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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 67 OF 2019
IN
SUIT NO. 1373 OF 1992

Vasanti G Nerurkar	...Applicant
<i>In the matter between</i>	
Banganga Cooperative Housing Society Ltd	...Plaintiff
<i>Versus</i>	
Vasanti G Nerurkar	...Defendant

Ms Shruti Tulpule, i/b UP Warunjikar, for the Plaintiff.
Mr Rajesh Shah, i/b AP Rege, for the Defendant and Applicant in
Chamber Summons No. 67 of 2019.

CORAM: G.S. PATEL, J
DATED: 30th January 2019

PC:-

1. The Chamber Summons is by the Defendant for amendment of the Written Statement in terms of the schedule annexed to it. The schedule proposes the addition of paragraph 8A which, briefly stated, says that the Defendant expended considerable efforts in getting removed certain public reservations from the plot or plots that are the subject matter of the suit and the agreements in question. Indeed, this is all that the amendment says and there is a listing below the proposed paragraph 8A, running into nearly a

dozen pages, is of correspondence said to have been exchanged between the Defendant and various agencies and authorities and other documentation in that behalf.

2. This amendment is actually not necessary at all. It is more in the nature of evidence and the law is well-settled that a party does not need to plead evidence. The concern of the Defendant is, quite understandably, that the amendment should be allowed by way of abundant caution lest it be contended at a later date that there is no supporting pleading for this evidence.

3. Having regard to this submission, I have gone through the Written Statement with the assistance of Mr Shah for the Defendant/Applicant and I find that there is sufficient pleading already in the written statement, though perhaps not in the words of proposed paragraph 8A. The pleading is that the Defendant endeavoured to have the reservations removed, and it is to be found in paragraphs 6, 8 and particularly 14 of the written statement. In the last of these, the Defendant says in terms that she has all along been making efforts with various authorities by incurring considerable expenses and spending time and labour for the development of plot "B". Then there is in paragraph 15 a statement that the Defendant has been trying for the last 11 years to get the said plot released and that was to the knowledge of the Plaintiff. The precise manner in which the Defendant went about this is, of course, a matter of evidence and cannot and should not be in the pleadings at all.

4. I think it is sufficient to permit the Defendant to introduce what is stated in proposed paragraph 8A and the documents listed below it in the Defendant's examination-in-chief and disclosures while ensuring that all the Plaintiff's contentions are specifically kept open. I note that the Plaintiff has, in response to this Chamber Summons, denied that the Defendant has taken efforts or that the documents show this. That will be a matter for trial and I am not foreclosing the contentions on either side as a result of this order.

5. I am told also that most and perhaps all of the documents now proposed to be listed under paragraph 8A were in fact disclosed by the Defendant in an earlier Affidavit of Documents and a compilation.

6. Having regard to these circumstances, I will dispose of the Chamber Summons with these observations permitting the Defendant to include in her Evidence Affidavit the whole or the substance of what is stated in the proposed paragraph 8A of the present Chamber Summons and keeping all contentions of the Plaintiff expressly open in that regard and in regard to all other documents.

7. It is clarified that the Defendant is at liberty to include additional documents in a supplementary Affidavit of Documents.

8. The Plaintiff closes its case.

9. The Defendant will file and serve her Evidence Affidavit on or before 25th February 2019.
10. List the suit for marking the Defendant's documents on 15th March 2019.
11. The Chamber Summons is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)