

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

CHAMBER SUMMONS NO. 723 OF 2019
IN
SUIT NO. 2557 OF 2012

Abhay Kantilal Shah & Anr. ... Plaintiffs

V/S.

Shreeniwas Cotton Mills & Ors. ... Defendants

Ms. Devanshi Shah, Advocate for Applicants / Plaintiffs.
Mr. Cyrus Ardeshir a/w. Mr. Neveille Mukerji I/b. Veritas Legal
for Defendant Nos.1 and 2.

CORAM : B. P. COLABAWALLA, J.
DATED : 29th July, 2019.

P.C.

This Chamber Summons has been filed by the Plaintiffs to permit them to carry out amendments to the Plaint as per the schedule annexed to the Chamber Summons.

2. Mr. Ardeshir, the learned Counsel appearing on behalf of the Defendant Nos. 1 and 2 opposed this Chamber Summons, mainly on two grounds, firstly, that the claim made by virtue of the amendment was barred by the Law of Limitation and

secondly, that by allowing the aforesaid amendment, the entire nature of the suit changes. He, therefore, submitted that this Chamber Summons ought to be dismissed. An Affidavit-of-reply dated 23.07.2019 to this effect has also been filed on behalf of Defendant No. 1.

3. Having heard both sides, I am clearly of the view that the amendments sought do not in any way change the entire nature or the cause of action in the suit. In these circumstances, this argument of Mr. Ardeshir will have to be rejected. As far as the issue of Limitation is concerned, I find that this issue is on mixed question of law and fact. Keeping the issue of Limitation expressly open and all other contentions raised by Defendant Nos. 1 and 2, I am inclined to allow the aforesaid Chamber Summons.

4. In these circumstances, the Chamber Summons is allowed in terms of prayer clauses (a) and (b) which read thus:

- (a) That this Hon'ble Court be pleased to allow the Chamber Summons and permit the Plaintiffs to carry out the amendments as per the schedule attached hereto;

- (b) This Hon'ble Court be pleased to allow the Plaintiffs to file the above Suit in accordance with Commercial Courts, Commercial; Division and Commercial Appellate Division of High Courts Act, 2017 and be further pleased to allow the Plaintiffs to amend the plaint by incorporating consequential changes in the title, docket, vakalatnama, etc.

5. The amendment shall be carried out within a period of four weeks from today and the amended copy of the plaint shall be served upon all the Defendants within a period of two weeks thereafter. The Defendants shall file their Written Statement, if any, within a period of eight weeks from the date of receipt of the amended copy of the plaint.

6. It is made clear that the Defendants have not admitted any of the statements that are made in the Affidavit-in-support of the Chamber Summons or in the schedule to the Chamber Summons. All issues on merits as well as on Limitation are expressly kept open to be agitated between the parties at the hearing and final disposal of the Suit.

7. The Chamber Summons is disposed of in the aforesaid terms. No order as to costs.

(B. P. COLABAWALLA, J.)