

**CORAM : HIS HONOUR JUDGE SHRI M. S. SHARMA
(C.R.NO.4)**

DATED : 22nd April, 2014.

ORAL ORDER

1. This Chamber Summons is taken out by the plaintiff for amendment of Plaint and addition of parties.
2. Heard advocate for plaintiff and defendants and respondents. Perused the record.
3. It is contention of plaintiff that, the name of defendant no. 1 is in fact M/s. S. Rajesh & Associates, an unregistered Partnership firm, but, due to typographical error the word 'S' remained to be mentioned and required to be added in the title clause.
4. The plaintiff further contend that, due to typographical error in the Plaint defendant nos. 2 and 3 have got mentioned while there is no defendant no. 3 at present in the Plaint and it was required to be mentioned as R.R. Puthran as defendant no. 3 but at the time of filing suit it remained to be mentioned.
5. The plaintiff claimed that, there are 2 partnership firms in the same name i.e. S. Rajesh & Associates wherein one firm is unregistered and another is registered wherein defendant no. 2 and

one Mr. R.R. Puthran are claimed to be the partners but in fact said R.R. Puthran is a fictitious person and address shown in the Registrar of Firms is false and bogus. By narrating about the previous litigations between the parties it is claimed by the plaintiff that controversy is created by defendant no. 2 by raising confusion about existence of two firms as mentioned above and defendant no. 2 is trying to play a mischief with the Court and in order to clear said confusion it is necessary to bring all the required parties on record.

6. Defendant no. 2 filed a detailed reply and opposed the Chamber Summons by submitting that, there is no cause of action against the respondents and no relief is claimed against them. It is the stand of defendant no. 2 that, the unregistered firm by name S. Rajesh Associates was formed by one Mr. V. Subramaniam (deceased) and Mr. Rajesh Rao on 02.10.1986 and thereafter vide order dtd. 08.11.2012 said firm was dissolved. He also contends that, in the year 1994 a registered firm under the name and style as "M/s. S. Rajesh & Associates" was formed by him and by Mr. R.R. Puthran & deceased V. Subramaniam made all the attempts to deregister said partnership but could not succeed. It is also contention of defendant no. 2 that, said R.R. Puthran is neither a fictitious person nor his address is bogus and false. This defendant further states that, the legal heirs of late V. Subramaniam have no

concern with registered firm "S. Rajesh & Associate" and therefore question of adding said firm does not arise and prayed to dismiss the Chamber Summons.

7. On 05.02.2014 plaintiff filed precipe and took out Notice of Motion and prayed for grant of ad-interim relief. On said date somebody on behalf of defendant no. 1 appeared and made a statement that he will not dispossess the plaintiff and plaintiff was directed to serve defendant no. 2 by way of affixing the copy on the conspicuous part of the residence of the defendant or through bailiff and in the meantime parties were directed to maintain the status quo.

8. On 13.02.2014 advocate Mr. Y. H. Vora appeared on behalf of defendant no. 1 and made a statement that some stranger posing himself to be appearing for defendant no. 1 appeared in the Court and made a statement in view of which the status quo order came to be passed and said order was sought without serving Notice of Motion to the defendants. Therefore, considering the fact that allegations were of serious nature, direction was given to defendant no. 1 to file an affidavit to clear all the facts.

9. On 24.02.2014 Mr. Y.H. Vora filed Vakalatnama for defendants and made a submission that suit is filed against non

existing firm and no undertaking on behalf of said firm can be given. On the said date ambiguities in the Plaint were noted and parties made allegations of fraud in respect of defendant no. 1 therefore Mr. Minojen Subramaniam was directed to remain present before the Court who accordingly appeared in the Court on 27.02.2014. Said Minojen Subramaniam is claimed to be the legal heir of Mr. V. Subramaniam who was the partner of unregistered firm "S. Rajesh and Associates". Plaintiff wish to bring all the legal heirs of V. Subramaniam on record. Defendant no. 2 was also claimed to be a partner of unregistered firm and now have come with the claim that he is the partner of registered firm. Name of both the firms is exactly same and considering the nature of allegations and the controversy involved it is necessary to hear all the concerned parties. Also, it is necessary to clear the ambiguities in the Plaint. The suit is at interim state. Hence, in the light of above stated circumstances, it is necessary to allow the plaintiff to carry out the amendment. Hence, following Order is passed :-

ORDER

1. Chamber Summons No. 834 of 2014 is made absolute in terms of prayer clause (a) which reads as under :-

(a) For an Order allowing the Plaintiff to amend the Plaint by adding / inserting the Respondents as Defendants to the present Suit as per Schedule to the Chamber Summons.

2. Plaintiff to carry out amendment on or before next date.

(M.S. Sharma)

Judge

City Civil & Sessions Court,

Gr. Bombay.

Dt:- 22.04.2014.

Dictated on : 22.04.2014.

Transcribed on : 23.04.2014.

Signed on : 25.04.2014.