

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7757 OF 2021

Mahendra P. Shah ... Petitioner
Vs.
Sai Leela Enterprises and others ... Respondents

Mr. Amrut Joshi i/b. Mr. Sanket Mungale a/w. Mr. Tejas S. Mahamuni
for Petitioner.
Mr. S. M. Shettigar for Respondents.

CORAM : BHARATI DANGRE, J.
DATE : NOVEMBER 22, 2021

P.C. :

The petitioner is aggrieved by the order passed below Exhibit-J in Chamber Summons No.1074 of 2016 passed on 03.03.2021 by the learned Judge of the City Civil Court, Greater Mumbai. The said Chamber Summons was taken out by one Sai Leela Enterprises under Order XXII Rule 10 of the Code of Civil Procedure, 1908 praying for substituting its name as 'defendant No.1A' in place of the original defendant - Canara Bank, in the wake of the registered Deed of Assignment dated 10.05.2011 entered into between the original defendant and the proposed defendant under which the debts of the bank were transferred and assigned to the proposed defendant. Claiming that all the rights, title, interest and benefit in and to the debt, charge and security interest of Canara Bank now vest in the proposed defendant, the necessary amendment was sought in terms of the schedule appended to the Chamber Summons.

2. With the assistance of the parties, I have perused the impugned order and also the Chamber Summons upon which the impugned order has been passed.

Chamber Summons No.1074 of 2016 is the bone of contention between the parties. It made the following three prayers:-

- “a) This Hon’ble Court be pleased to grant leave to the Applicant to be substituted as the Defendant No.1A in place of Canara Bank, the Original Defendant No.1 in the aforesaid B.C.C.C. Suit No.109795 of 1989 (H.C.Suit No.3307 of 1989);
- b) This Hon’ble Court be pleased to direct the Plaintiff to carry out amendments in the aforesaid B.C.C.C. Suit No.109795 of 1989 (H.C.Suit No.3307 of 1989) as per the Schedule, which is annexed to the present Chamber Summons;
- c) Pending hearing and final disposal of the aforesaid Chamber Summons the hearing and further proceedings in the aforesaid B.C.C.C. Suit No.109795 of 1989 (H.C.Suit No.3307 of 1989) be stayed;”

3. The Chamber Summons is accompanied with the Schedule which seeks the following:-

- i. deletion of the original defendant Canara Bank from the cause title;
- ii. addition of Sai Leela Enterprises as defendant No.1A in the Suit;
- iii. addition of paragraph 1 on the 7th line of the plaint dated 07.11.1989 as well as paragraph 21A and certain necessary amendments in the plaint as per the Schedule.

4. The impugned order has made the Chamber Summons absolute in terms of prayer clauses (a) and (b).

5. As far as the petitioner is concerned, the learned counsel fairly states that he concedes to the legal position of the right of the applicant, Sai Leela Enterprises to defend the Suit in the wake of the Deed of Assignment. He further submits that he has questioned the registered Deed of Assignment by filing Suit No.43 of 2013 before this Court in its original jurisdiction and the same Suit is pending. He, therefore, urges that he would have accorded his no objection if Sai Leela Enterprises

was added as the defendant in addition to the Canara Bank i.e., original defendant and not in its substitution. However, he has a serious objection to the amendment of its plaint as sought by prayer (b) of the schedule of amendment and on perusal of the impugned order it is manifest that the learned Judge has not assigned any reason nor does he make reference to any provision of law under which the defendant can seek amendment in the pleadings of the plaintiff. The obvious reason is, there cannot be any such provision which would permit amendment of the plaint except on the motion being made by the plaintiff.

The learned counsel for the defendant concedes to the aforesaid legal position and therefore, necessarily prayer clause (b) in the Chamber Summons cannot be in any case granted.

6. In the wake of the aforesaid since according to the petitioner the assignment deed is subject to challenge, instead of substitution of the original defendant, Sai Leela Enterprises is permitted to be added as a defendant in the Suit along with the Canara Bank (Original Defendant No.1) and the amendment is permitted to be incorporated by inserting the said defendant as defendant No.1A.

7. With the aforesaid modification, the impugned order is partly set aside, as far as it allows prayers (a) and (b). The learned Judge shall permit the necessary amendment to be carried out within a period of one week from the receipt of a copy of this order and proceed with the Suit accordingly.

8. Writ Petition is disposed of accordingly.

(SMT. BHARATI DANGRE, J.)