

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8494 OF 2014

Official Liquidator,
High Court, Bombay

...Petitioner

vs.

Maharashtra State Electricity Distribution
Company Limited

...Respondent

Mr. Vedchetan Patil, for the Petitioner
Ms. Anjali Baxi, for Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : APRIL 05, 2019

P.C.:

. Heard Mr. Patil, learned counsel for the Petitioner and Ms. Baxi, learned counsel for the Respondent.

2. Leave is granted to amend the cause title. The amendment to be carried out forthwith.

3. The challenge in this Petition is to the order dated 9th April, 2014 by which the learned trial Judge has dismissed the Petitioner's application seeking leave to amend the statement.

4. Mr. Patil, learned counsel for the Petitioner submits that the Petitioner seeks to raise certain legal contentions by amending the written statement including *inter alia* the contention that the suit is barred by the limitation. However, he submits that the Petitioner

also seeks to raise certain factual issues which should not be raised earlier on account of suppression on the part of Plaintiff. He submits that the previous written statement filed by the initial Liquidator on the basis of documents available and now that further documents given to allow the amendment was necessitated.

5. Ms Baxi, the learned counsel for the Respondent point out that similar amendment was applied for by one of the Directors of the Company which is since has been dismissed. She submits that the present application seeking leave to amend is nothing but an attempt to overreach the previous order made in the matter. Besides, she points out that the amendment was applied for, after the commencement of the trial and there is no explanation about due diligence. For these reasons, she submits that the present Petition is liable to be dismissed.

6. Admittedly, the application to leave to amend was filed after the commencement of the trial. In this case, since the suit is of the year 2014, the provision under Order VII Rule 17 of the Code of Civil Procedure may not apply. However, on perusal of the record, the Defendant No. 2 in the suit who was one of the Directors of the Petitioner's company had also filed a virtually identical application below Exhibit 84 which came to be rejected. Therefore, it does

appear that the present application is taken out by the Petitioner was an attempt to overreach the order made by the learned trial Court dismissing the application at Exhibit 84. Besides, there is no necessity of amend the written statement in order to raise legal defences. The pleadings in the Civil Suit, never been new defences. In so far as, the issue of limitation is concerned, it is the duty of the Court to consider the issue of limitation irrespective of whether such defences is raised in the written statement or not.

7. For the aforesaid reasons, there is no jurisdictional error in the view taken by the learned trial Judge. This Petition is required to be dismissed and is hereby dismissed.

8. However, it is made clear that despite the dismissal after the issue of limitation arises, the learned trial Judge will have to decide such issue irrespective of whether or not the issue is raised or not.

9. With the aforesaid observation, this Petition is dismissed.

10. There shall be no order as to costs.

11. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)