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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8550 OF 2025**

M/s. Shamvik Glasstech Pvt Ltd ... Petitioner

vs.

M/s. M.D. Automac Through its Prop Amarjit Singh Azad ... Respondent

Mr. B.K. Bali i/b. Bali Associates for Petitioner

Mr. D.A. Bhalerao and Mr. Abhiram Apte for the Respondent.

CORAM : GAURI GODSE, J.

DATED : 6th AUGUST 2025

ORDER:

1. This petition is taken up for final disposal. This petition is filed by the original defendant in the summary suit. The petitioner has filed notice of motion for condonation of delay in filing affidavit-in-reply to the summons for judgment. In this notice of motion, the petitioner has filed a chamber summons to seek amendment for adding a prayer that the order dated 25th November 2022, directing the matter to proceed without the reply be recalled. This chamber summons is rejected by the impugned order.

2. Learned counsel for the petitioner submits that in the affidavit-in-reply to the notice of motion, the objection was raised that the

order directing to proceed without reply is not set aside. Hence, the petitioner would not be entitled to seek condonation of delay in filing the affidavit-in-reply. Hence, he submits that by way of abundant precaution, the chamber summons was filed seeking to carry out amendment to add the prayer. He therefore submits that the amendment is a technical amendment, as in the absence of recalling the said order, the petitioner may not be permitted to file his reply to the summons for judgment.

3. Learned counsel for the respondent(plaintiff) opposes this petition on the ground that the petitioner was very well aware about the order and there is no reason to explain as to why prayer for recalling the order dated 25th November 2022 was not filed at the time of filing of the notice of motion seeking delay condonation. He therefore submits that there is no reason to permit the petitioner to carry out amendment at this stage.

4. I have perused the papers of the petition. The proposed amendment is only for adding the prayer to recall order dated 25th November 2022. The petitioner's substantive notice of motion is for condonation of delay of 130 days in filing reply to the summons for judgment is pending. The prayer for amendment is rejected on the ground that as per Order VI Rule 17 of the Civil Procedure Code,

1908 ('CPC'), the pleadings can be amended at any stage if necessary for the purpose of determining the real question in controversy. It is observed in the interim order that the pleadings would mean plaint and a written statement. Hence, on this ground, the learned judge has refused permission to amend the notice of motion. There is no dispute that on 25th November 2022, the order was passed for proceeding with the summons for judgment without reply. Since, the notice of motion for condonation of delay in filing affidavit-in-reply is pending, the petitioner would be entitled to seek recalling of order dated 25th November 2022. The petitioner has explained that inadvertently, the said prayer was not made. The chamber summons was immediately filed even before the notice of motion was finally heard. The reasons recorded in the impugned order regarding the applicability of Order VI Rule 17 of CPC would not be sustainable. The petitioner would be entitled to seek amendment to the notice of motion. The proposed amendment would not cause any prejudice to the respondent. The respondent would always be entitled to file the additional reply to the notice of motion concerning the amended prayers.

5. Hence, this is a fit case to exercise powers under Article 227 of the Constitution of India to interfere with the impugned order. Hence, the petition is allowed by passing the following order:

- I) The impugned order dated 13th December 2024, passed by the Adhoc Judge, City Civil Court, Mazgaon, Mumbai, C.R. No. 81 in Chamber Summons No. 896 of 2024 in Notice of Motion No. 2461 of 2023 in Summary Suit No. 170 of 2021 is quashed and set aside.
- II) The petitioner(defendant) is permitted to amend Notice of Motion No. 2461 of 2023, as per the Schedule annexed to the Chamber Summons.
- III) The respondent(plaintiff) is at liberty to file additional affidavit-in-reply to the notice of motion within four weeks from today.
6. Writ petition is allowed in the aforesaid terms.

(GAURI GODSE, J.)