

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL CHAMBER SUMMONS NO.624 OF 2019
IN
COMMERCIAL IP SUIT NO.243 OF 2019**

Radha Bharadwaj	..Plaintiff
Vs.	
Ellipsis Entertainment Media LLP & Ors	..Defendants

Mr. Zal Andhyarujina a/w Mr. Pratik Pawar and Mr. Siddhesh S. Pradhan
I/b J. Sagar Associates for Plaintiff/Applicant

Mr. Karl Tamboly a/w Ms. Komal Joshi and Mr. Rohan Mathur I/b ALMT
Legal for Defendant No. 1;

Mr. Ashish Kamat a/w Ms. Madhu Gadodia, Mr. Vikramaditya Chavan and
Mr. Devashish Tiwari I/b Naik Naik and Co. for Defendant No. 2;

Dr. Birendra Saraf a/w Mr. Rashmin Khandekar a/w Mr. Sanjay Kadam, Ms.
Apeksha Sharma and Mr. Sanjeel Kadam I/b Kadam and Co. for Defendant
No. 3;

Mr. Dharam Jumani a/w Mr. Parag Khandhar I/b DSK Legal for Defendant
No. 4.

**CORAM : K.R.SHRIRAM, J.
DATE : 16th JULY 2019**

P.C.:

1 This is a chamber summons for leave to amend the plaint. Plaintiff has not even served the writ of summons on defendants, but of course plaintiff had moved for ad-interim reliefs. This chamber summons is taken out for leave to amend the plaint on the basis that additional facts have transpired or come to light after filing of the plaint. According to plaintiff none of the facts set out in the plaint is inconsistent with the proposed amendment. Mr. Kamat submitted, relying upon judgment of the Apex Court in the matter of **Revajeetu Builders & Developers Vs**

Narayanaswamy and Sons & Ors.¹ that the proposed amendments are basically newspaper reports, which plaintiff wishes to be introduced and it is settled law that newspaper reports cannot be looked into by courts while considering the merits of the matter. Mr. Kamat submitted that, therefore, the amendment is not necessary to decide the real controversy in the suit. Mr. Kamat submitted that the first condition which must be satisfied before the amendment can be allowed by court is whether such amendment is necessary for determination of real question in controversy and according to Mr. Kamat this condition has not been met.

2 Mr. Tamboly submitted that the suit was lodged in November 2018 and ad-interim relief was refused. In my view, ad-interim relief has not been refused but, because the advocate for plaintiff sought time when the matter was taken up for ad-interim relief the court directed that the notice of motion itself be heard for hearing subject to numbering, on 18th February 2019, after the ad-interim matters.

3 Be that as it may, factors that the court has to consider while hearing the application for leave to amend the plaint has been summarised in paragraph 63 of Revajitu (supra) and the same reads as under:

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the

1 (2009) 10 Supreme Court Cases 84

application for amendment:

(1) Whether the amendment sought is imperative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multi-ple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

4 It is also settled law that while hearing the application for amendment, court does not go into the merits of the proposed amendment.

5 Therefore, I see no merit in Mr. Kamat's submission that the proposed amendments are basically newspaper reports and the amendment is not required for proper and effective adjudication of the case. Mr. Andhyarujina also stated that wherever there are reference to judgments in the proposed amendment, those will be deleted because that cannot form part of pleadings. Therefore, leave to amend the schedule also is granted.

6 As stated earlier even writ of summons is yet to be served, none of defendants have also filed any written statement. The suit filed is to restrain defendants from infringing plaintiff's copy right in the script / screen play titled “A Most Auspicious Journey” owned by plaintiff and for other reliefs as more particularly set out in the plaint. It is plaintiff's case

that subsequent to filing of suit, various materials have come to light, which also supports plaintiff's case that there is an infringement of plaintiff's copy right. Therefore, considering the proposed amendment, I do not find anywhere that it will change the nature and character of the suit. It only provides additional information for plaintiff to justify plaintiff's case, which of course, can be met by defendants in their written statement. I cannot, considering the proposed amendment dismiss the application by stating that the amendments are not proper or necessary for adjudication of the case. On the contrary, they are necessary. Refusing the amendment would, in my view, lead to injustice to plaintiff and no prejudice will be caused to defendants. They may raise all defence in the written statement which is yet to be filed. In the circumstances, chamber summons is allowed in terms of prayer clause (a). Amendment to be carried out and amended plaint to be served within one week from today.

7 Mr. Andhyarujina states that advocate for defendant no.3 has addressed a communication dated 28th November 2018 informing plaintiff's advocate that defendant no.3 Fox Star Studios, has merged with Star India Pvt Ltd. and now Fox Star Studios is a division of Star India Pvt Ltd. Mr. Andhyarujina, therefore, seeks leave to amend the cause title to change the name of defendant no.3 from Fox Star Studios to Star India Pvt Ltd. Leave granted. Amendment to be carried out alongwith other amendments.

8 If plaintiff wish to file a further affidavit in support of a notice

of motion, they may do so and serve the same also within one week from today. Defendants to file affidavit in reply and serve copy by 31st July 2019. Notice of motion be listed for ad-interim on 6th August 2019.

9 All counsel appearing for defendants waive service of the writ of summons. The 30 days period for filing the written statement will commence on the date the amended plaint is served.

(K.R. SHRIRAM, J.)