

**IN THE BOMBAY CITY CIVIL COURT, AT
MUMBAI**

**CHAMBER SUMMONS NO.1592/2016
IN
SUIT NO.3894/2013**

Mohd. Saeed s/o. Mohd. Hanif Sayed

...Plaintiff

V/s.

1. Sayed Mohd. Tamim Abdul Subhan & Ors.

...Defendants

Adv. Mr. Redekar for plaintiff.

Adv. Mr. Kazi for defendants.

**CORAM : HHJ Shri Sanjay V. Patil,
C. R. No.01**

DATE : 14.03.2017

(Dictated in open court)

ORDER

1. The plaintiff has taken out this chamber summons for amendment as per the schedule attached to chamber summons. It is the case of the plaintiff that during the pendency of the suit, the developer has allotted new premises i.e. room no.401 in the said Society to defendant no.1 only and therefore, plaintiff wants to claim various reliefs in respect of the new premises and he prayed for allowing the chamber summons.

2. On the other hand, the defendant no.1 filed affidavit in reply and in short, opposed the said chamber summons on the ground that plaintiff was having knowledge and chamber summons can not be

allowed. He pointed out that the amendment is likely to change the nature of the suit and is also barred by law of limitation.

3. In view of the abovesaid rival contentions of the parties, the only questions arise as to whether said amendment is necessary and as to whether said amendment is prohibited by the proviso of Rule 17 of Order 6.

4. I have heard Adv. Redekar, Ld. Counsel for the plaintiff and Adv. Kazi, Ld. Counsel for the defendant no.1.

5. Ld. Counsel for the plaintiff pressed for allowing the amendment by pointing the nature of dispute between the parties and on the ground of subsequent events and submitted that no subsequent events should be taken.

6. Ld. Counsel for the defendant objected the amendment on the ground that it is going to change the nature of the suit and amendment is vague and barred by law of limitation and amendment is preferred very late.

7. After going through the proposed amendment, I find that the event took place during the pendency of the suit and plaintiff alleged that defendant no.3 has now handed over the possession of suit premises to defendant no.1 and therefore, he sought substantial amendment and also permission to add new prayers regarding appointment of Court receiver and injunction restraining defendants from creating third party interest in any manner. Apparently, the amendment is necessary for determining

the controversy between the parties fully and finally. It is well settled law that merits of the amended pleading can not be consider at this stage. I do not find that the said amendment changes the nature of the suit.

8. In addition to this, provisions to Rule 17 is not applicable as the event took place subsequently. I therefore, find substance in the present chamber summons and it deserves to be allowed. In the result, I proceed to pass following order.

ORDER

1. The Chamber Summons is made absolute with cost of Rs.500/- to defendant no.1.
2. Amendment shall be carried out on or before next date.
3. Chamber Summons is disposed of accordingly.

(Sanjay V. Patil)
Judge
City Civil Court,
Gr. Bombay.

Date : 14.03.2017

Order dictated on : 14.03.2017
Transcribed on : 15.03.2017
Signed on : 18.03.2017

“CERTIFIED TOBE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”

18.03.2017 at 05.00 pm
UPLOAD DATE AND TIME

(Mrs. S. W. Tuscano)
NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ Shri S. V. Patil, C.R. No.1
Date of Pronouncement of JUDGMENT/ORDER	14.03.2017
JUDGMENT/ORDER signed by P.O. on	18.03.2017
JUDGMENT/ORDER uploaded on	18.03.2017