

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.438 OF 2018
IN
SUIT NO.518 OF 2017**

Sunil S Jain	..Plaintiff/Applicant
Vs.	
Kamla Landmarc Construction Pvt Ltd.	..Defendants
And	
Municipal Corporation of Greater Mumbai & Anr	..Respondents

**WITH
NOTICE OF MOTION NO.1553 OF 2017
WITH
NOTICE OF MOTION NO.705 OF 2018
IN
SUIT NO.518 OF 2017**

Mr. Mayur Khandeparkar I/b Mr. Mehul Shah for Plaintiff/Applicant
Mr. Abhishek Bhadang for Defendant No.1 (in liquidation)
Ms Soniya Putta a/w Mr. Sustafa Bohra and Ms Smruti Maniar I/b Solomon and Co., for Defendant No.2
Mr. Ravi Sirsikar for Respondent Nos.1 and 2 (MCGM)

**CORAM : K.R.SHRIRAM, J.
DATE : 4th MARCH, 2019**

P.C.:

1 This chamber summons is taken out by plaintiff to leave to amend the plaint to add respondents as party defendants to the suit and for other amendments.

2 Mr. Bhadang appearing for defendant no.1 states that if at all, plaintiff incurs any costs and wish to recover that from defendant no.1, plaintiff may lodge claim with the official liquidator, who will consider the same in accordance with law.

3 Mr. Sirsikar for respondents states that he leaves it to the court and if the chamber summons is allowed, then respondents will raise all defences in the written statement.

4 The main opposition came from defendant no.2. Ms Putta submitted that attempt of plaintiff by bringing this amendment to the plaint is to obtain orders against respondents, which plaintiff was not in any event entitled to. According to Ms Putta, the plans which are sanctioned by respondents do not mention anything about the flat which plaintiff claims to have purchase from the developer which is in liquidation (defendant no.1). Ms Putta states that defendant no.2 has challenged the sanctioned plan in respect of the flat, for which plaintiff is seeking specific performance.

5 This is a pre-trial amendment. Defendants have also not filed the written statements. Plaintiff is dominus litus. Plaintiff is seeking to add respondents as defendants because plaintiff has already taken out a notice of motion against respondents for the reliefs which plaintiff wishes to introduce in the plaint. Division Bench of this court in Appeal No.41 of 2008 in Mobin G. D'souza Vs. Vivian d/o Wilfred Fonseca & Ors., passed an order dated 2nd September 2008, in which, paragraph 14 reads as under:

14. While parting with the matter, it has come to our notice that in many matters, the Advocates join the parties directly in a Notice of

Motion without joining them in original proceedings which is not in consonance with the Code of Civil Procedure and office has not taken any objection in this regard. We make an observation that whenever it is found in the suit while executing the interim orders that third party is in possession of the suit property, the interim order shall not be executed against the third party unless the third party is made a party to the main suit and pre-contests on merit to the interlocutory orders. Otherwise, the Plaintiffs and other parties to the suit may obtain interlocutory orders without disclosing to the Court that some other party is in possession of the property and which we find is a fraudulent move to be adopted in the Court and therefore, we have observed that henceforth no Notice of Motion should be entertained by the office wherein the party who is not party in the suit and is made a party in the Motion only.

6 Mr. Khandeparkar states that therefore, the amendment is necessary, otherwise it would be observed that an order against respondents have been taken without making respondents a party to the main suit.

7 Moreover, having considered the proposed amendment, I do not find anything not bonafide. The proposed amendment prayers also cannot be termed ex-facie as barred by limitation.

8 Therefore, keeping open rights and contentions of defendants, including the proposed defendant nos.3 and 4 to raise all defences including limitation, chamber summons is allowed in terms of prayer clause (a), except item no.10 to the schedule, which is bracketed in red ink. Amendment to be carried out and amended plaint be served within two weeks from today. All defendants waive service of writ of summons. Written statements to be filed within 30 days of receiving the amended

plaint. Suit be listed for issues on 12th June 2019, at which time, if parties do not come with agreed draft issues and a separate list of issues on which they are unable to agree, both the parties will be saddled with substantial cost.

9 Notices of motion to come up on 23rd April 2019.

(K.R. SHRIRAM, J.)