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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**CHAMBER SUMMONS NO. 600 OF 2019
IN
SUIT NO. 1695 OF 2012
WITH
SUIT NO. 1695 OF 2012**

Asoo K. Nihalani ...Applicant/Plaintiff
VS
Shekhar Dadarkar & Ors. ...Defendants

.....
Mr Karl Tamboly a/w Ms Prerna Lalchandani I/b Mr Omkar Kulkarni
for the Applicant/Plaintiff.
Ms Aditi Jadhav I/b Mr K.K.Tiwari for Defendant No.1.
Mr Viraj Maniar I/b Maniar Srivastava Associates for Defendant
Nos.3 and 4.

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**CORAM : B. P. COLABAWALLA, J.
JUNE 20, 2019.**

P.C. :

Perused the Chamber Summons and affidavit in support
thereof and the affidavit of defendant No.3 in reply thereto.

2 Heard Mr Tamboly for the plaintiff and Mr Maniar for
defendant Nos.3 and 4. The present Chamber Summons is filed by the
plaintiff praying for amendment to the plaint as set out in the
schedule annexed to the Chamber Summons. The affidavit in support
of the Chamber Summons indicates that by an order dated 25th July,
2018 passed by Hon'ble S.J. Kathawala, J. the plaintiff was permitted

to add defendant Nos.3 and 4 as party defendants to the present suit. However, the learned counsel for the plaintiff states that inadvertently the consequent reliefs as against defendant Nos.3 and 4 were not sought and the amendments could not be carried out. Hence the present Chamber Summons.

3 However, Mr Maniar, in view of what is stated in paragraph No. 4 of the affidavit-in-reply to the Chamber Summons, has stated that the amendments sought to be incorporated in the plaint are barred by limitation and hence should not be allowed. He also states that the plaintiff has conducted the proceedings in a careless manner and no indulgence ought to be shown to the plaintiff. He draws my attention to prayer clause (a) to the present Chamber Summons which is for injunction which prayer is not maintainable in the present proceedings.

4 He also states that the plaintiff ought to have been careful to seek appropriate reliefs in the Chamber Summons No. 1000 of 2018 in which the aforesaid order dated 25th July, 2018 was passed. He submits that even in an earlier Chamber Summons bearing (L) No. 899 of 2018, the plaintiff despite seeking reliefs, had not made defendant Nos.3 and 4 hereto as respondents, as a result of which the

same was withdrawn.

5 From the affidavit-in-reply of defendant Nos.3 and 4 and the submissions, even if I were to assume that the plaintiff has been careless in conducting the proceedings to add defendant Nos.3 and 4 as parties, since it is an admitted position that the development rights of defendant No.1 in respect of the property of defendant No.2 have been taken over by defendant Nos.3 and 4, it would be in the interest of justice if the plaintiff is allowed to amend the plaint as per the schedule annexed to the Chamber Summons.

6 Accordingly, the Chamber Summons is allowed in terms of prayer clauses (a) and (b). No order as to costs.

7 It is made clear that all issues with reference to these amendments including the issue of limitation are expressly kept open to be agitated by the parties at the trial of the suit. I have not opined one way or the other, either on the issue of limitation or on merits of these amendments.

8 The plaintiff shall carry out the aforesaid amendments within a period of two weeks from today and serve a copy of the

amended plaint on the defendants within a period of two weeks thereafter. The defendants shall be at liberty to file their Written Statement/ additional Written Statement, if any, to the plaint as originally filed, as also as amended, within a period of four weeks from the date of service of the amended plaint upon them. Place the matter under the caption “for directions” on 16th August, 2019.

(B.P.COLABAWALLA, J.)