

MHCC010190532024



IN THE BOMBAY CITY CIVIL COURT AT GR. MUMBAI

CHAMBER SUMMONS NO. 2337 OF 2024

IN

SUIT NO. 5926 OF 2024

(High Court Suit No.34 of 2017)

Mr. T. C. Santosh Menon

... PLAINTIFF

Versus

Mrs. Sunita Unn Nair and Another

... DEFENDANTS

APPEARANCES :

Ms. Nutan Patel, Advocate for the plaintiff

Mr. Deepak Chitnis, Advocate for the defendant No.1.

CORAM : V. M. SUNDALE, ADHOC JUDGE
COURT ROOM NO.02

DATED : 18th MARCH, 2026

ORDER

01. By the present Chamber Summons, the plaintiff seeks leave to amend the plaint by incorporating certain additional pleadings and documents, including reference to a notice dated 14.09.2010, and for carrying out consequential corrections in the statement of claim, particularly with regard to the period for which interest on the security deposit of ₹30,00,000/- is claimed, along with other necessary

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amendments as set out in the Schedule annexed to the Chamber Summons.

02. In brief, the plaintiff has instituted the present suit inter alia seeking specific performance by directing defendant No.1 to execute an Agreement for Sale in respect of the suit flat situated at Bandra, Mumbai, on the basis of an alleged oral agreement or understanding between the plaintiff and the deceased mother of defendant No.1, and in the alternative has sought refund of the security deposit along with interest and damages. It is the case of the plaintiff that the suit is based on transactions and correspondence commencing from the year 2003 and subsequent exchanges between the parties. The plaintiff states that earlier proceedings, including Interim Application No.668 of 2020, were conducted through his father and constituted attorney, who was managing the litigation. The plaintiff submits that recently upon visiting his father, he was handed over an old file pertaining to the suit premises, which had not been available earlier. Upon perusal of the said file, the plaintiff discovered certain material documents, including a notice dated 14.09.2010 issued through his advocates to defendant No.1, which had not been referred to in the plaint due to its non-availability at the relevant time.

03. The plaintiff further states that the said notice dated 14.09.2010 makes reference to an earlier notice dated 21.09.2006 and calls upon defendant No.1 to refund the security deposit of ₹30,00,000/- along with interest at the rate of 18% per annum, thereby having a direct bearing on the subject matter of the suit. According to the plaintiff, omission to mention the said notice in the plaint was inadvertent and occurred due to lack of access to the relevant file, and

the same is now required to be incorporated for proper adjudication of the dispute. The plaintiff has also pointed out certain errors in the statement of claim and in the plaint, particularly in respect of the period for calculation of interest, which is required to be corrected from 23.05.2006 instead of the earlier mentioned dates. The plaintiff submits that the proposed amendments are necessary, bona fide, and do not change the nature of the suit but are intended to place complete and correct facts before the Court. It is further contended that no prejudice would be caused to the defendants if the amendment is allowed, whereas serious prejudice would be caused to the plaintiff if the same is refused. The plaintiff therefore prays that the present Chamber Summons be allowed in the interest of justice.

04. The defendant No.1 has resisted and contested the present Chamber Summons by filing the reply and, at the outset, submits that the application for amendment is wholly misconceived, not maintainable in law and amounts to an abuse of the process of this Court. It is submitted that the plaintiff has approached this Court with unclean hands by suppressing material facts and documents, particularly the subsequent agreements for leave and license executed in the years 2004, 2005 and 2006, which are vital for adjudication of the present dispute. The plaintiff has deliberately misrepresented the nature of the transaction as one of alleged sale, whereas the consistent conduct between the parties clearly establishes a licensor-licensee relationship. The plaintiff has, in fact, paid license fees from time to time, which itself falsifies the case of any agreement for sale. It is further submitted that the plaintiff cannot be permitted to take a completely inconsistent and contradictory stand by way of amendment

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when a specific case has already been pleaded in the plaint. The proposed amendment is clearly an attempt to fill up lacunae and cure defects in the case. Such an amendment is impermissible in law, particularly when it changes the nature of the suit. The conduct of the plaintiff clearly shows that the present application is filed only to delay the proceedings. Hence, the Chamber Summons deserves to be dismissed with costs.

05. The defendant No.1 further submits that the trial of the suit has already commenced, as issues have been framed and evidence has been led, which position has been acknowledged by the plaintiff himself before this Court. In view of the proviso to Order VI Rule 17 of the Code of Civil Procedure, no amendment can be allowed after commencement of trial unless the plaintiff satisfies the requirement of due diligence, which has not been demonstrated in the present case. The plaintiff has failed to explain why the facts now sought to be introduced were not pleaded earlier despite being within his knowledge. On the contrary, the record indicates that there has been deliberate suppression of material facts with an intention to mislead the Court. It is also pertinent that the Hon'ble Bombay High Court, in earlier proceedings between the parties, has observed that the plaintiff had made misleading statements and attempted to play fraud upon the Court. In such circumstances, the plaintiff is not entitled to any discretionary relief. The proposed amendment seeks to introduce a completely new and inconsistent case, which would alter the nature and character of the suit. Allowing such an amendment would cause serious prejudice to the defendant and defeat the settled principles governing pleadings.

06. Without prejudice to the aforesaid, the defendant No.1 submits that the reliefs sought to be introduced by way of amendment are ex facie barred by limitation. The alleged agreements relied upon pertain to the years 2003 to 2006, whereas the suit has been filed much later without any sufficient explanation for the delay. The plaintiff has failed to disclose these material particulars in the original plaint, which itself reflects mala fide intention. It is further submitted that the defendant No.1 has already initiated eviction proceedings under Section 24 of the Maharashtra Rent Control Act, which have been allowed by the Competent Authority, and an order of eviction has been passed directing the plaintiff to hand over possession of the suit premises. Despite the same, the plaintiff continues in unauthorized occupation and has failed to pay compensation, maintenance charges and property taxes, which the defendant has been compelled to pay. The present Chamber Summons is thus a dilatory tactic to prolong the proceedings and frustrate lawful orders. In the circumstances, it is submitted that the Chamber Summons be dismissed with compensatory costs.

07. Heard, Ms. Nutan Patel, learned advocate for the plaintiff Mr. Deepak Chitnis, learned advocate for the defendant No.1 at length.

08. In view of the pleadings, documents, and submissions, the following points arise for determination. I have recorded my findings with reasons to follow it as under:

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SN	POINTS	FINDINGS
01.	Whether the plaintiff has made out a case for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908?	Yes
02.	Whether the plaintiff has satisfied the requirement of “due diligence” as contemplated under the proviso to Order VI Rule 17 CPC, considering that the trial has commenced?	Yes
03.	Whether the proposed amendment changes the nature and character of the suit or introduces an inconsistent case?	No
04.	Whether the proposed amendment is barred by limitation?	No
05.	Whether the Defendants would suffer prejudice if the amendment is allowed?	No
06.	What order?	As per final order

REASONS

AS TO POINT NO. 01 TO 06:

09. Upon perusal of the pleadings, affidavit in support, reply and the material placed on record, it is not in dispute that the trial of the suit has already commenced, inasmuch as issues have been framed and the plaintiff has entered the witness box. Therefore, the proviso to Order VI Rule 17 CPC squarely applies and the plaintiff is required to establish that despite due diligence, the facts now sought to be incorporated could not have been pleaded earlier. In the present case, the plaintiff has explained that the amendment has been necessitated upon recently discovering an old file maintained by his father and constituted attorney, who was earlier managing the litigation. The plaintiff has specifically stated that the said file contained material documents, including the notice dated 14.09.2010, which was not

within his knowledge or accessible to him at the time of filing the plaint. The explanation, though disputed, appears to be plausible, particularly considering that the proceedings were being conducted through a constituted attorney. There is no material on record to conclusively establish that the plaintiff had deliberate knowledge of the said documents and suppressed the same. In such circumstances, the requirement of due diligence can be said to have been satisfied.

10. The principal objection raised by the defendant No.1 is that the proposed amendment introduces a completely new and inconsistent case by attempting to shift the nature of the transaction from that of a license to an alleged agreement for sale. However, upon careful consideration, it is evident that the foundation of the suit remains unchanged. The plaintiff has, from the inception, sought specific performance based on an alleged oral agreement, and in the alternative, refund of the security deposit with interest and damages. The proposed amendment merely seeks to incorporate an additional notice dated 14.09.2010 and to correct certain particulars relating to the period for calculation of interest. These amendments are essentially clarificatory and explanatory in nature and are intended to support the existing cause of action. They do not substitute the original case nor introduce a new and inconsistent cause of action. It is well settled that a party is entitled to amend pleadings to effectively meet the defence raised and to bring on record material facts necessary for adjudication.

11. As regards the contention of limitation, it is to be noted that the amendment does not introduce a new substantive relief but only elaborates upon the existing claim and corrects certain particulars

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in the statement of claim. The reference to the notice dated 14.09.2010 is in continuation of the earlier transactions and correspondence already forming part of the plaint. Therefore, the question of the amendment being barred by limitation does not arise at this stage. Even otherwise, the issue of limitation is a mixed question of law and fact, which can be decided at the time of trial. The defendant would have full opportunity to raise all permissible defences, including limitation, in response to the amended pleadings.

12. The contention regarding prejudice is also without merit. Any inconvenience caused to the defendant No.1 can be adequately compensated by granting an opportunity to file an additional written statement and by awarding costs. No irreparable prejudice is demonstrated which cannot be compensated in terms of costs. On the contrary, refusal to allow the amendment may result in incomplete adjudication and multiplicity of proceedings. The object of procedural law is to facilitate adjudication on merits rather than to shut out relevant material on technical grounds.

13. Insofar as the allegations of suppression and mala fides are concerned, the same are matters which require adjudication on the basis of evidence and cannot be conclusively determined at this stage. The Court is presently concerned only with the limited issue of whether the proposed amendment is necessary for the purpose of determining the real controversy between the parties. In the considered opinion of this Court, the proposed amendment satisfies the said requirement. In view of the foregoing discussion, Point Nos. 1 and 2 are answered in the affirmative, Point Nos. 3 to 5 are answered in the negative, and in respect of Point No. 6, the following order is passed.

ORDER

1. The Chamber Summons No. 2337 of 2024 in Suit No. 5926 of 2024 is allowed subject to costs.
2. The Plaintiff is granted leave to amend the plaint in terms of the Schedule annexed to the Chamber Summons.
3. The amendment shall be carried out within a period of two weeks from the date of this order.
4. The defendants are granted liberty to file an additional written statement, if any, within four weeks thereafter.
5. The plaintiff shall pay costs of ₹15,000/- (Rs. Fifteen Thousand Only) to defendant No.1 as a condition precedent.
6. All contentions of the parties on merits, including limitation and alleged suppression, are kept open.
7. The Chamber Summons No. 2337 of 2024 in Suit No. 5926 of 2024 is disposed of accordingly.

Date: 18.03.2026

(V. M. Sundale)
Ad-hoc Judge
Bombay City Civil Court,
Gr. Mumbai

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”		
25.03.2026	3.00 p.m.	Shilpa P. Pawar Stenographer - Grade I
UPLOAD DATE	TIME	

Name of the Judge (With Court Room No.)	H. H. Judge Shri. V. M. Sundale Court Room No.2
Date of Pronouncement of ORDER	18.03.2026
ORDER signed by P. O. on	24.03.2026
ORDER uploaded on	25.03.2026