

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.565 OF 2017
IN
COMMERCIAL SUIT NO.552 OF 2017**

Naresh Ottarmal Jain & Ors	..Plaintiffs
Vs.	
Jitendra Rameshbhai Jain & Anr	..Defendants
And	
Sumit Jain & Ors	..Respondents

Mr. Kamalesh Mali for Plaintiffs/Applicants
Ms Dimple Majithia I/b Divya Shah Associates for Plaintiff (given discharge)
Mr. Sahil Ansari I/b Mr. Bipin Joshi for Defendant No.1
Ms Archana Deshmukh I/b Singhani & Co. for Defendant No.2
Mr. I. A. Siddiqui for Respondent No.2
Ms Shaista Pathan I/b Y and A Legal for Respondent No.7
Mr. Tushar Gujar I/b Solics Lex for Respondent Nos.8, 9 and 15
Mr. Sushil Upadhyay I/b Mr. A. M. Saraogi for Respondent No.16
Mr. Dinesh Bhatia a/w Ms Risha Alva I/b Pan India Legal for Respondent No.17

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

P.C.:

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1 Ms Majithia instructed by M/s Divya Shah Associates states that M/s. Divya Shah Associates have filed joint vakalatnama with Mr. Kamalesh Mali. Ms Majithia states that Divya Shah and Associates have not been receiving any instructions in the matter and the understanding is Mr. Mali will alone continue. Therefore, Divya Shah Associates are discharged and

Mr. Mali will continue as advocate for plaintiffs.

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2 This is a pre-trial amendment application. Based on affidavit in reply that was filed by defendant no.1 to the original notice of motion, plaintiffs state that it came to light that defendant no.1 has created third party rights and entered into various agreements with respondents. Plaintiffs state that if any order is passed, as prayed for in the plaint, respondents will certainly get prejudiced and they are proper and necessary parties to the suit. Counsel states that respondents could not be added earlier when the suit was filed, because plaintiffs were not aware of the identity of respondents.

3 Though affidavits in reply opposing the chamber summons have been filed, after the chamber summons was heard, counsel for respondents state that chamber summons could be allowed keeping open their rights and contentions to be raised in the written statements. Defendants have not filed any written statements yet. Counsel appearing for defendants also have no objection subject to keeping open their rights and contentions.

4 In the circumstances, keeping open rights and contentions of defendants and respondents, chamber summons is allowed in terms of

prayer clause (a), except bracketed portion which read as under:

“(a) That by an order and direction of this Hon'ble Court the Plaintiffs/Applicants be permitted to implead the Respondents as the Defendants in the present Suit (L) No.164 of 2017 and also be pleased to permit the Plaintiffs/Applicants to amend the plaint and Notice of Motion (L) No.588 of 2017 by adding the Respondents as party defendant in the Suit (L) No.164 of 2017 (along with consequential amendment to the plaint) as more particularly annexed as Schedule-I to the present chamber summons.”

5 Amendment to be carried out and amended plaint to be served within four weeks from today. Written statements to be filed and copy served within 30 days of receiving the amended plaint.

6 Defendants waive service of writ of summons. Counsel appearing for respondent nos.2, 7, 8, 9, 15, 16 and 17 who are present in court waive service of writ of summons. As regards other respondents, plaintiffs to take steps to serve the writ of summons with copy of the plaint, within one week of amending the plaint.

7 Chamber summons accordingly disposed.

(K.R. SHRIRAM, J.)