



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1663 OF 2016
IN
SUIT NO. 3502 OF 2007**

M/s. Padmavati Developers .. Applicant

In the matter between :

M/s. Padmavati Developers .. Plaintiff

Vs.

Mr.Azim Kasam Mansoori .. Defendant

Mr.Abhijeet Rane a/w. Ms.Pooja Kharat i/b Dahibawkar & Co. for plaintiff.

Mr.Pritesh Vasant Bhagat for defendant.

CORAM : K.R.SHRIRAM, J.

DATE : 29TH AUGUST 2017

P.C.

1 This chamber summons is taken out for leave to amend the plaint. The suit filed is for specific performance. According to plaintiff, the mandatory averment as required under Section 16(c) of the Specific Relief Act, 1963 that plaintiff was and is ready and willing to perform their obligations under the contract has been missed out and if the amendment is not permitted, the suit itself may get dismissed.

2 This is a pre-trial amendment. Under Section 16(c) of the Specific Relief Act, 1963 an averment that plaintiff was and is ready and willing to perform its obligation under the contract is mandatory. It is settled law that

if such an averment is absent, then it would amount to failure to disclose the cause of action and it would entitle the Court to reject the plaint under Order VII, Rule 11 of the Code of Civil Procedure, 1908. Therefore, refusal to allow the amendment would deprive plaintiff of a valuable right which had accrued to him.

3 Since this is a pre-trial amendment, I am inclined to allow this chamber summons. The chamber summons is allowed in terms of prayer clause (a) and disposed accordingly. The schedule for the proposed amendment is the schedule annexed to the further affidavit dated 29th August 2017 filed by one Anant Rane, Partner of the plaintiff.

4 Plaintiff to amend the plaint and serve a copy of the amended plaint within three weeks from today. Within one week of receiving the amended plaint, defendants to file their additional written statement.

5 The suit be listed for directions on 6th October 2017.

(K.R. SHRIRAM, J.)