

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 8001 OF 2015

Bajaj Steel Industries Ltd.	... Petitioner
V/s.	
The Board of Trustees of the Port Trust of Mumbai & Anrs.	... Respondents

Mr. Shailesh More for the Petitioner.
Mr. Ravi Irle with Manoj Thakur i/b M/s. Milla & Mulla & CBC for the
Respondent No.1.

**CORAM : K. K. TATED, J.
DATED : 08/07/2016**

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the petitioner original plaintiff challenges the order dated 21.04.2015 passed by Judge, Bombay City Civil Court at Bombay in Chamber Summons No. 285 of 2015 dismissing the petitioner's/defendant's application for carrying out the amendment in written statement.

3 The learned Counsel for the petitioner submits that in the present proceeding, the respondent plaintiff filed Suit No. 8051 of 2001 for recovery of dues. He submits that on similar facts, the petitioner defendant filed Regular Civil Suit No. 18 of 2009 in the Court of Chhindwada. That suit was decreed by Chhindwada Court by Judgment and Decree dated 30.09.2010. He submits that considering the Judgment and Decree passed by the Chhindwada court, defendant

filed Chamber Summons for bringing on record the subsequent event. He further submits that the suit as it was filed by the plaintiff was barred by law of limitation. These two points were required to place on record in written statement. Hence, defendant preferred Chamber Summons for allowing him to carry out amendment in written statement. The same was rejected by the Trial Court.

4 The learned Counsel for the defendant submits that the Court below failed to consider the fact that defendant wanted to bring on record by carrying out amendment in written statement, subsequent development i.e. Judgment and Decree dated 30.09.2010 in Regular Civil Suit No. 18-A of 2009. He further submits that after considering the entire papers and proceeding, the defendant learnt that suit as it is filed by the plaintiff was barred by limitation. Hence, the defendant preferred Chamber Summons for carrying out amendment in written statement. He submits that considering the facts and circumstances of the present case, this Hon'ble Court be pleased to allow the defendant to carry out appropriate amendment in written statement. He submits that if the Chamber Summons preferred by the defendant is not allowed, irreparable loss and injury will be caused to them.

5 On the other hand, the learned Counsel for the Respondent Plaintiff vehemently opposed the present Writ Petition. He submits that the Trial Court in paragraph 5 of the impugned order specifically recorded that the plaintiff's evidence was over and thereafter, the defendant filed their affidavit of evidence. He submits that once the trial began, there is no question of allowing the defendant to carry out

any amendment in the written statement. Hence, there is no substance in the present Writ Petition and same to be dismissed with costs.

6 I heard both the sides at length. There is no dispute between the parties that evidence as well as cross examination of plaintiff was over. Thereafter, the defendant filed their affidavit of evidence. Once, the trial began, there is no question of allowing the parties to amend their pleading unless and until extra ordinary reason is made out. In the present case, defendant wants to rely on the subsequent judgment passed by the Chhindwada Court in Regular Civil Suit No. 18-A of 2009. That cannot be a ground for allowing the defendant to carry out amendment in the written statement. The question of limitation was known to the defendant at the time of filing the written statement and in spite of that the same was not raised at that time. The amendment cannot be allowed once, the trial began.

7 Considering the above mentioned facts and reasons given by the Trial Court, I do not find any substance in the Writ Petition.

8 Hence, following order is passed:

- a) Writ Petition stands rejected.
- b) Trial Court to decide the defendant's application below Exh.35 dated 25.11.2014 as early as possible on its own merits.

(K.K.TATED, J.)