

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL CHAMBER SUMMONS NO.1150 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION NO.1605 OF 2018
IN
COMMERCIAL SUIT NO.943 OF 2018**

Rakesh S. Kathotia and Anr.Applicants/Plaintiffs

Vs.

Milton Global Limited and Ors.Defendants

Mr. Aditya Mehta a/w. Ms. A.A. Mujawar and Ms. Astha Gaud I/b.
Economic Laws Practice for applicants/plaintiffs.

Mr. Sharan Jagtiani I/b. Ms. Veena Advani for defendant nos.1 and 11.

Mr. Ashwin C. Hawelikar for defendant nos.2,9 and 10.

Ms. Anisha Balse I/b. Mr Parikshit Desai for defendant nos.5 to 8.

CORAM : K.R.SHRIRAM, J.

DATE : 25th FEBRUARY 2019

P.C.:

1 This chamber summons is to add respondents as defendant nos.12 and 13 to the suit and to carry out the amendments as mentioned in the Schedule annexed to the chamber summons.

2 The reason why this amendment application has become necessary, according to plaintiffs, could be found in paragraphs 2 and 6 of the affidavit in support. It is stated that in reply to the notice of motion, defendant no.3 had disclosed about entering into certain agreements with respondents. Likewise in paragraph 6 it is stated that it was evident from the affidavit in reply filed by defendant nos.9 and defendant no.3 that certain further facts came to light.

3 Respondents though served are not present but have filed affidavit in reply. In the affidavit in reply, the fact that defendant no.3 has disclosed certain facts have not been denied. Similarly, in response to paragraph 6. Respondents have also dealt with the merits of the averments. It is settled law that at the time of considering the amendment application Courts do not go into the merits of the amendment sought. Further this is a pre-trial amendment and defendants are yet to even file written statement.

4 Having considered the amendment sought, in my view, it does not change the nature and character of the suit and in my view, the amendments are necessary for effective disposal of the suit. Therefore, keeping open the rights and contentions of all defendants including respondents, including limitation and even in respect of the amended portion, the chamber summons is allowed and accordingly disposed in terms of prayer clauses – (a) and (b) which read as under :

(a) that the plaintiffs be permitted to add respondents abovenamed as defendant nos.12 and 13 to the above suit;

(b) that the plaintiffs be permitted to carry out the amendments in the plaint as more particularly stated in the Schedule.

5 In the Schedule the portion bracketed in red ink, i.e., “F. Consequential amendments including in notice of motion”, is not allowed.

6 Amendment to be carried out and copy of the amended plaint and notice of motion to be served upon all defendants and newly added defendants within two weeks from today.

7 Affidavit in reply/further affidavit in reply to the notice of motion to be filed and copy served within two weeks of receiving copy of the amended plaint, notice of motion and affidavit in support of the notice of motion.

8 The counsel present today for defendants waive service of the writ of summons. As regards other defendants, writ of summons to be applied for within two weeks from today and writ of summons to be served within four weeks thereafter.

9 Suit to be listed for case management hearing on 15th March 2019.

(K.R. SHRIRAM, J.)