I have gone through the impugned order passed by the trial Court. I do not find any reason to interfere with the view taken by the trial Court as the plaintiff has sought to amend prayer clause made in the plaint after the plaint has been returned, which chamber summons is rightly rejected. Moreover the chamber summons was filed almost five years after the order returning the plaint was passed. Therefore, I am not not inclined to interfere with the impugned order.

4. It is however made clear that if the appellant files a fresh Suit, the same obviously will be dealt with on its own merits and in accordance with law without being influenced by any of the observations made by the trial Court while returning the plaint and in the order rejecting the chamber summons for amendment.

5. All the contentions of both the parties are kept open. Since the learned counsel for the appellant submitted that he

would be filing a fresh Suit, the question of now proceeding with the plaint as returned does not arise.

6. With these observations, the Appeal stands dismissed.

(M. S. KARNIK, J.)