



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

**CHAMBER SUMMON NO.15 OF 2018
IN
COMMERCIAL SUIT NO.30 OF 2018**

Vrushali Patil and ors. ...Plaintiffs
V/s.
MD Devcon Private Limited & ors. ... Defendants

**WITH
NOTICE OF MOTION NO.33 OF 2018
IN
COMMERCIAL SUIT NO.30 OF 2018
WITH
CHAMBER SUMMON NO.273 OF 2018
IN
COMMERCIAL SUIT NO.30 OF 2018**

...
Mr.Cyrus Ardeshir a/w. Mr.Sushrut Desai, Mr.Sushaant Arora and
Ms.Rashmi Solian i/b. Vigil Juris for plaintiffs/applicants.
Mr.Sahil Mahajan for defendant nos.2 to 4.
Ms.Prachi Khandge i/b. M.P.Vashi Associates for defendant nos.7 to 9.

...

CORAM : K. R. SHRIRAM, J.

DATE : 3rd DECEMBER, 2018.

P.C. :

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1. This chamber summons is taken out for leave to amend the paint as per schedule annexed to the chamber summons.
2. Admittedly, the suit is at very nascent stage. None of the defendants have even filed written statement.

3. Reason for taking out this chamber summons for leave to amend the plaint could be found in paragraph Nos. 1, 3, 4, 5 and 6 of the affidavit-in-support of chamber summons. What it appears is that when defendant no.3, acting on behalf of defendant nos.1 to 6, filed an affidavit-in-reply to the notice of motion taken out by plaintiffs, certain further facts came to light in as much as the project which was to be developed was not only the land under CTS No. 1285 A/E that was set out in the letter of allotment but it also to extend to contiguous and adjacent land CTS No.1285 A/B and CTS No.1285 A/C. According to plaintiffs. this chamber summons has become necessary to bring these additional facts and also documents in support thereof on record.

4. Defendant nos.7 to 9 have filed affidavit-in-reply. The stand of defendant nos.7 to 9 is that, by this application, plaintiff is trying to enlarge the scope of the suit beyond the cause of action and seeks reliefs against defendant nos.7 and 9.

5. I have seen the proposed amendments and also the averments in the plaint. I have also considered the affidavits. The Apex Court in the case of *M/s. Revajeeetu Builders & Developers V/s. M/s. Narayanaswamy & Sons & Ors.*¹ in paragraph 63 has listed the factors to be kept in mind while considering the application for amendment

1. (2009) 10 SCC 84

and the same reads as under:

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

(1) Whether the amendment sought is im-perative for proper and effective adjudication of the case?

(2) Whether the application for amendment is bona fide or mala fide?

(3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case? and

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.”

6. In my view, the proposed amendment does not change the nature and the character of the suit. I cannot also come to a conclusion that the proposed prayer a(1), a(2), a(3) could *ex facie* be held to be barred by law of limitation. Evidence has to be led.

7. In the circumstances, keeping open all rights and contentions of defendants, chamber summons is allowed in terms of prayer clause (a).

8. Amendment to be carried and amended plaint to be served within two weeks from today.

9. Written statement / additional written statements to be filed within three weeks on receiving the copy of the amended plaint.

10. Ms. Khandge seeks stay of this order. Stay refused.
11. Stand over to 11th January, 2019 for directions.

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1. In view of the order passed in Chamber Summons No.273 of 2018, this chamber summons does not survive.
2. Chamber summons dismissed.
3. Notice of Motion No.33 of 2018 be listed on 11th December 2018.

(K. R. SHRIRAM, J.)