

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS No. 1144 of 2017

IN

SUIT No. 2459 of 2012.

Kartik Bhatt & Ors

..Applicants.

In the matter between:-

Kartik Bhatt & Ors.

..Plaintiffs.

Vs

Deepak S. Nikalje & Ors.

..Defendants.

And

Siddharth Nagar Vikas Seva

Sangh Sarkari Grihanirman Sanstha ..Proposed Respondent.

Mr. Ashish Suryavanshi i/by Mr. Vasant Dhawan for proposed
defendant No.4.

Mr. Shanay Shah a/with Mr. N. Menon i/by Thakore Jariwala
& Associate for the Applicant.

Mr. Sahil Ansari i/by Bipin Joshi for Defendant Nos. 1 to 3.

CORAM : B. P. COLABAWALLA, J.

DATED :- 28th June, 2019.

P.C. :-

1. This Chamber Summons has been filed to allow the plaintiffs to carry out amendment as mentioned in the Schedule to the Chamber Summons. This amendment is sought in a suit that is already disposed of by consent terms dated 25th October, 2013.

2. These consent terms were taken on record by this Court vide its order dated 25th October, 2013. In the said order leave to amend was also granted to the plaintiffs to add “Siddharth Nagar Vikas Seva Sangh Sarkari Grihanirman Sanstha” as defendant No.6 in Suit No. 1116 of 2010 and defendant No.4 in Suit No. 2459 of 2012. The amendment was to be carried out during the course of the day. The consent terms that were presented and which were accepted by the Court have been signed by all the defendants as well as the said “Siddharth Nagar Vikas Seva Sangh Sarkari Grihanirman Sanstha” along with their Advocates.

3. According to the plaintiffs, there is a breach of these consent terms and hence they filed Execution Application (Lodging) No. 859 of 2017 before this Court. However, an objection was taken that since the cause title of the plaint was not amended the execution application could not be numbered. It is in this light that

the present Chamber Summons has been filed to amend the cause title of the plaint. There has been a delay of 1495 days in carrying out the amendment. The learned Counsel appearing on behalf of the plaintiffs submitted that inadvertently this amendment was not carried out considering that the consent terms between the parties and which were entered into on 25th October, 2013 were being implemented. It is only when there was a breach of the consent terms that they realized this inadvertent mistake and hence have filed the present Chamber Summons.

4. Considering that this is a formal amendment and the fact that the party that is sought to be added, has already signed the consent terms and acted upon it, the Chamber Summons is allowed in terms of prayer clause (a) and (b) which read thus :-

(a) That the delay of 1495 days in carrying out formal amendments to the title of the Plaint as per Minutes of the Order dated 25.10.2013 be condoned;

(b) That Plaintiffs be permitted to carry out amendments as mentioned in Schedule of the present Chamber Summons.

5. Re-verification is dispensed with.

6. It is ordered that the Chamber Summons is allowed in terms mentioned above on the condition that the plaintiffs shall pay costs of Rs.50,000/- (Rupees Fifty Thousand) to defendant Nos. 1, 2 and 3 and Rs.50,000/- (Rupees Fifty Thousand) to proposed defendant No.4 respectively. This payment of costs can be made either directly to the said defendants or to their respective Advocates. These costs shall be paid within a period of two weeks from today, failing which the Chamber Summons shall stand dismissed, without further reference to the Court.

7. The Chamber Summons is disposed of accordingly.

(B.P. COLABAWALLA, J.)

Radhakishan
S. Ladda

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