

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS No. 114 of 2018

IN

SUIT No.473 of 2014.

Bharti Mahendra Jain

..Applicant.

In the matter between :-

Bharti Mahendra Jain

..Plaintiff.

Vs

A & A Shelters Pvt. Ltd. & Ors

..Defendants.

And

Vayuputra Builders & Infrastructures
Private Limited

..Respondent.

Mr Vishal Kanade a/with Mr. M.P. Vora I/by M/s
Pramod Kumar & Co., Advocates for the Plaintiff.

Mr. Y.V. Divekar a/with Rohan Karande I/by M/s
Divekar & Co., Advocate for Defendant No.2.

CORAM : B. P. COLABAWALLA, J.

DATED :- 16TH JANUARY, 2019.

P.C. :

1) This Chamber Summons has been filed by Plaintiff to join the Respondent- "Vayuputra Builders & Infrastructures Private Limited" as Party Defendant No.4 in the present suit as

well as for certain amendments as per the Schedule annexed to the chamber summons. As far as the Respondent is concerned, the plaintiff has filed an affidavit of service dated 16th January, 2019 evidencing service of this chamber summons on the respondent. Despite service none have appeared on behalf of the respondent. As far as Defendant No.2 is concerned, they have appeared through an Advocate.

2) Mr. Divekar, the learned Advocate appearing on behalf of Defendant No.2 strongly opposed this chamber summons. He submitted that by virtue of this amendment the plaintiff is now coming up with an entirely new case. The amendments have the effect of changing the entire cause of action in the present suit as originally filed and in fact now reliefs are claimed against defendant No.2 which were originally never claimed. He further submitted that the claim made against Defendant No.2 is ex facie also barred by law of limitation. For all the aforesaid reasons, Mr. Divekar submitted that this chamber summons be dismissed.

3) On the other hand, Mr. Kanade, learned Counsel appearing on behalf of the Plaintiff submitted that this Chamber

Summons has been necessitated in view of the fact that Defendant No.2 society has terminated the development agreement with defendant No.1 and has now entered into a new development agreement with the respondent. It is in these circumstances that the respondent is sought to be added as a party to the plaint and consequential amendments in relation to the said respondent are made in the Schedule annexed to the chamber summons. As far as argument of Mr. Divekar regarding a whole new case and change of cause of action is concerned, Mr. Kanade relied upon clause 6.4 of the development agreement entered into by Defendant No.2 society with the respondent which states that the society shall, at its sole cost and expense defend and settle, all past, present and future third party claims and/or litigations. Mr. Kanade pointed out that fourth schedule gives details of the said proceedings / litigations and at serial No.1 is the present suit. He therefore submitted that there is no change of case or cause of action as contended by Mr. Divekar. Even as far as the relief claimed against Defendant No.2 is concerned, Mr. Kanade submitted that this was necessitated in view of the new development agreement that was entered into by defendant No.2 with the respondent.

4) As far as limitation is concerned, Mr Kanade submitted that the claim was clearly not barred as the cause of action, as now pleaded, arose only in view of the fact that new development agreement was entered into by defendant No.2 with the respondent. Without prejudice to the aforesaid argument, Mr. Kanade submitted that, in any event the question of limitation can always be kept open to be decided by the Court when it finally hears the suit and that should not be an impediment in allowing the amendment. For all these reasons he submitted that the chamber summons be allowed.

5) I have heard learned Counsel for the parties at some length and perused the papers and proceedings in the present Chamber Summons. As far as the respondent is concerned, though he is duly served he has chosen not to appear in the present matter and has not filed any affidavit-in-reply. It is also not in dispute that defendant No.2 has entered into a new development agreement with the respondent. The plaintiff is a purchaser of the flat that was to be constructed by the original developer namely defendant No.1. This being the facts, I think it is absolutely necessary that the respondent be joined to the

present suit as they would be a necessary and proper party.

6) As far as argument of defendant No.2 that, now an entirely new case is pleaded or that the amendment changes entire cause of action of the suit, I find this argument to be wholly ridiculous. The facts pleaded in the Schedule to the chamber summons arise squarely out of the new development agreement that was entered into by defendant No.2 society with the respondent. It is in these circumstances that the facts and averments are pleaded in the Schedule to the chamber summons and the necessary prayers are sought. In other words, it is by virtue of subsequent developments that have taken place that the amendment of the plaint is sought for. In these circumstances, I do not find any substance in the argument of Mr. Divekar.

7) As far as the issue of limitation is concerned, I am not inclined to decide this issue at this stage. I make it clear that even though I am inclined to allow the chamber summons, issue of limitation is expressly kept open to be agitated at the appropriate stage.

8) In the above circumstances and in view of the foregoing discussion, the chamber summons is allowed in terms of prayer clauses (a) and (b) which read thus :-

(a) that Vayuputra Builders & Infrastructures Private Limited being Respondent above named be joined as party defendant No.4 in the above Suit.

(b) that the Plaintiff be permitted to carry out amendments as per the Schedule annexed hereto in the Plaint and with all necessary and consequential amendments in the Plaint.

9) The amendment to be carried out within a period of two weeks from today and a copy of the amended plaint shall be served on all Advocates for the defendants, including newly added Defendant No.4 (the Respondent herein) within a period of two weeks thereafter. All defendants shall be at liberty to file their written statement/additional written statement to the amended plaint within a period of eight weeks from the date of service of the amended copy of the plaint.

10) Chamber summons is disposed of in the aforesaid terms. No order as to costs.

(B.P. COLABAWALLA, J.)