

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS No. 394 OF 2019

IN

COMMERCIAL IP SUIT No.59 of 2010

Pidilite Industries Ltd. and Anr ..Plaintiffs.

Vs

Vilas Neimichand Jain and Anr ..Defendants.

Mr. Rashmin Khandekar a/with Mr. Minesh Andhari, Mr. Hemant Thadhani and Mr. Jay Shah i/by Krishna and Saurastri Associates for the Plaintiffs.

Mr. H.W. Kane and Ms. Vedangi Soman i/by W.S.Kane & Co. for the Defendants.

CORAM : B.P. COLABAWALLA, J.

DATED :- 6th March, 2020.

P.C. :-

1. This Chamber Summons has been filed by the Plaintiffs seeking amendment of the plaint as per the Schedule annexed to the Chamber Summons. Mr. Kane, the learned Advocate appearing on behalf of the Defendants has opposed this Chamber Summons and has submitted that the trial in the present case commenced way back in 2013. Placing reliance upon the proviso to Order VI Rule 17 of the Code of Civil Procedure, Mr. Rane submitted that this Court is barred from allowing the aforesaid amendment.

2. On the other hand, Mr. Khandekar, the learned Advocate appearing on behalf of the Plaintiffs submitted that the proviso would not apply in the facts of the present case at all as the events that are sought to be brought on record are the events that have been transpired after the commencement of the trial and hence the fetter put on the Court by virtue of the proviso to Order VI Rule 17 would not apply.

3. I have gone through the Chamber Summons, the affidavit filed on behalf of the Defendants as well as the amendments that are sought to be brought on record. The suit as originally filed was a suit only for passing off. During the pendency of the suit and after the trial commenced, the Plaintiffs have now been able to seek registration of its trade mark and it is in this light the amendments are sought. The Plaintiffs are therefore now seeking reliefs for infringement as well. In fact, even Mr. Kane conceded that the Plaintiffs could file an independent suit for infringement of its trademark. This being the factual position, I am inclined to agree with Mr. Khandekar that the proviso to Order VI Rule 17 would not apply to the facts of the present case. In fact, by allowing the amendment, it would also avoid multiplicity of proceedings.

4. This being said, I think the plaintiffs ought to be allowed to carry out the amendments on certain terms. In these circumstances, the following order is passed :-

(i) The Chamber Summons is allowed in terms of prayer clause (a) and (b) which read thus :-

(a) The Plaintiffs be permitted to amend the Plaint as per the Schedule annexed hereto and all other consequential and incidental amendments thereto be allowed; and

(b) The delay, if any, in filing the Chamber Summons be condoned.

(ii) The Chamber Summons is allowed as mentioned above, subject to the condition that the Plaintiffs shall pay costs of Rs.50,000/- to the Tata Memorial Centre (to be used for Research) within a period of two weeks from today and file a receipt evidencing the payment of costs on the record of this Court.

iii) If the costs are paid, the amendments to be carried out within a period of two weeks from the date of

payment of costs.

iv) Needless to clarify that if the costs are not paid within the time stipulated, the Chamber Summons shall stand dismissed without further reference to the Court.

5. In the event the costs are paid and amendments are carried out, the amended copy of the plaint shall be served on the Advocates for the Defendants within a period of one week from carrying out the amendments. In turn, the defendants shall be at liberty to file an additional written statement to the amended plaint within a period of four weeks thereafter.

6. All parties including the Tata Memorial Centre are directed to act on an ordinary copy of this order duly authenticated by the Associate of this Court. Chamber Summons No. 394/2019 is accordingly disposed off.

(B.P. COLABAWALLA, J.)