

Sharayu Khot.

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

CHAMBER SUMMONS NO. 183 OF 2018

IN

SUIT NO. 1047 OF 2016

Jos A. Kulanagara

...Applicant

In the matter between

Jos A. Kulanagara

...Plaintiff

Versus

M/s. Aria Infra & Ors.

...Defendants

Mr. Kamat, with Mr. Ashwin, Mr. Omprakash Pandey, Ms. Aneeta Vasani, for the Applicant/Plaintiff.

Mr. Kirit Hakani, for the Defendant No. 1.

Mrs. Sunanda Kumbhat, i/by Niyati Hakani, for the Defendants No. 2 to 7.

CORAM : R.I. CHAGLA J.

DATE : 30 September 2019

ORDER :

1. This Chamber Summons has been taken out for amendment of the Plaint. The amendment now sought be brought about is with regard to certain facts which are to be included in the

Plaint and which were omitted due to inadvertence of the previous advocate as well as to bring on record certain subsequent events which have taken place after filing of the Suit.

2. The amendment has sought certain consequential reliefs from the main relief which is for the specific performance of the agreement between the Plaintiff and Defendants No. 2 to 7.

3. The learned Counsel for the Respondents/Defendants has opposed the Chamber Summons on the ground that the preliminary issue under Section 9A of the Code of Civil Procedure, 1908 is currently being determined by this Court at the stage of trial and that the evidence had virtually been completed when an Application was made before this Court for filing additional evidence and vide order dated 27th June 2018 passed by S.J. Kathawalla, J., the Notice of Motion seeking leave of this Court for filing additional evidence was allowed subject to costs of Rs. 1,00,000/- to the Defendant No. 1.

4. It is submitted that the amendment sought is by bringing facts which are contrary to the facts pleaded in the Plaint as well as

seeking relief of handing over the possession of the suit property despite the Plaint proceeding on the basis that the lawful possession of the suit property is with the Plaintiff. It is submitted by the learned Counsel for the Respondent No. 1 as well as supported by Respondents No. 2 to 7 that the amendment if allowed would cause serious prejudice to the Defendants by virtue of the evidence having proceeded with in respect of the issue arising under Section 9A of the Code of Civil Procedure, 1908. Accordingly, they have submitted that the Chamber Summons be rejected.

5. Having considered the amendment being sought in the Chamber Summons, it appears that the amended reliefs now sought to be brought in the Plaint are consequential relief and relate to the main prayer of specific performance of the agreement between the Plaintiff and Defendants No. 2 to 7. It is well settled that the merits of the amendment cannot be considered by this Court whilst hearing the Application for amendment. The trial which was on going was limited to the issue under Section 9A of the Code of Civil Procedure, 1908. This cannot prevent the Plaintiff from seeking amendment of the Plaint. The main issues are still to be tried and that will be only after the Defendants file their Written Statement to the Plaint.

Further, Section 9A of the Code of Civil Procedure, 1908 has been repealed. It is apparent from the order dated 27th June 2018 passed by S.J. Kathawalla, J. which had allowed the Notice of Motion taken out by the Plaintiff seeking leave of this Court to file additional evidence, there has thereafter been little or no progress in the proceedings under Section 9A of the Code of Civil Procedure, 1908, prior to its repeal.

6. Considering that there is substantial delay in taking out the Chamber Summons for amendment to the Plaint, it would be appropriate particularly since, the trial under Section 9A proceedings, was under substantial progress and that these facts were known to the Applicant earlier and could have been part of the Plaint, it would be appropriate to impose costs of Rs. 50,000/- on the Applicant.

7. Accordingly, the Chamber Summons is allowed in terms of prayer clause (a) subject to payment of costs of Rs. 50,000/- (Rupees Fifty Thousand only) which is to be donated within one week from the date of uploading of this order to K.E.M. Hospital to be used in the neurosurgery department and confirmation letter, along with a copy of this order, be sent to Dean, K.E.M. Hospital. The

account details are as under:-

Bank Account of Hospital	Dean, Poor Box Charity Fund, K.E.M. Hospital, Mumbai
Bank Account Number of Hospital	011710004666 (S.B.)
Bank and Branch	Dena Bank, Parel Branch
Address, Tel. No., Fax No. and e-mail of the concerned Bank	Dena Bank, Madina Manzil, 88, Dr. Ambedkar Road, Mumbai – 400 012, Maharashtra. 022-24131112/24135820 PAREL@DENABANK.CO.IN
MICR Code Number	400018040
IFSC Number	BKDN0450117

8. The Plaintiff is directed to carry out amendment as per schedule within a period of two weeks from the date of this order.

9. The amended Plaint shall be served upon the Defendants.

10. The Chamber Summons is accordingly, disposed of in the above terms.

11. The learned Counsel for the Respondent No. 1

seeks stay of the above order for a period of four weeks.

12. Considering that the Application has been made for stay, in the interest of justice, this order is stayed for a period of four weeks.

[R.I. CHAGLA J.]