

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9161 OF 2023

M/s.Aditya Peripherals Pvt. Ltd.

... Petitioner

Versus

Shupra Computers

... Respondents

— —
Mr. Bhooshan R. Mandlik for the Petitioner.
— —

CORAM : SHARMILA U. DESHMUKH, J.

DATE : July 27, 2023.

P. C. :

1. Heard.

2. The challenge in the petition is to the order dated 24th February, 2023 rejecting the petitioner's application seeking amendment of the plaint.

3. Learned counsel appearing for the Petitioner submits that the suit in question was instituted seeking recovery of the amount and the relevant period as regards the amount due and payable was of 13th November, 2007 to 17th July, 2015. He would contend that by the proposed amendment, the plaintiff sought to correct the said period to 13th November, 2007 to 12th December, 2018. He would

contend that the said application has been rejected on the ground of due diligence.

4. Considered the submissions and perused the papers with the assistance of the learned counsel for the Petitioner.

5. The suit in question seeks recovery of amount, which according to the plaintiff was due and payable for the period from 13th November, 2007 to 17th July, 2015. Regular Civil Suit No.148 of 2018 has been filed on 23rd January, 2018. Perusal of the written statement which is at page 30 of the petition reveals that the defendant has taken an objection on the ground of limitation, as the recovery was sought for the period 13th November, 2007 to 17th July, 2015.

6. Considering the objection which has been taken the proposed amendment cannot be permitted. Apart from the fact that the same would have the effect of demolition of the objection of limitation, the said amendment has been proposed after substantial evidence of the plaintiff has been recorded and as such, is a post trial amendment. That being so, the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 applies. In the application there is no explanation as to why the matter could not be raised prior to the commencement of the trial.

7. In view of the above, there is no infirmity in the impugned order dated 24th February, 2023. Writ Petition being devoid of merits stands dismissed.

(Sharmila U. Deshmukh, J.)