

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY*****ORDINARY ORIGINAL CIVIL JURISDICTION*****INTERIM APPLICATION NO. 1747 OF 2023****IN****COMMERCIAL SUMMARY SUIT N O. 1281 OF 2019****Ravin Infraproject Pvt. Ltd.****..... Applicant/
Plaintiff****VERSUS****Nexus Green Ltd. & Anr. Limited****..... Respondent
(Org.Defendant)**

Mr. Karl Tamboly, a/w. Mr.Rudra Deosthali i/b. Parinam Law Associates for the Applicant/Plaintiff.

Ms.Dhara Modi, a/w. Ms.Nandita Dethe i/b. Singhania Legal Services for the Defendant No.1.

Mr.Dhaval A.Patil i/b. M/s.K.Ashar & Co. for the Defendant No.2.

CORAM: ABHAY AHUJA, J.**DATE : 24th AUGUST, 2023****P.C:-**

This is an application filed by the plaintiff seeking to amend the plaint in terms of the schedule of amendment annexed to the application. Mr.Tamboly, learned counsel for the applicant/plaintiff would submit that the scheduled amendments are being carried out pursuant to an order dated 28th June, 2022 of this Court wherein after hearing the summons for judgment, the learned Single Judge has

permitted the withdrawal of the summons for judgment with liberty to apply for an amendment and to file a fresh summons for judgment thereafter.

2. Learned counsel submits that it is pursuant to the said liberty that this application is being filed.

3. Learned counsel would submit that the proposed amendments are clarificatory and explanatory in nature and do not seek to alter or amend the plaint so as to prejudice the defendant. No new facts are being brought on record and that the amendment will not in any way change the nature of the suit. Learned counsel therefore prays that the application be allowed.

4. On the other hand, learned counsel for the respondent no.1 who refers to the affidavit in reply dated 8th June, 2023 submits that although the order granting liberty to amend is of 28th June, 2022, the application for amendment has been filed only on 20th April, 2023 and that there is a considerable delay in filing the application. Learned counsel would also submit that the plaintiff is trying to add new facts in

the plaint which were well within the knowledge of the plaintiff and if the application is allowed, the same will cause delay, hardship and prejudice to the defendant no.1.

5. It is also being submitted in the reply that the plaintiff is trying to alter the basic structure of the suit which is not permissible in law and therefore the application be dismissed.

6. Learned counsel for the defendant no.2 also opposes the interim application on the ground of delay and submits that the application be dismissed.

7. I have heard learned counsel and considered the rival contentions.

8. This Court by order dated 28th June, 2022 had after hearing the summons for judgment permitted withdrawal of the same and granted liberty to the plaintiff to apply for amendment and to file fresh summons for judgment. The said order did not specify any time limit within which the interim application was to be preferred. For the sake

of convenience, the said order is usefully reproduced as under :-

1. After this Summons for Judgment was heard for some time, Mr. Tamboly, on instructions, states that some amendments are required to be carried out in the plaint. He therefore seeks leave to withdraw this Summons for Judgment with liberty to apply for amendment and to file a fresh Summons for Judgment.

2. Accordingly, the Summons for Judgment is allowed to be withdrawn with liberty as aforesaid.

9. The plaintiffs have filed this interim application on 20th April, 2023 seeking to amend the plaint in terms of the schedule. A perusal of the schedule of the amendments indicates that considering the nature of the suit, the amendments are clarificatory and explanatory in nature as there is already reference to swift messages and bills of exchange in paragraph (18) and paragraph (25) of the plaint. Ex.I of the plaint also refers to the invoices co-relating with the bills of exchange. On a query from the Court as to the table with respect to the proposed Ex.J-1, Mr.Tamboly, learned counsel would submit that that is merely co-relation between the invoices, the bills of exchange and the swift messages referred to in the plaint and the said documents are already annexed as the exhibits to the plaint. These facts and explanation by the learned counsel for the plaintiff are not disputed by the learned

counsel for the defendants. Except to say that there is delay in filing of the interim application for amendment, there is no other objection raised on behalf of the defendants.

10. It therefore does not appear that the proposed amendments will in any way change the nature of the suit. No prejudice in my view would be caused to the defendants as the defendants can always file reply to the summons for judgment. As noted above, the order dated 28th June, 2022 granting liberty to the plaintiff to amend does not specify any outer limit within which the interim application was to be preferred. Therefore, contention on behalf of the defendants need not be entertained particularly when they would get an opportunity to file reply to the summons for judgment on merits.

11. Having heard learned counsel and having perused the interim application as well as the reply filed by the defendant, this Court is of the view that the amendment as prayed for be allowed.

12. Let the plaint be amended within a period of two weeks. Let the amended plaint be served upon the defendants within a period of one

week thereafter. Let the summons for judgment be taken out within a period of one week after service of the amended plaint upon the defendants.

13. Application stands allowed in the above terms. The parties to bear their own costs.

14. Let the Registry list the suit for directions on **29th September, 2023.**

[ABHAY AHUJA, J.]