



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2465 OF 2025**

Ashish Kumar Choudhary and Anr. ... Petitioners
versus
Vishrut Enterprises Pvt. Ltd.
(formerly known as Vishrut Infotech
Pvt. Ltd.) and Ors. ... Respondents

Mr. Rajendra B. Mokashi with Mr. Aditya Mokashi i/by Mr. Saurabh Oka, for Petitioners.

Mr. Suresh M. Sabrad with Ms. Neha M. Zanje i/by Mr. Pratik S. Sabrad, for Respondent Nos.1 and 2.

Mr. Pravin Upadhyay, for Respondent No.7.

CORAM: N.J.JAMADAR, J.

DATE : 25 FEBRUARY 2025

ORAL ORDER :

1. Heard the learned Counsel for the parties.
2. The challenge in this Petition is to an order dated 10 February 2025 passed by the learned Civil Judge, Sr.Division, Panvel, whereby the application preferred by the Petitioners and other co-Defendants seeking permission to file additional written statement under Order VIII Rule 9 of the Code of Civil Procedure, 1908, came to be rejected.
3. The learned Civil Judge was of the view that the contentions on behalf of the Petitioners and the co-Defendants that the additional written statement was necessitated on account of subsequent events, was not sustainable as all the events, which were referred to in the application seeking permission to

file additional written statement, had occurred before the filing of the written statement dated 30 April 2024. The learned Civil Judge was also of the view that there was no explanation for not raising the contentions proposed to be raised by way of additional written statement before the commencement of the trial, and even the draft of the additional written statement was not annexed to the application, and, thus, a blanket permission to file additional written statement cannot be granted.

4. Mr. Mokashi, learned Counsel for the Petitioners, submitted that there might have been some indolence on the part of the Petitioners and co-Defendants. However, the trial Court could not have deprived the Defendants of the opportunity to bring material facts on record. Rejection of the application to file additional written statement entailed the consequence of denial of an effective opportunity of hearing. Therefore, to advance the cause of substantive justice, the Petition deserves to be allowed, and the Defendants be permitted to file additional written statement by imposing costs, if so warranted.

5. Mr. Mokashi placed reliance on a decision of the Supreme Court in the case of Olympic Industries V/s. Mulla Hussainy Bhai Mulla Akberally and Ors.¹ wherein the Supreme Court has enunciated that it is well settled that the Court should be more generous in allowing the amendment of the counter

¹ (2009) 1 SCC 528

statement of the defendant than in the case of plaintiff. The Court ought not to have rejected the application to file additional written statement on the ground of delay.

6. Mr. Sabrad, learned Counsel for Respondent Nos.1 and 2, however, submitted that the entire endeavour of the Defendants had been to protract the trial of the suit by filing one application after another, despite directions for expeditious conclusion of the trial. An endeavour was made to take the Court through various applications filed on behalf of the Defendants and orders passed thereon.

7. In view of the provisions contained in Order VIII Rule 9 of the Code, 1908, there can be no additional pleadings, except by way of written statement to the counter claim. In the case at hand, the Defendants do not profess to file additional written statement as a part of consequential pleadings, the necessity of which arises in the event there is an amendment in the plaintiff. Instead, it is the case of the Defendants that, some facts remained to be incorporated in the original written statement, and, therefore, it was necessary to bring those facts on record of the Court by way of additional written statement.

8. Evidently, the said exercise was directed with a view to wriggle out of the situation which arose on account of the commencement of the trial. Had the Defendants sought amendment in the written statement, the proviso to

Rule 17 of Order VI would have come into play as the evidence of the Plaintiffs has been recorded and the suit was posted for recording the evidence of the Defendants. The interdict contained in the proviso to Order VI Rule 17 would thus preclude the Defendants from seeking amendment in the Written Statement.

9. In the application, an endeavour was made on behalf of the Defendants to contend that the additional written statement was necessitated on account of subsequent events. The Court cannot lose sight of the fact that the written statement was filed on 30 April 2024. The learned Civil Judge has categorically recorded that all the events referred to by the Defendants had occurred prior to the filing of the said Written Statement. Thus, there was no substance in the contention on behalf of the Defendants that the subsequent events necessitated filing of an additional written statement.

10. Reliance placed by Mr. Mokashi on the decision of the Supreme Court in the case of Olympic Industries (supra), does not advance the cause of the Defendants. On the contrary, in the facts of the case, the interdict contained in the proviso to Order VI Rule 17 comes into play. Evidently, to wriggle out of the situation, an endeavour was made to file an additional written statement.

11. In my view, the learned Civil Judge has correctly appreciated the conduct of the Defendants and rightly rejected the prayer to file an additional written statement. No interference is, thus, warranted in exercise of

supervisory jurisdiction of this Court.

12. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)