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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2040 OF 2018

Bhabha Financial Consultant	
Through Proprietor – Tilak Dedhia	... Petitioner
Versus	
The State of Maharashtra and Ors.	...Respondents

**WITH
INTERIM APPLICATION NO.1 OF 2019
IN
WRIT PETITION NO.2040 OF 2018**

Tilak Dedhia	
Proprietor, Bhabha Financial Consultant	...Applicant
Versus	
The State of Maharashtra and Ors.	...Respondents

Mr. Jeyarajan Muthiahs, for the Petitioner/Applicant.

Ms. Vaishali Nimbalkar, A.G.P. for Respondent No.1.

Mr. Abdul Wahab A. H. Mukri i/b M/s. Purohit and Company, for Respondent Nos.3 to 6.

CORAM : REVATI MOHITE DERE, J.

DATE : 3rd MARCH, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 6th

November, 2017, passed by the learned Judge, City Civil Court, Greater Bombay, in Chamber Summons No.757 of 2017 in Summary Suit No.7926 of 1998 (High Court Summary Suit No.2028 of 1998).

3. Learned Counsel for the petitioner submits that the petitioner's chamber summons seeking amendment of the plaint, ought to have been allowed, inasmuch as, the same does not in anyway change the nature of the Suit. He submits that by Chamber Summons No.757 of 2017, the petitioner is seeking inclusion of additional quantity of shares, which was not sought in the earlier chamber summons.

4. Learned Counsel for the Respondent Nos.3 to 6 opposes the petition. He submits that no interference is warranted in the impugned order. He submits that the chamber summons filed by the petitioner, i.e. Chamber Summons No.757 of 2017, was not tenable as the petitioner's earlier chamber summons being Chamber Summons No.236 of 2016, seeking amendment of the plaint was partly allowed in respect of addition of defendant no.2, 2A to 2C only and rest of the reliefs sought were rejected by the trial Court and that the same has attained finality.

5. Perused the papers. The petitioner is the original plaintiff who has filed a summary suit being Summary Suit No.7926 of 1998 seeking the following substantive prayer:

“(a) The defendant be ordered & decreed to pay to the plaintiff a sum of Rs:-1,41,965.00 with 18% interest from the date of the suit till realization in full together with cost.”

6. It appears that the petitioner filed Chamber Summons No.236 of 2016 on 6th January, 2016 and sought amendment of the plaint and for addition of prayer clauses ‘b’ to ‘f’. The trial Court was pleased to allow the prayer clause ‘b’, which reads as under:-

“(b) That if this Hon’ble court may deem fit & proper, M/S Trambaklall Ratilal Parekh & son securities P Ltd & their directors as legal heirs to be added as party to this case as defendant no-2 ; 2 a ; 2 b ; 2 c ; 2 d as suggested by defendant no.1 in para 8 of his written statement.”

7. The trial Court rejected prayer clause ‘c’, which reads as under:-

“(c) That the defendant no.1 be ordered and directed by this Hon’ble court to return the plaintiffs shares [with all rights]

lying with the defendant which was delivered by the plaintiff [for which defendant not paid] which is clear from the account statement of the defendant filed with written statement as “EX-C”. Along with the shares which was repurchased & the amount debited to the plaintiffs account [as bad delivery].”

8. The trial Court rejected prayer clause ‘c’ alongwith other prayers i.e. ‘d’ to ‘f’ (interim prayers). It appears that the petitioner again filed chamber summons being Chamber Summons No.757 of 2017 on 19th April, 2017 and sought amendment of the plaint and for insertion of certain paragraphs and prayer clause ‘b’. The proposed prayer clause ‘b’ in the aforesaid chamber summons, reads as under:-

“b) The defendant be ordered & decreed to pay to the plaintiff, the quantity of Shares as on 06.03.1995 with Reinstate and recasting quantity as eligible as provided by BSE with all kinds of rights viz, Bonus etc. till the date of realization as per BSE And/or the recast values as on the realization based on the said shares.”

9. The trial Court after noting that earlier chamber summons was partly allowed and that the chamber summons was rejected in respect of the amendments sought with respect to prayer clause 'b', did not entertain the present chamber summons as it was hit by the provisions of res-judicata. It is not in dispute that the order dated 22nd April, 2016, passed in Chamber Summons No.236 of 2016, has attained finality and as such the 2nd Chamber Summons i.e. Chamber Summons No.757 of 2017, claiming similar reliefs was rightly not entertained by the trial Court. It also appears that the said amendment was sought after almost 15 years and there seems to be inconsistency in the amendment sought. It also appears that by the proposed amendment the petitioner is seeking possession of additional shares in the original plaint, when there is not a whisper about delivery of any such shares and re-purchase of the same in the plaint.

10. Considering the aforesaid, no interference is warranted in the impugned order.

11. Petition is accordingly dismissed. The trial Court to proceed with the suit, on its own merits, uninfluenced by the observations made in this order. All contentions of all parties are kept open.

12. In view of the aforesaid, the Interim Application being Interim Application No.1 of 2019, does not survive and the same is also disposed of.

REVATI MOHITE DERE, J.