

SA Pathan

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

WRIT PETITION NO.11565 OF 2023

WITH

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WRIT PETITION NO.11567 OF 2023

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Mount English Medium School	... Petitioner
V/s.	
Jeevandeep Edumedia Pvt Ltd.	... Respondent

Mr. Niranjana Bhavake i/by Bhavake & Associates, for
Petitioner.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 20, 2023

P.C.:

1. Challenge in all writ petitions under Section 115 of the Code of Civil Procedure, 1908, is to order passed by the Trial Court rejecting application under Order 7, Rule 11 of the Code of Civil Procedure, 1908.
2. The respondent-original plaintiff has filed a suit for recovery of amount under the provisions of Commercial Courts Act.
3. The petitioner had filed an application under Order 7, Rule 11(d) of the Code of Civil Procedure, 1908 raising issue of limitation and jurisdiction. According to the petitioner, the last

invoice based on which the suit was filed on 27 March 2018; however, suit is filed on 7 January 2022.

4. The second objection is regarding territorial jurisdiction of the Court. According to him, the invoice contains a recital that Court in Mumbai only has territorial jurisdiction to entertain the suit.

5. The Trial Court relying on the judgment of the Apex Court in the case of **Prakash Corporate Vs. D. V. Projects Ltd. 2022 Live Law (SC) 162**, took cognizance of order passed by the Supreme Court in *Suo Moto Writ Petition (Civil) No.3 of 2020* excluding period from 15 March 2020 till 2 October 2021.

6. According to learned Advocate for the petitioner, such benefit was neither pleaded nor argued on behalf of plaintiff and, therefore, Court could not have *Suo Moto* granted such benefit.

7. The said submission has no force as the judgment delivered by the Apex Court has a force of law under Article 145 of the Constitution of India. The Courts are always within their powers to take cognizance of law even if not brought to their notice by the parties.

8. In the facts of the case, the suit has been filed on 7 January 2020. The exclusion period has interpreted by the Apex Court in *Suo Moto Writ Petition (Civil) No.3 of 2020* started from 15 March 2020 and an ends on 2 October 2021; therefore, in view of judgment of Apex Court in the case of **Prakash Corporate** (Supra), rejection of application under Order 7, Rule 11(d) of the Code of Civil Procedure, 1908 cannot be termed as error of jurisdiction

requiring interference under Section 115 of the Code of Civil Procedure, 1908.

9. Moreover, it shall be open for the defendant to raise issue of limitation during the course of trial and if such issue is raised, the Trial Court shall decide such issue on its own merits.

10. The next issue of territorial jurisdiction raised by the petitioner.

11. The Trial Court rejected the application holding that the measure cause of action accrued within territorial jurisdiction of the Trial Court.

12. It needs to be noted that the issue of territorial jurisdiction being mixed question of law and fact, the parties needs to be given opportunity to prove such issue during trial. Hence, no illegality can be attributed to the order passed by the Trial Court while rejecting application under Order 7, Rule 11(d) of the Code of Civil Procedure. There is no merit in all the writ petitions.

13. All writ petitions are, therefore, dismissed. No costs.

(AMIT BORKAR, J.)