

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

CHAMBER SUMMONS NO.496 OF 2018

WITH

NOTICE OF MOTION NO.818 OF 2018

IN

COMMERCIAL SUIT NO.496 OF 2017

Rupa Hitesh Sayta)....Applicant/Plaintiff

V/s.

Shakuntala R.Kapadia and Ors.)....Defendants

[Mr.Shaunak Sayta-Constituted Attorney of plaintiff present].

Ms.Neelam S.Vyas I/by Purnima G.Bhatia for defendant no.1.

CORAM : K.R.SHRIRAM,J

DATE : 14.1.2019 & 15.1.2019

P.C.:-

CHAMBER SUMMONS NO.496 OF 2018

1. This is a pre trial amendment application for leave to amend the plaint. Written statement is filed by defendant no.1. The other defendants, it is not clear whether have filed any written statement. It is also not clear whether all the defendants have been served. The records also do not indicate whether any other defendants have filed written statement.

2. At this stage, Ms.Vyas for defendant no.1 states that her instructing Advocate Purnima Bhatia will be filing Vakalatnama for

defendant nos.2 to 15 and will also be filing written statement.

Amendment sought also does not alter the nature and character of the suit. There are no fresh prayers being sought.

3. In the circumstances, Chamber summons allowed in terms of prayer clause-(a) with a clarification that item-3 in the schedule to chamber summons which is bracketed in red ink is not granted.

4. Chamber summons accordingly disposed. Plaint to be amended and amended plaint to be served within two weeks from today. Additional written statement to be filed by defendant no.1 and written statement by defendant nos.2 to 15 to be filed within two weeks of receiving the amended plaint.

5. Ms.Vyas. also waives service of writ of summons on behalf of all the defendants.

6. Stand over to 15.2.2019 for directions.

NOTICE OF MOTION NO.818 OF 2018

1. Ms.Vyas for defendants states nothing survives in this Notice of Motion. Notice of Motion disposed accordingly.

On 15.1.2019 :-

1. At 3.00 p.m. after notice to plaintiff, Ms Bhatia mentions that her junior advocate inadvertently stated that Ms Bhatia will be filing Vakalatnama on behalf of defendant nos.2 to 15, whereas, her instructions are only to file Vakalatnama on behalf of defendant nos.2 to 4, apart from defendant no.1, on whose behalf Vakalatnama is already filed. Ms Bhatia states that Vakalatnama will be filed within one week from today and also waives service of writ of summons.

2. As regards defendant nos.5 to 15, from an affidavit of one Mr.Tiwari, affirmed on 27th March, 2018, with the bailiff in the office of Sheriff of Bombay (original to be filed in the registry), none of these defendants appear to have been served. Packets have all come back with an endorsement 'unclaimed' or 'not served' or 'left'. Mr.Kunal Katariya appearing for plaintiff seeks one opportunity to serve all these defendants by hand delivery.

3. Fresh writ of summons to be issued. Returnable date in writ of summons to be extended to 8th March, 2019. Writ of summons to be served by 1st February, 2019. Deputy Sheriff / Bailiff to serve defendants by hand delivery.

4. At this stage, Ms Bhatia states that many of the defendants have been either wound up or are no more in existence. Mr. Katariya states that some of the defendants are sole proprietary concern of defendant no.3. Ms Bhatia states that if defendant no.3 is already a party, then where is the question of adding the proprietary concern as defendants, who are allegedly the sole proprietary of defendant no.3. Mr.Katariya states that he will take instructions as regards when the defendant is already a party, why should the proprietary concern be also added as defendants. Mr.Katariya states that he might even take instructions as to whether the trading names like defendant no.6 and defendant no.7 can be struck off from the array of defendants.

5. Registry to accept the written statements of defendant no.2 to defendant no. 4.

6. At this stage, counsel state that dispute could be referred to mediation since it is a dispute between siblings, plaintiff and defendant no.1 being sisters and defendant nos.2 to 4 are family members of defendant no.1.

7. Therefore, by consent, Mr. Chirag Mody, an Advocate practicing in this Court, is appointed as Mediator to mediate all disputes between plaintiff and defendant nos.1 to 4, not just restricted to the issues which are subject matter of the suit.

8. The fees and administrative expenses of Mediator to be shared equally between plaintiff and defendants (50 : 50). Mediator to complete the mediation and submit a report by 28th February, 2019.
9. Both counsel state that their respective clients will extend all co-operation to the Mediator.
10. It is made clear that reference to Mediator does not mean time table earlier given as regards other defendants have been put on hold. That will continue in any event.
11. Stand over to 8th March, 2019, for directions.

(K.R.SHRIRAM,J)