

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1209 OF 2015

IN

COMMERCIAL SUIT NO. 126 OF 2021

Pranav J. Choksi ... Applicant/Def No. 17.

In the matter of

National Spot Exchange Limited ... Plaintiff

vs.

M/s. N. K. Proteins Limited and 49 Ors. ... Defendants

Ms. Prageeyaa Khanna a/w. Mr. Anshul Anjarlekar i/b. M/s. Raval-Shah & Co.
for the Applicants / original Defendant nos. 13, 15, 16 and 17.

Mr. Ashish Kamat i/b. Vaish Associates for the Respondent and Original
Plaintiff.

Mr. Vishal Maheshwari i/b. U M Legal for Defendant nos. 1 to 4.

CORAM : A. K. MENON, J.

DATED : 13th JANUARY, 2022

[THROUGH VIDEO CONFERENCE]

P.C. :

1. This Chamber Summons is filed by defendant no. 17 seeking rejection of the plaint under Order VII Rule 11 read with Order I Rule 10 (2) of the Code of Civil Procedure, 1908 and to strike off the name of applicant as party defendant. According to Ms. Khanna learned counsel appearing in support of the application, the applicant is neither a necessary nor a proper party to the suit and hence the suit is liable to be rejected against defendant no. 17.

2. Ms. Khanna further submits that since the suit does not disclose any cause of action against defendant no. 17 the Suit and Notice of Motion filed in the suit are also liable to be rejected. She submits that a written statement has been filed by defendant no. 17. It is admitted that defendant no. 17 is a shareholder as contented by the plaintiff in paragraph 10 of the plaint. According to her no dividend has been declared by the company and her client has not benefited from the shareholding in the defendant company. She submits that the plaint is bereft of any allegation against defendant no. 17 and therefore no cause of action could have arisen.

3. Ms. Khanna has invited my attention to paragraph 16 and 18 in support of her contention that these averments do not constitute cause of action and that absent a cause of action against defendant no. 17 the plaint is liable to be rejected. She therefore submits that the Chamber Summons be allowed and that suit against defendant no. 17 be rejected.

4. In response, on behalf of the plaintiff Mr. Kamat submits that the suit does in fact disclose cause of action against not only defendant no. 17 but also against some of the other defendants who have also filed similar application. Mr. Kamat invited my attention to the averment in the plaint and in particular in paragraph 18 in which the plaintiff has in no uncertain terms stated that defendant nos. 15 to 19 (inclusive of defendant no. 17) are shareholders of defendant no. 1 and are beneficiaries of trades carried out by defendant no. 1 on the plaintiff exchange.

5. Mr. Kamat submits that the cause of action in the Suit is based on fraud perpetrated by defendant no. 13 who is believed to be father of defendant no. 17 and other defendant includes defendant no. 15 and 16 which are companies said to be under control of defendant no. 13. Mr. Kamat has also invited my attention to paragraphs 87, 91 and 111 of the plaint all of which clearly seek to hold defendant no. 17 also liable.

6. Whether or not Ms. Khanna's defences are to be accepted or not is to be considered only at the trial of the suit and at this stage it is not possible to hold that the suit does not disclose a cause of action against the applicant. Moreover, I find that the suit specifically seeks relief against all these defendants which include defendant no. 17. In my view therefore the suit does disclose a cause of action. I am therefore of the view that the Chamber Summons cannot succeed and I pass the following order :

- (i) Chamber Summons is dismissed.
- (ii) No order as to costs.

At this stage Ms. Khanna submits that three other Chamber Summonses are also pending being CHS/1217/ 2016, CHS/1228/2015 and CHS/1230/2015.

List the Interim Application (L) no. 26200 of 2021, CHS/1217/2016, CHS/1228/2015 and CHS/1230/2015 on 20th January, 2022.

(A. K. MENON, J.)