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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**CHAMBER SUMMONS NO. 1034 OF 2017
IN
SUIT NO. 2578 OF 2012**

Apollo Industrial Premises Co-op.HSG Ltd. ...Applicant/Plaintiff
VS
The Bombay Xaverian Corporation Pvt. Ltd. ...Defendant

.....

Mr Gaurav Mehta a/w Ayaz Bilawala with Dhanashree Gaikaiwari I/b
Bilawala & Co. for the Applicant/Plaintiff.
Ms Richa Singh for and on behalf of proposed Defendant No.7.
Mr V.A.Almeida for defendant No.1.

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**CORAM : B. P. COLABAWALLA, J.
JULY 11, 2019.**

P.C.:

The learned advocate appearing on behalf of the plaintiff has stated that inadvertently, in the schedule to the Chamber Summons, defendant No.7 is described as “**Saldanha Realty and Infrastructure Pvt. Ltd.**” but in fact it should be “**Saldanha Realty and Infrastructure LLP**”. He, therefore, tenders a draft amendment to substitute the schedule to the Chamber Summons.

2 In these circumstances, the draft amendment is taken on

record and marked "X" for identification. The schedule to the Chamber Summons is allowed to be substituted with the draft handed in.

3 This Chamber Summons has been filed seeking a condonation of delay of six days in taking out the present Chamber Summons as well as to permit the applicant/plaintiff to amend the plaint as per the schedule annexed to the Chamber Summons. The proposed defendant No.7 "**Saldanha Realty and Infrastructure LLP**". is sought to be added by virtue of the present Chamber Summons. The proposed defendant No.7 has filed an affidavit-in-reply to the Chamber Summons dated 27th June, 2019. In paragraph 4 of this affidavit it is stated that the proposed defendant No.7 may be added as a party to the present suit for placing on record the correct facts in the matter and placing the preliminary objections with respect to the maintainability of the present suit filed by the applicant/ plaintiff. It is further stated that no allegations, averments, statements or submissions made in the Chamber Summons should be deemed to be admitted by the proposed defendant No.7 who reserves its rights to file a detailed Written Statement once impleaded as a party defendant.

4 I must also mention that in paragraph 5 it is the case of the proposed defendant No.7 that the above suit as filed by the plaintiff is exfacie barred by the Law of Limitation.

5 Considering the affidavit filed by the proposed defendant No.7, the Chamber Summons is allowed in terms of prayer clauses (a) and (b) which reads thus -

- “(a) that this Hon'ble Court be pleased to condone the delay of 6 days in taking out the present Chamber Summons;
- (b) that this Hon'ble Court be pleased to permit the plaintiff to amend the plaint as per the schedule annexed hereto.”

6 The condition precedent for allowing the Chamber Summons is that the applicant/plaintiff shall pay the costs of Rs.25,000/- to the Tata Memorial Hospital, Mumbai within a period of four weeks from today and file a receipt of compliance of payment of costs on the record of this Court. Needless to clarify that if the costs are not paid within time, the Chamber Summons shall stand dismissed without further reference to the Court. Once the costs are paid the amendment to the plaint as per the substituted schedule shall be carried out within a period of two weeks and the amended copy of the plaint shall be served on all the defendants within a period of two weeks thereafter. The defendants shall be entitled to file their

Written Statement/ additional Written Statement within a period of eight weeks from the date of service of the amended plaint.

7 It is made clear that all the rights and contentions of all the defendants including the issue of limitation are expressly kept open to be agitated at the hearing and final disposal of the suit. I have not opined one way or the other on the rival contentions of the parties.

8 The Chamber Summons is disposed of in the aforesaid terms.

(B.P.COLABAWALLA, J.)