

Santosh

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

**CHAMBER SUMMONS NO. 657 OF 2019
IN
COMM SUIT NO. 417 OF 2018**

Rolex Meters Pvt. Ltd.	...Applicant
In the matter between	
Maharashtra State Electricity Distribution Co.Ltd.	...Plaintiff
Versus	
Rolex Meters Pvt. Ltd.	...Defendant

Mr. Rahul Sinha, i/b DSK Legal, for the Plaintiff.
Mr. Joy Dip Bhattacharya, a/w Robin George, Mr. Vilas Bane,
i/b M/s. V. B. Legal, for the Defendant.

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CORAM: N. J. JAMADAR, J.

DATED : 7th APRIL, 2022

PC:-

1. The defendant has taken out this Chamber Summons to incorporate amendment in the written statement. The defendant contends that the events which the defendant proposes to bring on record by way of amendment transpired during the period commencing from the date of filing of Notice of Motion No.2529 of 2018 to 7th March, 2019, on which day, the said Notice of Motion was allowed and registry was directed to take the written statement on record. The defendant further

contends that the events and documents proposed to be incorporated bear upon the controversy in issue as the plaintiff had sought replacement of the meters and the defendant did comply with those requisitions and the proposed pleading is in respect of the said transactions. The proposed amendment will not change the character of the defence of the defendant nor will it cause any prejudice to the plaintiff. Hence, the defendant be permitted to amend the written statement in terms of the schedule appended to the Chamber Summons.

2. The plaintiff has resisted the application by filing an affidavit-in-reply.

3. The plaintiff asserts that the written statement was to be filed within a week's time from 7th March, 2019. The transactions referred to by the defendant in the schedule of amendment have occurred prior to 7th March, 2019. There was no reason not to incorporate those facts in the written statement, which came to be filed pursuant to the order of the Court in Notice of Motion No.2529 of 2018, dated 7th March, 2019. Relying upon the interdict contained in Order XI Rule 1(10) in its application to the Commercial Court's Act, 2015, the plaintiff has prayed that the application be rejected.

4. I have heard Mr. Bhattacharya, the learned Counsel for the applicant- defendant and Mr. Sinha, the learned Counsel for the plaintiff.

5. The learned Counsel for the defendant would urge that the defendant had in fact tendered the written statement along with Notice of Motion No.2529 of 2018. However, since the said Notice of Motion came to be allowed by order dated 7th March, 2019, the developments in the intervening period could not be incorporated in the written statement.

6. The learned Counsel for the plaintiff controverts this position. Inviting the attention of the Court to the order passed by this Court on 7th March, 2019 in Notice of Motion No.2529 of 2018, whereby it was ordered that the written statement shall be filed in the Registry within a week thereof, the learned Counsel for the plaintiff submitted that the defendant had ample opportunity to incorporate the facts now proposed to be brought on record. Placing reliance on the provisions contained in Order XXI Rule 1(2), the learned Counsel for the plaintiff submitted that since the documents were in possession and power of the defendant, at this juncture, the defendant cannot be permitted to introduce those documents.

7. It is trite that the Court shall allow all the amendments, which are necessary for the determination of real question in controversy between the parties. There are two considerations which weigh with the Court, one, the potentiality of prejudice to the other side in the event the amendment is allowed. Two, such amendment ought not be permitted, which takes away a vested right in the adversary.

8. In the case at hand, the amendment is sought at a pre-trial stage. The proviso to Order VI Rule 17 does not come into play. The amendment is in the nature of elaboration of the defence of the defendant. Moreover, an amendment in written statement deserves a mare liberal consideration.

9. The submission on behalf of the plaintiff that the defendant was in possession of the documents and was aware of the facts and was in possession of the relevant documents at a time when the written statement was to be filed in pursuance of the order passed by this Court on 7th March, 2019, is required to be appreciated in the light of the fact that the Notice of Motion was filed on 30th July, 2018. The claim of the defendant that the written statement was tendered along with the Notice of Motion on 30th July, 2018, could not be controverted. In this view of the matter, the submission on behalf of the defendant that the

defendant could not incorporate the facts now proposed to be incorporated by way of amendment appears sustainable.

10. For the forgoing reasons, the Chamber Summons deserves to be allowed.

11. Hence, the following order:

: O R D E R :

- (i) The Chamber Summons stands allowed in terms of prayer Clauses (a) and (b).
- (ii) Necessary amendment in accordance with the schedule of amendment be carried out within a period of one week.
- (iii) Amended copy of the written statement be served on the plaintiff within a week thereafter.

[N. J. JAMADAR, J.]