
(2008) 07 BOM CK 0070

In the Bombay High Court

Case No : Chamber Summons No. 174 of 2008 in Summary Suit No. 408 of 2005

M.J. International

APPELLANT

Vs

Nakshatra Finlease Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

Citation : (2008) 5 ALLMR 562

Hon'ble Judges : S.J. Vazifdar, J

Bench : Single Bench

Advocate : Ajay Panicker, for the Appellant; Sanjay Jain, instructed by Vinod Mistry and Co. for Defendant Nos. 2 and 3, for the Respondent

Judgement

S.J. Vazifdar, J.—By this Chamber Summons the Plaintiff has sought the leave of the Court to amend the plaint.

2. The suit is filed to recover the balance of the amounts allegedly lent and advanced by the Plaintiff to Defendant No. 1. It is alleged that the amounts were lent by the Plaintiff to Defendant No. 1 at the instance and on the misrepresentation of one Ramkrishna Raheja, since deceased and Defendant Nos. 2 and 3 who are his widow and son and Director of Defendant No. 1. Defendant Nos. 4 to 7 are impleaded on the basis that the shares of Ramkrishna Raheja are held benami by them. Thus Defendant Nos. 2 and 3 are also sued in their capacity inter-alia as heirs of the late Ramkrishna Raheja to the extent of his estate coming to their hands. Defendant Nos. 4 to 7 are sued as benamidars of the said Ramkrishna Raheja qua the said shares.

3. Needless to say I express no opinion on the merits of the claim especially against Defendant Nos. 2 to 7.

4. In paragraph 5 of the plaint it is inter-alia averred that Defendant No. 1 "every time confirmed the amount payable to the Plaintiff and assured to repay the same with interest at the rate of 24% p.a." It is further stated that the

Defendants had confirmed the said amount by signing the income tax confirmation letter sent to the Defendants upto August, 2002 but that the Defendants failed and neglected to return the confirmation letters duly signed. Finally the Plaintiff in paragraph 5 has craved leave to refer to and reply upon the confirmation letters signed on behalf of the Defendant Company from time to time when produced. A copy of one of the confirmation letters is annexed as Exhibit-B.

5. By the proposed amendment, the Plaintiff has sought to produce the balance-sheets of the Defendants for the years 1995-1996 to 1998-1999 which according to the Plaintiff admitted and acknowledged the suit claim under the head "Unsecured Loans".

6. To this amendment there can be no objection. The material sought to be produced is only evidence in respect and in support of the Plaintiff's claim. If proved it would constitute an admission of what is claimed in the suit.

7. By the proposed amendment the Plaintiff has also contended that the Defendants confirmed the outstanding amount of Rs. 1,89,067/- payable to the Plaintiff by signing at the foot of the balance confirmation letters dated 17.8.1998, 22.7.2002 and 9.8.2002 addressed by the Plaintiffs to the Defendants. The said balance confirmation letters dated 17.8.1998 and 22.7.2002 are also sought to be produced and annexed to the plaint as Exhibits "B-1" and "B-2". The balance confirmation letter dated 9.8.2002 is already annexed to the plaint as Exhibit-B.

8. There can be no objection to this part of the amendment either. The material, namely the balance confirmation letters have already been referred to in paragraph 5. The balance confirmation letter dated 9.8.2002 is already annexed to the plaint as Exhibit-B. What the Plaintiff has craved leave to refer to and rely upon are the balance confirmation letters and not merely a balance confirmation letter. While annexing the balance confirmation letter dated 9.8.2002 it is expressly stated that it is "one of the" confirmation letters.

9. There is thus no change in the cause of action. There is no withdrawal of any admission. The documents merely support the Plaintiff's claim.

10. It was contended on behalf of Defendant Nos. 2 and 3 that this being a summary suit, the application for amendment thereof ought not to be treated in the same manner as an application for amendment of a regular civil suit. It was submitted that the remedy under Order 37 of the C.P.C. being summary in nature, the procedure therein imposed strict conditions upon both, the Plaintiffs and the Defendants. Thus, it was submitted that even if there is a delay in the amendment, the ratio of the judgment of the Supreme Court in Jai Jai Ram Manohar Lal Vs. National Building Material Supply Gurgaon, would not apply.

11. I do not agree. There is nothing in Order 6 Rule 17 of the C.P.C. which indicates that applications for amendment of a plaint in a suit filed under Order

37 of the C.P.C. ought not to be permitted even if they otherwise falls within the ambit of order 6 Rule 17 of the C.P.C. I see no justification to uphold this contention even on principle.

12. Further there is nothing in the judgment of the Supreme Court in Jai Jai Ram Manohar Lal's case which limits the applicability of its ratio only to regular civil suits or that it specifically excludes the applicability of the ratio therein in respect of summary suits.

13. It was further submitted that even if an application for amendment is allowed, it ought to be accompanied by an order granting unconditional leave.

14. I do not agree. Mr. Jain has indicated no basis to support this submission. I have been unable to find one either. A Summons for Judgment must be taken out in accordance with the suit/plaint. If the plaint is amended it must be in accordance with the amended plaint. Neither Order 6 nor Order 37 nor any other provision prohibit the Plaintiff taking out a Summons for Judgment after the suit is amended. This would be so even if an earlier Summons for Judgment was withdrawn or even dismissed. No doubt the order to be passed on the Summons for Judgment would depend upon the basis on which the earlier Summons for Judgment was dismissed. If for example it was dismissed due to some technical lacunae in the plaint it would not reflect on the merits of the case.

15. I see no reason why a second Summons for Judgment cannot be taken out on the basis of the plaint after it is amended. There is no substance in the submission that a plaint in a Summary Suit may be permitted to be amended only on the condition that unconditional leave is granted to the Defendants to defend the suit.

16. Even as a matter of exercise of discretion the grant of an amendment subject to an order granting unconditional leave is totally unwarranted. The question whether the Defendants ought to be granted unconditional leave to defend the suit or not must be decided not by the Court considering the application for amendment but by the Court that hears the Summons for Judgment that may be taken out pursuant to the amended plaint.

17. In the circumstances, the Chamber Summons is made absolute in terms of prayer (a). The amendment shall be carried out within eight weeks from today.