

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

**IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO.1024 OF 2018**

IN

COMM.SUIT (L) NO.899 OF 2018

Pooja Entertainment & Films Ltd.)....Plaintiffs/Applicants

V/s.

Kriarj Entertainment Pvt. Ltd.)....Defendants

And

Amazon Seller Services Private Ltd. & Ors.)....Respondents

Mr.Devang Lakhotia a/w Mr.Tahir Prande I/by Juris Consillis for
plaintiffs/applicants.

Mr.Shanay Shah a/w Mr.Vikramditya Chavan and Ms.Swati Singh I/by
naik Naik and Co. for defendant no.7.

CORAM : K.R.SHRIRAM,J

DATE : 11.2.2019

P.C.:-

1. This Chamber summons is for leave to amend the plaint as per the schedule annexed thereto. Mr.Lakhotia for plaintiffs states that all defendants and respondents have been served. Mr.Lakhotia undertakes to file affidavit of service within one week from today.

2. According to plaintiffs, certain information came to light after the suit was filed and hence those facts are required to be brought on record. According to plaintiffs, after the suit was filed,

defendants, particularly defendant nos.1 to 5, 6, 7 & 13 were negotiating, dealing, exploiting, transferring, etc. of non theatrical rights including sate lite, cable, DTH etc. and have approached respondents for the same. Plaintiffs also state that defendant nos.1 to 5 have not given credit to plaintiffs in film. It is also stated that after the suit was filed, plaintiffs became aware that defendant nos.1 & 7 have executed a deal term dated 25.5.2017 and co-production agreement dated 28.7.2017 and defendant nos.7 & 13 unilaterally and singly are dealing with rights of the film Fanney Khan. Various other reasons are given as to why plaint should be amended.

None of the respondents or defendants except defendant no.7 have filed any reply opposing the Chamber summons.

3. Mr.Shah for defendant no.7 raises an objection and according to him the suit filed is for an order and declaration that plaintiffs have sole and exclusive rights to distribute, exhibit and exploit commercial and non commercial theatrical rights of the film Fanney Khan and for consequential reliefs. Mr.Shah submitted that by this amendment plaintiffs are extending its claim to non theatrical rights as well and therefore, there is a change in the nature and character of the suit.

4. It is settled law that when an application for amendment is being considered, Courts do not go into merits of the proposed amendment sought and whether plaintiffs will succeed on the amended reliefs. It is also settled law that while considering an amendment application, the Court cannot go into the questions of merit of such amendment (*Andhra Bank V/s. ABN Amro Bank N.V. and Ors.*¹).

While considering whether an application for amendment should be allowed or not, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits. The averments sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment (*Rajesh Kumar Aggarwal and Ors. V/s. K.K. Modi and Ors.*²)

5. The Apex Court in *M/s. Revajeetu Builders & Developers V/s. M/s. Narayanaswamy & Sons & Ors.*³ in paragraphs 63 and 64 has listed the factors which have to be kept in mind while considering the amendment application.

1. AIR 2007 SC 2511

2. AIR 2006 SC 1647

3. (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 malafide, worthless and/or dishonest amendments.*

6. What the Court has to consider, inter alia, is whether amendment prayed for changes the nature and character of the suit. Plaintiffs are engaged in the business of film production and distribution. Memorandum of Understanding was entered into on 16.12.2017 between plaintiffs and defendant no.1 where plaintiffs became entitled to right of sole and exclusive rights to distribute,

exhibit or exploit the commercial and non commercial theatrical rights of the film and credit in the publicity materials and trailers for the film. Plaintiffs have also paid sum of Rs.8.5 crores to defendant no.1. It is plaintiffs' case that defendant no.1 committed breach of the Memorandum of Understanding and is seeking rights under the Memorandum of Understanding dated 16.12.2017. What are the rights under the Memorandum of Understanding plaintiffs are entitled to and for what period etc. can be considered only at the trial of the suit. Whether plaintiffs are entitled to only theatrical rights or also non-theatrical rights can be considered at the trial of the suit. The onus will be on plaintiffs to prove which are the licensed rights to plaintiffs. While hearing an amendment application, courts cannot go into those details.

7. Therefore, in my view, by seeking rights on non-theatrical rights in the amendment does not mean to changing nature and character of the suit.

8. In the circumstances, Chamber summons allowed in terms of prayer clause-(a) which reads as under :-

“(a) That this Hon'ble Court be pleased to allow the Plaintiffs to amend the Plaint in terms of the Schedule of Amendments annexed hereto.”

All rights and contentions of defendants and proposed defendants are kept open. Amendment to be carried out and amended plaint to be served within 3 weeks.

(K.R.SHRIRAM,J)