

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL CHAMBER SUMMONS NO.1320 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION NO.2221 OF 2018
IN
COMMERCIAL SUIT NO.1280 OF 2018**

Vimla Kewal KapoorPlaintiff

Vs.

Ekta Supreme Corporation and Anr.Defendants

Ms. Ankita Singhania i/b. Mr. Akash Menon for applicant/plaintiff.
Mr. Amrut Joshi a/w. Ms. Neha M. Shah i/b. Maniar Srivastava Associates
for defendants.
Mr. Arun Panickar for proposed defendant no.3.

**CORAM : K.R.SHRIRAM, J.
DATE : 18th MARCH 2019**

P.C.:

COMMERCIAL CHAMBER SUMMONS NO.1320 OF 2018

1 Ms. Singhania, on instructions states that all respondents have been served. Respondent no.1 is present in Court through Mr. Panickar. Mr. Panickar undertakes to file Vakalatnama in the suit itself within one week from today.

2 So far as proposed defendant nos.4,5 and 6, i.e., respondent nos.2,3 and 4 are concerned, Ms. Singhania undertakes to file affidavit of service within one week from today.

3 It is stated in the affidavit in support that at the ad-interim stage, when defendants made a statement of status-quo, it came to light that

defendants had created third party rights with respect to the suit property in favour of proposed defendant nos.4,5 and 6 and therefore, proposed defendant nos.4,5 and 6 are proper and necessary parties to the suit. It is also stated that in paragraph 31 of the plaint there are specific averments seeking specific performance of LOI/Allotment Agreement dated 30th September 2009. Paragraph 31 of the plaint reads as under :

31. The Plaintiff states that the LOI/Allotment Agreement dated 30/9/2009 seeks for specific performance on the part of the Defendants and as such, the provision of Specific Reliefs Act needs to be invoked. Thus, the Defendants have committed a clear breach of contract and become liable for specific performance under Sections 10 and 15 of the Specific Reliefs Act, 1963 and the Indian Contract Act 1872 and become liable to pay damages to the Plaintiff hereinabove.

4 Ms. Singhania states that though there are averments in the plaint seeking specific performance, in the prayer clause a prayer for specific performance has been missed out. Ms. Singhania states that this came to light after the new advocate came on record. In paragraph 4 of the affidavit in support of the chamber summons, the change of advocate is mentioned.

5 Mr. Joshi states that the proposed amendment will change the nature and character of the suit and also new prayers will be time barred.

6 Paragraphs 63 and 64 of ***M/s. Revajeetu Builders & Developers V/s. M/s. Narayanaswamy & Sons & Ors.***¹ read as under :

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

1. (2009) 10 SCC 84

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 application for amendment.

(1) Whether the amendment sought is im-perative 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 multiple 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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.

7 Considering the nature of the amendment prayed for, I do not find any malafide on the part of applicant. The suit originally was on the basis of LOI/Allotment Agreement dated 30th September 2009 based on which plaintiff is seeking possession of the premises mentioned in the plaint. These premises, it came to light at the ad-interim stage, has been sold to proposed defendant nos.4,5 and 6. Therefore, plaintiff is seeking

amendment to the plaint. In my view, it does not in any way change the nature and character of the suit.

8 Mr. Joshi states that the proposed amendment to be added as prayers *ex-facie* are time barred. I am afraid to come to the conclusion and in my view, the proposed prayer to be added for specific performance was an omission because the plaint is very clear and particularly paragraph 31 which has been quoted above. Moreover, the written statement also is yet to be filed by defendants.

9 In the circumstances, chamber summons is allowed. All rights and contentions of defendants and newly added defendants are kept open.

10 Amendment to be carried out and copy of the amended plaint to be served within three weeks from today.

11 Mr. Joshi, counsel for defendant nos.1 and 2 and Mr. Panickar, counsel for newly added defendant no.3 waive service of writ of summons.

12 Suit be listed for case management hearing on 7th June 2019.

13 For completion of records, registry to take on record the rejoinder of plaintiff.

(K.R. SHRIRAM, J.)