

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

**CHAMBER SUMMONS NO.906 OF 2011
CHAMBER SUMMONS (L) NO.645 OF 2016
NOTICE OF MOTION NO.3687 OF 2010
IN
SUIT NO.470 OF 2009**

Papeyon Developers Pvt. Ltd.)....Plaintiff

V/s.

Mehrunnisa D.Jagirdar & Ors.)....Defendants

And

SBP Realtors Pvt. Ltd.)....Respondent

Mr.D.V.Deokar a/w Mr.Pinakim Modi and Mr.Dhruvesh Parikh i/by
Parimal K.Shroff and Co. for plaintiff/applicant.

Mr.Farhan Dubash a/w Mr.Anosh Sequeria and Mr.S.Dalvi i/by
Siganporia and Dalvi for defendant nos.1, 5 & 6.

**CORAM : K.R.SHRIRAM,J
DATE : 22.8.2017**

P.C.:-

1 This chamber summons is taken out to implead the respondent and for carrying out consequential amendment to the plaint. The respondent though served, is not present and the undertaking of Mr.Deokar for plaintiff/applicant to file affidavit of service within one week, is accepted.

2 Mr.Dubash for defendant nos.1, 5 & 6 states that in the Notice of Motion, defendants have taken out defence of limitation which defence has been raised in the Chamber summons as well but

the court is yet to frame any issue under Section 9A of the Code of Civil Procedure, 1908. As held by this court in ¹***Immigrants Ideal Producers Co-operative Society Ltd. & Anr. Vs. Jahanara Moiz Dalal*** that issue raised under Section 9A of the Code of Civil Procedure, 1908 will not come in the way of an amendment application.

Mr.Dubash in fairness agrees for the same. At the same time, Mr.Dubash states that if the Court records that the amendment will not be effective retrospectively but it will take effect from the date the Chamber summons has been lodged and keep open the rights of the defendants to raise issue of limitation, the Chamber summons can be allowed.

3 Keeping open rights and contentions of defendants and observing that amendment will not relate back from the date of the suit, Chamber summons allowed in terms of prayer clause-(a).

4 Mr.Deokar for plaintiff/applicant states that pursuant to the order of Division Bench, the plaint had already been amended and the amendment so carried out should be accepted as amendment pursuant to today's order.

Mr.Dubash has no objection. Therefore, plaint need not be re-amended.

1 2004 (1) Mh.L.J. 910

5 Amended plaint to be served within one week from today.
Should the defendants and the newly added defendants wish to file
additional written statement/written statement, the same to be filed
and copy served within 4 weeks of receiving amended plaint/plaint.

Both the Chamber summons are allowed accordingly and
stand disposed.

NOTICE OF MOTION NO.3687 OF 2010

1 This Notice of Motion to be listed for hearing in due
course.

(K.R.SHRIRAM,J)