

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

CHAMBER SUMMONS NO.1102 OF 2019

IN

SUIT NO.2147 OF 2010

Meena Satramdas Motwani ...Plaintiff

vs.

M/s.Karm Yogi Property Developers
Private Limited and Another ...Defendants

Mr. Karan Bhosale a/w. Huzefa Khokhawala and Ms. Divya Shetty i/b. M/s.Nankani Associates, for the Plaintiff
Mr. Diksha S. i/b. Mr. S.A. Mhatre, for Defendant No. 1.
Mr. Asit Singh, for Defendant No. 2.

CORAM : N. J. JAMADAR

DATE : FEBRUARY 05, 2020

P.C.:

. This Chamber Summons is taken out by the Plaintiff to amend the Plaint so as to incorporate certain averments as regards the alleged falsity in the claim of Defendant not that Defendant No. 1 had addressed letters on 11th January, 2007, 26th February, 2007, 21st March, 2007 and 9th April, 2007 purported to be demand notices calling upon the Plaintiff to make further payment and the consequent untenability of the defence of termination of the agreement for sale, the specific performance of which is sought by the Plaintiff.

2. Defendant No. 1 has filed affidavit in reply in opposition

to the prayer for amendment. Defendant No. 2 has also filed affidavit in reply and resisted the prayer for amendment.

3. The ground of inordinate and unexplained delay in seeking the amendment is raised by both the Defendants apart from contesting the claim of the Plaintiff on the circumstances which necessitate the amendment.

4. In Chamber Summons No. 1101 of 2019 in Suit No. 2316 of 2010 wherein an identical amendment was sought by the Plaintiff and almost identical allegations were made against Defendant No. 1 therein, and who happens to be Defendant No. 1 in this Suit, regarding the termination of the agreement for sale on the basis of communications dated 11th January, 2007, 26th February, 2007, 21st March, 2007 and 9th April, 2007 by affixing postal stamps, on the certificate of posting, which was issued by the Department of Post subsequent to the date of dispatch, this Court had allowed the Chamber Summons by an order dated 14th January, 2020.

5. This Court had, inter alia, observed as under:

10. Before advertng to consider the rival submissions, it is imperative to note that the claim of the applicants that the postal stamps, which have been affixed on the certificates of posting were issued on 1 st December, 2008, finds support in the information furnished by the postal authorities December, 2018 and 20th February, 2019. The record of release of the postal stamps is also maintained on the official website of the Department of Post, which indicates that the stamps in question were released on 1 st December, 2008. The issue which thus warrants consideration is whether the plaintiffs can be precluded from seeking amendment in the plaint on account of delay.

11. The context of the matter cannot be lost sight of. If the claim of the applicants is correct, then a very serious doubt about the genuineness of the notices issued by defendant no.1, which constitutes the basis of the defence of termination of the agreement, arises.

12. It is trite that judicial disposition cannot place a premium on falsity. The aspect of delay also pales in significance if the element of unearthing the dis-ingenuousness, as alleged by the plaintiffs, is considered. Ultimately, if it is established that the notices were ante-dated, the said fact would have a significant bearing on the determination of the issue of lawful termination of the agreement.

13. In the backdrop of the aforesaid context, the submission on behalf of defendant no.2 that the interdict contained in proviso to Order VI Rule 17 governs the situation at hand, is required to be considered. By an order dated 8th December, 2019,

this Court directed that the issue of limitation would be tried alongwith other issues, which may arise for determination. It does not appear that issues on all counts have been framed. Thus, in strict sense, the trial cannot be said to have been commenced. The fact that the plaintiffs had filed an affidavit of evidence for the determination of issue of limitation, which was directed to be decided as a preliminary issue, constitute an impediment in considering thus does not the prayer for amendment.

14. The proposed amendment, if viewed through the prism of the nature of dispute between the parties, appears to be necessary for determining the real question in controversy between the parties. Thus, the prayer deserves to be allowed.

6. The aforesaid reasons apply with equal force to the facts of the instant case as the amendment in the Plaint is sought on the identical grounds. Hence, the following order:

ORDER

- (i) The Chamber Summons stands allowed.
- (ii) The Applicant/Plaintiffs shall carry out the amendment as proposed in the schedule appended to the Chamber Summons within three weeks from today and serve its copy on the Defendants.
- (iii) Defendant No. 1 is at liberty to file additional written

statement within a period of one month from the date of service of the amended Complaint.

(iv) It is hereby made clear that the observation made hereinabove shall not be construed as an expression of opinion on the merits of the claim of the parties.

7. At this stage learned counsel for Defendant No. 2 seeks time to file the written statement on behalf of Defendant No. 2. Defendant No. 2 is at liberty to file written statement within a period of one month of the service of the copy of amended Complaint.

8. List on 8th April, 2020.

(N. J. JAMADAR, J.)