

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

CHAMBER SUMMONS NO.1307 OF 2018

IN

SUIT NO.309 OF 2017

Pramila Sumansingh Thakur)....Applicant/Plaintiff

V/s.

Municipal Corporation of Gr.Mumbai & Anr.)....Defendants

Ms.Sharan Patole for plaintiff/applicant.

Ms.Dhruti Kapadia a/w Mr.Ravi Y.sirsikar for defendants

CORAM : K.R.SHRIRAM,J

DATE : 11.3.2019

P.C.:-

1. This is a Chamber summons for leave to amend the plaint. The suit was filed by plaintiff as party in person. Down the line plaintiff realized that legal assistance was required and plaintiff approached Ms.Patole, the advocate for plaintiff. It is stated in the affidavit in support that there were some more facts and circumstances to be introduced in the plaint for effective consideration and disposal of the suit and as plaintiff had filed the suit as party in person those details were missed out.

2. From the proposed amendment, I find that plaintiff has only better described the property which plaintiff claims was taken

away by defendants and no compensation was paid. It is the case of plaintiff that defendants acquired part of plaintiff's property under the Town Planning Scheme. It is the case of plaintiff that the compensation was not paid and when plaintiff sought return of the property it was not given and it was given to somebody else and plaintiff was claiming compensation of approximately Rs.108 crores. The proposed amendment also seek addition of a prayer for a declaration that defendants have not used acquired plot for the purpose it was acquired and all those benefits should accrue to plaintiff. Plaintiff is also seeking to introduce an interim prayer.

3. Ms.Kapadia for defendants strongly opposes the amendment application. Ms.Kapadia states that plaintiff has become wiser only after written statement was filed and the details that plaintiff wishes to introduce were always available with plaintiff.

4. I have considered the Chamber summons, affidavit in support, schedule to the Chamber summons, affidavit in reply and also heard the counsel. This is a pre trial amendment. Paragraph-63 of ***M/s. Revajeetu Builders & Developers V/s. M/s. Narayanaswamy & Sons & Ors.***¹ reads as under :-

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. (2009) 10 SCC 84

FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

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.

5. Plaintiff had filed this suit as a party in person. The proposed amendments do not also change the nature and character of the suit. Ex-facie, I am unable to come to the conclusion that prayers proposed to be added as prayers (a.1) to (a.3) are barred by

limitation.

6. In the circumstances, keeping open rights and contentions of defendants to file additional written statement, Chamber summons allowed in terms of prayer clause-(a) except serial no.IV in the schedule which is bracketed in red ink. Amendment to be carried out and amended plaint to be served within 3 weeks from today. Additional written statement to be filed within two weeks of receiving the amended plaint.

7. Suit be listed for directions on 26.4.2019.

8. Chamber summons accordingly disposed.

(K.R.SHRIRAM,J)