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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO.269 OF 2019
IN
COMS SUIT NO.70 OF 2017

Ketan A. Shah

...Applicant /
Plaintiff

Versus

Philip Capital (India) Pvt. Ltd. & Ors.

...Defendants

Feroze Patel, Nupur Desai, Sharvari Joshi and Markand Gandhi & Co.
for the Plaintiff.

Gargi Maideo i/b. Ashwin Duggal & Associates for the Defendant
Nos.8 to 12, 14 to 18, 20, 21 and 23.

M. Fernandes i/b Vaish Associates for Defendant No.24.

CORAM : R.I. CHAGLA J.
DATE : 17 APRIL 2023.

ORDER :

1. By this Chamber Summons, the Applicant / Original Plaintiff has sought permission to amend the Complaint and other proceedings in the Suit as per the schedule annexed to the Chamber Summons. The Applicant has stated that the reason for filing of the Chamber Summons for amendment was that in the Complaint there was no bifurcation of the amounts which claims were inadvertently

combined. Accordingly for completeness of the pleadings the amounts claimed were to be bifurcated. The amounts claimed to be payable by Motilal Oswal Group was required to be separated from the amounts claimed as payable by Philip Capital Group. These payments were towards the refund of brokerage and C & F charges collected by Philip Capital Group through Defendant No.2 and Motilal Oswal Group through Defendant No.11. The amounts are claimed as due and payable to the Plaintiff in respect of the contracts entered into by them through NSEL with Philip Capital Group and Motilal Oswal Group.

2. The learned Counsel appearing for the Defendant No.24 has raised objection that though the proposed amendment has separated the claims made against Philip Capital Group from that against Motilal Oswal Group, they have roped in Defendant No.24 and have claimed that the amounts as being jointly and severally payable by Defendant No.24 in respect of claims against both groups for which the bifurcation has been sought. He states that Defendant No.24 does not belong to either of the two groups and accordingly, the proposed amendment to the extent it claims the amounts against Defendant No.24 is contrary to the earlier part of the proposed

paragraph 100 in the schedule of amendment.

3. The learned Counsel appearing for the Defendant Nos.8 to 12 and 14 to 18 has sought time to file Affidavit in Reply.

4. Considering that the Defendant Nos.8 to 12 and 14 to 18 was served way back in December, 2018 and reply had been filed by Defendant No.11 which is already on record, no further time can be granted to other Defendants to file Reply.

5. Further, the objection raised by Defendant No.24 is without merit. Considering that the original prayers in the Suit are also against Defendant No.24 and there is a claim for Defendant No.24 being jointly and severally liable to pay the Plaintiff in respect of their claims for refund of brokerage and C and F charges, there is no departure from the original pleadings.

6. A mere perusal of the schedule of amendment reveals that there is only a bifurcation made with respect to the amounts claimed by the Plaintiff in respect of the two groups as well as Defendant No.24 and their being jointly and severally liable. It is

open to the Defendants to deal with the merits of the amended Plaint by filing additional Written Statement which they are liberty to file.

7. Accordingly, the relief sought for in the Chamber Summons is granted. Hence the following order:-

(i) The Applicant is permitted to amend the Plaint in accordance with the schedule annexed to the Chamber Summons which amendment shall be carried out within a period of two weeks from the date of this Order.

(ii) Re-verification is dispensed with.

(iii) The Interim Application is accordingly disposed of.

(iv) Upon the Defendants being served with the amended Plaint, they shall file their additional Written Statement within a period of four weeks therefrom.

[R.I. CHAGLA J.]