

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 22375 OF 2024

Wall Street Finance Ltd

.. Petitioner

Versus

State of Maharashtra & Anr.

.. Respondents

.....

- Mr. Abhishek Bhaduri a/w Mr. Aijaz Sayyed i/by Ms. Sonal Mishal for Petitioner
- Ms. Shilpa Kapil for Respondent No. 2

.....

CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 22, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 22.08.2024.
3. Heard Mr. Bhaduri, learned Advocate for Petitioner and Ms. Kapil, learned Advocate for Respondent No. 2.
4. This Writ Petition is taken up for hearing on mentioning. Ms. Kapil appears for Respondent No. 2 who is the private Defendant in the Suit. Plaintiff (Petitioner herein) has taken out Chamber Summons bearing No. 2332 of 2023 for amendment of the name of the Plaintiff. Plaintiff is a Company whose name has been changed after following the due process and by operation of law sometime in December 2022. Necessary Certificate of Incorporation dated 27.12.2022 has been placed on record before the Trial Court. The

only and in my opinion innocuous reason given by the learned Trial Court while rejecting the Chamber Summons is that the Chamber Summons filed by the Plaintiff Company was after one year and Plaintiff Company has not explained due diligence for this one year period. Ms. Kapil would submit that this Court should take cognizance of this very fact attributable to the conduct of the Plaintiff that for one year the Plaintiff Company did not take any step and that has been considered by the Court and according to her an appropriate order has been passed. She would in fact urge the Court that she be permitted to file her affidavit in reply. I reject her request to file affidavit in reply in such a case as I do not deem it fit. When asked about her objections, she would once again repeat the same reason delineated herein above. Since this Court is inundated with thousands of petitions which are filed in this Court against interlocutory orders passed by the Trial Court, if in Petitions like the present case every Respondent is given an opportunity to file affidavit in reply, then it would be impossible for this Court to deal with all matters. No prejudice whatsoever can be caused to the Defendant. It will lead to protraction of the proceedings before the Trial Court. The learned Advocate for Respondent is unable to understand this, despite this Court having reasoned with her. The Suit is of the year 2012 and rather than assisting the Court in prosecuting and completing the said Suit as

expeditiously as possible, the conduct of the private Respondent who is the Defendant in the Suit is such that it is insisted that they wish to file affidavit in reply. For the above reasons, I reject the request made by Ms. Kapil urging the Court to permit the private Respondent to file affidavit in reply. I do not consider this as a fit case where I can permit the Respondent to file affidavit in reply. It is not required at all in this Petition at least. The impugned order dated 15.06.2024 and more specifically the reason given in paragraph No. 6 of the impugned order is clearly unsustainable in law. Suit cannot be allowed to progress and proceed with against a non-entity or a Company with a different / incorrect name which stands changed by operation of law. This needs to be understood by both the parties and the conduct of the Respondent in opposing the present Petition today and repeatedly seeking time to file affidavit in reply in such a Petition is not appreciated. The ground of due diligence being the only reason cannot be countenanced. Though one year time is taken, the Application cannot and could not have been rejected.

5. In view of the above, impugned order dated 15.06.2024 is not sustainable. The same is quashed and set aside. Resultantly allowing Chamber Summons No. 2332 of 2023. Amendment is permitted to be carried out within a period of one week from today before the Trial Court.

6. Considering the fact that the Suit is filed in the year 2012, learned Trial Court is directed to decide Summary Suit No. 2479 of 2012 as expeditiously as possible and in any event within a period of six months from today strictly in accordance with law and after allowing both the parties to lead their respective evidence. Parties shall co-operate with the Trial Court and shall not seek unnecessary adjournment unless it is absolutely necessary in case of any urgency or emergency.

7. All contentions of the parties are expressly kept open.

8. With the above directions, Writ Petition stands allowed and disposed.

[MILIND N. JADHAV, J.]

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2024.08.22
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