

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

CHAMBER SUMMONS NO.549 OF 2019

IN

SUIT NO.2618 OF 2007

Markers Development Services Pvt. Ltd. .. Applicant-Plaintiff

Vs.

M. Visvesvaraya Industrial Research and
Development Centre and Ors. .. Defendants

Mr. D.J. Khambata, Sr. Advocate, with Firdosh Pooniwalla and Mr. Arif Doctor, i/by Junnarkar & Associates, for the Applicant-Plaintiff.

Mr. J.P. Sen, with Mr. Kunal Vaishnav and Mr. Meit Sampat, i/by Little & Co., for Defendant No.1.

Ms. Jyoti Chavan, AGP for the Defendant Nos.2 and 3-State.

**CORAM : A. K. MENON, J.
DATED : 3RD MARCH 2021.**

P.C. :

1. Plaintiff has filed this suit seeking a declaration that the suit contract as contained in a letter dated 10th November 1980 executed by and between the plaintiff and defendant no.1 is valid, subsisting and binding. The suit came to be filed when the defendant sought to deny the contract and disturb the plaintiff's possession of the suit land. The suit land is located in Cuffe Parade at Mumbai. The plaintiff claims that they were entitled to a sub-lease in respect of the land from the defendant no.1, which was then a proposed lessee of the State of Maharashtra, since impleaded as defendant no.2 in the suit. Defendant no.3 is the Collector of Mumbai.

2. The present IA has been filed by the plaintiff seeking leave to amend the plaint in terms of the schedule annexed to the chamber summons. The amendment is being opposed by defendant nos.2 and 3. There is passive opposition from the defendant no.1 as well, which has filed an affidavit-in-reply dated 13th June 2019, in which the plaintiff's contentions in the chamber summons are sought to be denied. The defendant nos.2 and 3 have opposed the amendment, relying upon the affidavit of the Superintendent of Mumbai City Survey and Land Records.

3. The chamber summons is taken up today for final hearing and disposal. Appearing for the plaintiff in support, Mr. Khambata, the learned senior counsel submitted that pursuant to the suit contract, the plaintiff had commenced construction on the suit land some time in July, 1990. Thereafter in 2007, the defendant no.1 had threatened to disturb the plaintiff's possession of the suit lands, causing the suit to be filed in September, 2007. On or about 25th April, 2008, in a Notice of Motion filed by the plaintiff, the plaintiff secured an injunction restraining the defendant no.1 from in any manner selling, transferring, disposing of, alienating, encumbering or creating third party rights, interest in or entering upon any arrangement with anyone else in respect of the suit land or any part thereof. It is contended by Mr. Khambata that the injunction continues to be in force and has survived challenges in this court as well as the Supreme Court.

4. Sometime in 2009, the defendant no.1 filed its written statement and counter-claim. The plaintiffs have defended the counter-claim by filing its written statement to the counter-claim. In 2013, defendant no.1 filed an additional written statement, to be followed by the plaintiff's additional written statement to the counter-claim. In February, 2015, issues came to be framed in the suit. In November 2016, defendant no.3-Collector of Mumbai terminated the lease granted to the 1st defendant and purported to resume the land. This caused the defendant no.1 to file a Writ Petition in this court challenging the termination of the lease. The defendant no.1 was protected by an order passed in the writ petition on 25th November 2016. Defendant no.1 was granted liberty to file an appeal under Section 274 of the Maharashtra Land Revenue Code, 1966. In the interregnum, the parties were directed to maintain a status-quo.

5. In the wake of these developments, defendant nos.2 and 3 filed a chamber summons in this suit seeking to be impleaded as party-defendants. Mr. Khambata submitted that in the affidavit in support of the chamber summons, the defendant no.2 admitted that in the year 1970, after the suit plot was allotted to defendant no.1, the defendant no.1 was permitted to grant a sub-lease of the plot for construction of a hotel and that a sub-lease was proposed to be entered into with the plaintiffs. The affidavit goes on to record that disputes arose inter se between plaintiff and defendant no.1 in relation to the proposed construction. Mr. Khambata submits that the defendant no.2

had therefore admitted that it permitted the 1st defendant to grant a sub-lease and meanwhile the lease of defendant no.2 had been terminated.

6. The chamber summons seeking impleadment came to be allowed by this court's order dated 9th August 2017. The defendant no.1 challenged that order, which came to be confirmed by the appeal court. The defendant no.1 then filed a Special Leave Petition, which came to be rejected. Thus, the order of impleadment of defendant nos.2 and 3 attained finality. Thereupon the defendant nos.2 and 3 filed their Written Statement dated 20th March 2019. In the written statement, the defendant nos.2 and 3 are stated to have denied the plaintiff's rights as lessees or prospective lessees. Attention has been drawn to paragraph 17 of the written statement, in which the defendant nos.2 and 3 state that the 1st defendant had without obtaining permissions of defendant nos.2 and 3 permitted the plaintiff to carry out constructions, which construction is yet to be completed.

7. My attention is also invited to paragraph 22 of the written statement, in which the defendants 2 and 3 state that neither the plaintiff nor the defendant no.1 are entitled to claim as lessees of defendants 2 and 3. The defendants 2 and 3 alleged various illegalities having being committed by the 1st defendant. In view of the aforesaid contentions, the plaintiffs have thought it fit to move the application for amendment. Mr. Khambata submitted that the amendment is necessitated since in the written statement defendants 2 and 3 have for the

first time denied the plaintiff's right to obtain a sub-lease and as right which he seeks to enforce in the plaint.

8. On behalf of the defendants 2 and 3, Ms. Chavan, learned AGP has opposed the application. According to her, the amendment seeks to introduce the new cause of action and that the plaintiffs are always at liberty to file a fresh suit, if so advised. She submitted that the amendment ought not to be permitted since the plaintiffs are feigning ignorance of the fact that the termination of the lease had been already known to the plaintiffs in 2016 itself. However, the plaintiffs have waited till the written statement had been filed in order to move this amendment application. She submitted that there is no justification in allowing the amendment at this belated stage that issues had been framed and that the suit is now ready for go to trial. On this basis the learned AGP submitted that the amendment is unwarranted and ought not to be allowed.

9. It cannot be disputed that the court should allow all amendments that may be necessary for determining the real question in controversy between the parties; provided it does not cause any prejudice or injustice to the other side. As observed by the Supreme Court in *Rajesh Kumar Agarwal and Ors. Vs. K.K. Modi*, (2006) 4 SCC 385, the court is not required at that stage to go into the correctness or otherwise of the facts set out in the amendment. The court is expected to take notice of subsequent events in order to shorten litigation and preserve the rights of both parties. In the facts of that case, it

was observed that even if it was permissible for the appellant to file an independent suit on the basis of the amendment application, which had been declined by the high court, it was not understood as to why relief that could have been sought in a new suit cannot be permitted by way of an amendment in the current suit. Applying this principle to the facts of the present case, I find that there is no reason to deny the application. The defendants' contention is that the present amendment seeks to introduce a new cause of action and that a fresh suit can be filed in respect thereof. In my view, there is no justification in opposing the amendment inasmuch as the defendants 2 and 3 have entered into the arena of a pre-existing dispute as between the plaintiff and defendant no.1. Having so participated in the suit, they seek to refute the plaintiff's contention in this suit. It is always open for the plaintiff to make an appropriate amendment in view of the new developments caused by entry of defendants 2 and 3 into this lis. By filing the written statement and denying the claim of the plaintiff, the plaintiff thought it necessary to bring on record certain facts and carry out the amendments in order to ensure that the suit is in all respects competent. In the alternative, if the plaintiffs were to file a separate suit, it would necessarily involve common questions of fact and issues of law that would arise as between the defendant no.1 and the defendant nos.2 and 3 as also between the plaintiffs and defendant nos.2 and 3. Prima facie, it would seem that the issues that would arise in the proposed second suit would substantially be an issue in the first suit as well. The entire exercise of filing of second suit and impleading the defendants 2 and 3 and

probably defendant no.1 is in my view wholly unnecessary. On another front, if the plaintiffs were to file a suit today, the suit as against defendant no.1, it would probably be hit by the bar of limitation. Apart from the fact that it is necessary for courts to prevent multiplicity of proceedings, amendments are to be liberally allowed. In the present case, the mere fact that the issues have been framed in 2015 does not in any manner entail that the amendment application is not competent. The defendant nos.2 and 3 have filed a written statement in 2019 and the issues in the suit will in any event be required to be recast. Viewed from that perspective, I find no reason why this amendment should be denied. It is also noticed that the plaintiffs have filed this chamber summons soon after the written statement has been filed by the defendants.

10. The principal dispute between the parties is whether the plaintiffs are entitled to performance of the suit contract and till that issue is decided, whether the plaintiff is entitled to remain in possession of the suit land and also seek a sub-lease of the suit land. The termination of lease in favour of the 1st defendant by defendants 2 and 3 has presently been stayed / withdrawn and the matter is engaging the attention of the Maharashtra Revenue Tribunal. As presently advised, the entire set of facts reveal that the plaintiff's case of being entitled to a sub-lease will also have to be urged against defendants 2 and 3 by virtue of the termination. The amendment also seeks to emphasize that defendant no.1 had created rights in favour of the plaintiff and that the defendants 2 and 3 had recognized this fact. In the present case,

the plaintiff has contended that it acquired rights in the suit land much prior to the termination order dated 24th November 2016. Opposition on behalf of the defendants 2 and 3 to the amendment on the basis that a fresh suit can always be filed has no substance. The schedule of amendment does not in my view reveal that the plaintiff is seeking to act on a fresh cause of action. On the other hand, the amendment largely deals with events that have transpired since the filing of the suit, which includes the impleadment of defendants 2 and 3, who filed a written statement only as late as 20th March 2019. The written statement having denied or having set up a defence, that the plaintiff had no right to claim any reliefs, it was always open to the plaintiff to seek this amendment. It neither changes the cause of action or the nature of the suit in any manner.

11. For the aforesaid reasons, I am of the view that the amendment is liable to be allowed and accordingly, I pass the following order :-

- (i) Chamber Summons is made absolute in terms of prayer clause (a). Amendments in terms of the schedule to the chamber summons to be carried out within a period of four weeks from today.
- (ii) In view of the amendment, amended plaint to be served upon the defendants within two weeks thereafter.

- (iii) Leave is granted to the defendants to file an additional written statement within a period of four weeks from service of the amended plaint.
- (iv) Chamber Summons is disposed in the above terms.
- (v) No costs.

(A. K. MENON, J.)