

Mr. Chirag Mody, a/w Mr. Jayesh Mestry, Mr. Swapnil Shikhare, i/by Ashok Purohit & Co., for the Respondent/Proposed Defendant.

Mr. N. Bandodkar, IInd Asst. Court Receiver present.

CORAM : R.I. CHAGLA J.

DATE : 30 July 2019

ORDER :

1. The present Chamber Summons is for impleadment of the Respondent as a party Defendant to the present Suit.

2. The Plaintiff has sought impleadment of the Respondent as a Defendant on account of the Respondent being a party to the Memorandum of Understanding entered into with the Plaintiff and in which it was agreed between the parties that the owner of the plots to be developed i.e. the Plaintiff was desirous of development after settling the above Suit with one Prajapati and had approached the Respondent as developer and disclosed and negotiated the premises for redevelopment. In the Memorandum of Understanding at Clause 17, the Plaintiff has represented that they will settle the matter with the said

Prajapati within a period of six months from the date of execution of the Memorandum of Understanding and based upon the representations made by the Plaintiff, the Respondent had agreed to enter into the Memorandum of Understanding as per the terms and conditions appearing in the Memorandum of Understanding.

3. He has stated that by an award passed by the learned Arbitrator in the matter between Vivek Omprakash Abrol (Claimant therein), who is the Respondent (Proposed Defendant) in the Chamber Summons and the Plaintiff (Respondent therein), the Memorandum of Understanding was declared as valid, subsisting and binding agreement between the parties and that the Plaintiff herein was directed to specifically perform its obligations under the Memorandum of Understanding including settling the pending dispute with the said Prajapati within a period of six months from the date of the award i.e. 17th October 2018 and for doing all things necessary for this purpose including executing the Development

Agreement to grant development rights in the said property and to do all things necessary to effectively carry out of the terms of the said Memorandum of Understanding. Further, in paragraph 44(c) of the said award the learned Arbitrator held that in the case of failure or inability on the part of the Plaintiff herein to comply with its obligations under the said Memorandum of Understanding which included settling with the said Prajapati within a period of six months, the Plaintiff herein shall forthwith pay to the Respondent a sum of Rs. 4,50,00,000/- together with interest till payment/realisation. It appears that the challenge to the award under Section 34 has been rejected today.

4. Accordingly, the learned Counsel for the Plaintiff has sought impleadment of the Respondent by submitting that in the above Suit no relief will be claimed against the Proposed Defendant and the Respondent shall be joined only as a formal party.

5. The learned Counsel for the Respondent has opposed the Chamber Summons on the ground that the award which is passed by the learned Arbitrator provides that the Respondent herein shall be entitled for payment of a sum of Rs. 4,50,00,000/- together with interest upon the failure of the Respondent to comply with its obligations under Memorandum of Understanding including settling with the said Prajapati. He further states that the challenge to the award has been rejected today. He states that it is now open to the Respondent to either seek specific performance of the Memorandum of Understanding or payment of the said sum awarded.

6. Accordingly, he states that as of today the Respondent is not a necessary party to be impleaded as Defendant in the above Suit. In any event, he states that the settlement with the said Prajapati is matter between the Plaintiff herein and the said Prajapati and that the Respondent has no obligation to settle the matter with Prajapati.

7. Having considered the submissions, I am inclined to grant the amendment including the impleadment of the Respondent in the above Suit which has been sought for by the Applicant. The Plaintiff is *dominus litis* and is entitled to join any party whom he deems fit as party Defendant to the Suit. The learned Counsel for the Plaintiff has also stated that no relief is being sought for against the Respondent and that he is only being made a formal party Defendant to the Suit in view of the Memorandum of Understanding entered into between the Applicant and the Respondent. Further, the award has held the Memorandum of Understanding as valid, subsisting and a binding agreement between the Applicant and the Respondent. The challenge to the award has also been rejected by this Court. The Respondent is now entitled to claim specific performance of the Memorandum of Understanding.

8. Hence, since the execution of the Memorandum of Understanding being a subsequent event which will have a material bearing on the above Suit and the Respondent being a

party thereof, it would be for the benefit of the Respondent to be joined in the Suit. It is admitted as between the Applicant and the Respondent that the said Prajapati is a trespasser in the subject property and it would be in the interest of both the Applicant as well as the Respondent that the Applicant succeeds in its dispute with the said Prajapati in the above Suit. Further, it is necessary to note that the Chamber Summons has been taken out prior to expiry of the six months of settlement with the said Prajapati as provided for under the said award.

9. Hence, considering that the Memorandum of Understanding would be material in the subject Suit and that the Applicant and the Respondent are parties to the Memorandum of Understanding, it would be necessary for the Respondent to be impleaded as formal Defendant in the above Suit.

10. Accordingly, the Chamber Summons is made absolute in terms of prayer clauses (a) and (b).

11. The Plaintiff shall amend the Plaint as per schedule annexed to the Chamber Summons within a period of two weeks from the date of this order.

12. The Chamber Summons is accordingly, disposed of in the above terms.

13. The Suit shall be placed for directions on 19th August 2019.

[R.I. CHAGLA J.]