

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1101 OF 2019
IN
SUIT NO. 2316 OF 2010**

Neha Prakash Motwani & anr. ...Applicants
(ori.Plaintiffs)

In the matter between

Neha Prakash Motwani & anr. ...Plaintiffs

Versus

M/s. Karm Yogi Property Developers Pvt.
Ltd. and anr. ...Defendants

Mr. Karan Bhosale, a/w Mr. Huzefa Khokhawala, Divya
Shetty, i/b M/s. Nankani & Asso., for the Plaintiffs.

Mr. Sachin A. Mhatre, for Defendant no.1.

Mr. Vaibhav Bhure, a/w Brijal Gandhi, i/b M/s. Jayakar &
Partners, for Defendant no.2.

CORAM: N. J. JAMADAR, J.

DATED : 14th JANUARY, 2020

PC:-

1. This Chamber Summons is taken out by the plaintiffs seeking permission to amend the plaint so as to incorporate certain averments as regards the alleged falsity in the claim of defendant no.1 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 plaintiffs 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 plaintiffs.

2. In the affidavit in support of the Chamber Summons, it is averred that in the written statement filed by defendant no.1, it is alleged that the plaintiffs have not complied with the demand notices issued by defendant no.1, on the aforesaid dates, and the said failure on the part of the defendant warranted the termination of the agreement. The plaintiffs have conducted inquiry and found out that the certificates of posting, under which the aforementioned letters were allegedly dispatched, bear the postal stamps, which were issued in the year 2008. In this regard, the plaintiffs have obtained necessary certification from the authorities by filing applications under the Right to Information Act, 2005. Thus, it is the claim of the plaintiffs that defendant no.1 has pleaded a patently false defence and forged the document. It is, therefore, necessary to bring the said facts and circumstances on record by amending the plaint.

3. Defendant no.1 has resisted the prayer by filing an affidavit-in-reply. The substance of the resistance put-forth by defendant no.1 is that the prayer for amendment is belated and there is no justifiable reason for not seeking the amendment at an earlier point of time. The written statement was filed by

defendant no.1 in the year 2011. Thus, there is both inordinate and unexplained delay in seeking the amendment. The claim that the plaintiffs obtained necessary information from the postal authorities is stated to be a subterfuge for seeking amendment, at a belated stage.

4. Heard Mr. Bhosle, the learned Counsel for the plaintiffs, Mr. Mhatre, the learned Counsel for defendant no.1 and Mr. Bhure, the learned Counsel for defendant no.2.

5. It was submitted on behalf of the plaintiffs – applicants that the amendment sought by the plaintiffs is necessary for determining the real question in controversy between the parties. Moreover, the amendment is imperative to demonstrate that the defendant no.1 has played a fraud not only upon the plaintiffs and defendant no.2 but also the Court. The fact that the postal stamps, which have been affixed on the certificate of posting, were issued in the year 2008, conclusively, shows the falsity of the defence of defendant no.1 that the demand notices were issued in the month of January 2007 to April 2007 and, on the strength of the said demand notices, the Agreement came to be terminated. The lawful termination of the Agreement is a material issue which warrants adjudication.

6. The fact that there was delay in taking out the Chamber Summons, viewed in the backdrop of the aforesaid glaring circumstances, according to the learned Counsel for the applicants, does not dis-entitle the plaintiffs from seeking the amendment as the amendment is necessitated by the object of determination of the real question in controversy between the parties.

7. In order to lend support to this submission, the learned Counsel for the applicants placed reliance on the judgments of the Supreme Court in the cases of *Surender Kumar Sharma vs. Makhan Singh*¹ and *Pradeep Singhvi and another vs. Heero Dhankani and others*².

8. In opposition to this, the learned Counsel for defendant no.1 laid emphasis on the aspect of delay. It was urged with a degree of vehemence that when the written statement was filed in the year 2011 and all the aforesaid letters were relied upon in support of the defence that demand notices were issued, there was no reason for the plaintiff not to take out the application for amendment, within a reasonable period, even if the case of the applicants is taken at par.

1(2009) 10 Supreme Court Cases 626.

2(2004) 13 Supreme Court Cases 432.

9. The learned Counsel for defendant no.2, in turn, would submit that the interdict contained in the proviso to Order VI Rule 17 comes into play. By an order dated 25th November, 2014, the issue of limitation was framed, and directed to be decided as a preliminary issue under Section 9A of the Code of Civil Procedure, 1908, in its application to the State of Maharashtra. The plaintiffs have filed an affidavit of evidence for determination of the said issue. All the facts now sought to be urged were in the knowledge of the plaintiffs. Moreover, the fact that the postal stamps were issued in the year 2008 is in the public domain and the said aspect is also highlighted in the information furnished by the postal authorities under the Right to Information Act, 2005, on which reliance is placed by the applicants. Therefore, the plaintiffs cannot be permitted to amend the plaint as the trial has commenced, submitted the learned Counsel for defendant no.2.

10. Before adverting 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 1st December, 2008, finds support in the information furnished by the postal authorities on 14th 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 1st 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, thus does not constitute an impediment in considering 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.

15. Hence, the following order.

: O r d e r :

- (i) The Chamber Summons stands allowed.
- (ii) The applicants – plaintiffs shall carry out the amendments as proposed in the schedule appended to the Chamber Summons within three weeks from today and serve its copy on the defendants.
- (iii) The defendants are at liberty to file an additional written statement within a period of one month from the date of service of the amended plaint.

(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.

(v) List the suit on 11th March, 2020.

[N. J. JAMADAR, J.]