

(2024) 08 DEL CK 0029

Delhi High Court

Case No: Civil Miscellaneous Petition No. 1297 Of 2023, Civil Miscellaneous Application No. 41520 Of 2023

Rajesh Wadhawan

APPELLANT

Vs

Sh Naveen Sabharwal

RESPONDENT

Date of Decision: Aug. 1, 2024

Acts Referred:

- Constitution of India, 1950 - Article 227
- Code of Civil Procedure, 1908 - Section 151, Order 5 Rule 1, Order 6 Rule 15A, Order 9 Rule 7
- Arbitration and Conciliation Act, - Section 34

Hon'ble Judges: Shalinder Kaur, J

Bench: Single Bench

Advocate: Tarun Satija, Rajesh Mahindra

Final Decision: Allowed

Judgement

Shalinder Kaur, J

1. The petitioner has preferred to invoke the power of superintendence vested in this Court under Article 227 of the Constitution impugning the order dated 10.04.2023 passed by learned District Judge (Commercial Court) -01, West, Tis Hazari Court, Delhi (in short "Commercial Court") in CS (COMM) No. 320/2021 titled as "**Sh. Naveen Sabharwal Proprietor M/s Nav Prints vs Shr. Rajesh Wadhawan Proprietor M/s Global Trendz**" whereby petitioner's written statement was not allowed to form part of the record in view of non-conformity to Order VI Rule 15A of Code of Civil Procedure, 1908 (in short "CPC") thereby striking of his defence in the suit.

2. It would be apposite to elucidate the relevant facts starting with the respondent filing a suit for recovery of Rs. 33,50,081/- against the petitioner before the learned Commercial Court wherein the summons were issued to the petitioner on 13.08.2021. The petitioner was served with summon of the suit through WhatsApp and email on 26.08.2021. On 23.10.2021, the petitioner did not appear before the learned Commercial Court and hence was proceeded ex-parte. Later that day, the petitioner appeared before the Court and was apprised of the order passed and an application for setting aside ex-parte order was moved on the same day. The application of the petitioner was allowed on 25.11.2021 and the ex-parte order was set aside by the learned Commercial Court and the matter was posted for filing of written statement subject to issue of limitation on 05.01.2022.

3. Thereafter, the petitioner on 04.01.2022 filed the written statement along with the affidavit through the email and also filed the physical copy of the same on 06.01.2022 before the learned Commercial Court.

4. Upon filing of the written statement, the respondent filed replication along with an application under Order VI Rule 15A CPC for striking the petitioner's written statement off the record on the ground that the written statement as filed by the petitioner does not comply with the mandate of Order VI Rule 15A CPC as the same is not duly supported by the statement of truth and signatures are not appended on each and every page of the written statement.

5. Due to non-appearance of the petitioner, the learned Commercial Court on 09.05.2022 again proceeded ex-parte against the petitioner and posted the matter for ex-parte plaintiff's evidence. Upon learning of this, petitioner filed an application under Order IX Rule 7 CPC seeking to set aside the said ex-parte order dated 09.05.2022 which was allowed vide order dated 26.11.2022 subject to cost of Rs. 4,000. Matter was then fixed for reply and consideration of the application of the respondent under Order VI Rule 15A CPC on 24.01.2023.

6. Subsequently, the petitioner filed reply to the said application of the respondent and also moved an application under Order V Rule 1 read with Section 151 CPC seeking condonation of delay in filing the written statement after curing the defective written statement supported by statement of truth and with signatures appended on each and every page. Respondent filed reply to the application of the petitioner and the arguments were heard on 18.03.2023. Vide the impugned order, the learned Commercial Court dismissed the petitioner's application under Order V Rule 1 CPC and allowed the application of the respondent under Order VI Rule 15A CPC thereby striking off the written statement from the record by not allowing the petitioner to rely on it. Hence, the present petition before this Court.

Contentions of the Parties

7. Mr. Tarun Satija, learned counsel for the petitioner submitted that petitioner had filed the written statement on 04.01.2022 and its physical copy was placed on record on 06.01.2022 which is within the extended time of limitation as provided by Hon'ble Supreme Court in **Re: Cognizance for Extension of Limitation, (2021) 17 SCC 231**, however, the learned Commercial Court erred in dismissing application holding that no explanation was given by the petitioner for not curing the defects in the written statement within reasonable period once the defects came into petitioner's knowledge.

8. Learned counsel vehemently submitted that provisions under Order VI Rule 15A CPC are directory in nature and non-compliance will not render the filing of the written statement non-est as the said defects are curable in nature. Thus, limitation would also stop running the moment the written statement is filed.

9. Learned counsel further submitted that delay in re-filing of the written statement has to be treated on a different footing than delay in filing the original written statement, specifically when the defects are not material and only procedural not affecting the substance of the written statement, the delay in re-filing could be condoned.

10. Learned counsel also submitted that the written statement after removing defects could not be immediately filed as the petitioner's son was undergoing continuous treatment for a serious medical ailment and was admitted to the Hospital for 15 days. The learned Commercial Court has ignored the said fact while considering his application.

11. In this regard, the learned Counsel in support of his contentions placed reliance on various judgements set hereinbelow:

1. Uda Shankar Triyar v. Ram Kalevar Prasad Singh, 2005 SCC OnLine SC 1618

2. Delhi Development Authority v. Durga Construction Co., (2013) SCC OnLine Del 4451

3. M/s Unilec Engineer Ltd. v. HPL Electric and Power Ltd, 2023 SCC OnLine Del 5162

4. SSR International through its Proprietor Abhay Kumar Singhal v. Triveni Engineering and Industries Sugar Limited, 2023 SCC OnLine Del 7779

5. Sanjay Goel v. BKR Capital Pvt. Ltd. & Ors., 2024 SCC OnLine Del 593

6. Prayag Polytech Pvt. Ltd. & Anr. v. Raj Kumar Tulsian, 2023 SCC OnLine Del 6058.

7. Prakash Corporates v. Dee Vee Projects Limited, 2022 SCC OnLine SC 180

8. FMC Corporation & Anr. v. Natco Pharma, 2020 SCC OnLine Del 2074

9. Cosco International Pvt. Ltd. v. Jagat Singh Dugar, 2022 SCC OnLine Del 1113

10. Haier Telecom (India) Pvt. Ltd. v. Drive India Enterprise Solutions Ltd., 2018 SCC Online Bom 2829.

11. Saptarshi Construction v. Smt. Manjusree Singh, C.O. No. 179 of 2021 / MANU/WB/0450/2021

12. Harji Engineering Works Pvt. Ltd. v. Hindustan Steelworks Construction Ltd., 2021 SCC OnLine Cal 2457

12. Per contra, Mr. Rajesh Mahindra, learned counsel for the respondent submitted that the petitioner has been delaying the present suit since its inception and therefore, the conduct of the petitioner is required to be seriously looked at. Moreso, due to non-appearance of the petitioner on various dates, the learned Commercial Court had proceeded ex-parte twice, which orders were set aside subsequently on the applications moved by the petitioner before the learned Commercial Court. However, petitioner had been deliberately delaying the proceedings of respondent's suit on flimsy grounds.

13. Learned counsel submitted that petitioner has failed to furnish any explanation for not filing the written statement after alleged removal of defects within a reasonable time period from filing of the first written statement i.e. 04.01.2022.

14. It was contended that the petitioner has no right to file the subsequent written statement as under no provision of law without seeking amendment, a second written statement is permissible to be placed on record, more so, the said written statement is to be tested from date of filing and limitation is to be calculated from date of service. Since, subsequent written statement was filed on 13.01.2023, almost after one year which is beyond 120 days, thus, the said written statement which is highly belated, it cannot be taken on record and is liable to be rejected.

15. It was further submitted although no limitation period is prescribed for curing the defects, however, it cannot be more than the total period of limitation provided for filing a written statement. Reliance, was placed on **Prayag Polytech P. Ltd. vs Raj Kumar Tulsian, 2023 SCC OnLine Del 6058.**

16. Concluding his submissions, the learned counsel submitted that the case before the learned Commercial Court is at the final stage and even the written submissions in support of the arguments has been filed by the respondent and thus the petitioner cannot be permitted to restart the entire trial after more than three years having been passed since the filing of the suit.

Reasons and Conclusion

17. Before coming to the factual matrix of the case, it will be apposite to produce the provision under Order VI Rule 15A of CPC as amended by the Commercial Courts Act, 2015, which is hereunder:

"[15A Verification of pleadings in a commercial dispute - (1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule

(1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.]

18. The aforesaid provision mandates the verification of pleadings by way of an affidavit, which ensures that the statements made in the pleadings are duly authenticated and verified under oath and in absence of such verification, the pleadings cannot be relied as evidence. Even if the pleading is to be amended, the same has to be abided by the rigors of Order VI Rule

15A CPC and non-compliance of which may result in the Court rejecting the pleading or would require the party to have such defects rectified.

19. The statement of truth accompanying a pleading is sworn by the deponent who on oath undertakes that the contents of the accompanying pleading have been drafted as under his directions and instructions and moreso are true and correct to his knowledge. The said affidavit has to be attested, signed and to be filed along with the pleading. Therefore, this reflects the importance of strict compliance with the mandate of verification of pleadings.

20. The learned Single Judge of this Court in **Raj Kumar Gupta vs M/s Narang Constructions & Financiers Pvt. Ltd., 2023 IV AD (Delhi) 535** held that non-attesting of a an accompanying affidavit was a mere irregularity which was a curable defect and would not render the filing as non-est.

21. In **Oil and Natural Gas Corporation Ltd. vs Joint Venture of Sai Rama Engineering Enterprises (Sree) and Ors., MANU/DE/0049/2023**, this Court while dealing with an application under Section 34 of the Arbitration and Conciliation Act, held that filing of an affidavit in support of an application is a procedural requirement. The statement of truth by way of an affidavit is also a procedural matter and it would not render the aforesaid application as non-est but only defective.

22. Further, the learned Division Bench of this Court in **Prayag Polytech Pvt. Ltd and Another vs Raj Kumar Tulsian, 2023 SCC OnLine Del 6058** had categorically held that mere non-signing of each and every page of the pleadings is per se a defect, but the same could very well be cured. Likewise, any defect in verification of an affidavit in the nature of Statement of truth is also curable.

23. Needless to say, after occurrence of such defects, whether the same can be condoned or allowed to be cured will depend on facts and circumstances of each case based on factor such as stage of proceedings in the suit as well as law of limitation.

24. In the present case, the written statement was filed by the petitioner on 04.01.2022 through email and also on 06.01.2022 physically in Court. It is also true that period of limitation with respect to all kinds of limitations was extended by Hon'ble Supreme Court vide **Re: Cognizance for Extension of Limitation** (supra), from 15.03.2020 till 28.02.2022 by granting further time up to May, 2022 for the purposes of limitation. Therefore, the filing of the written statement was not challenged on the ground of limitation.

25. It is not disputed that petitioner has taken considerable time in curing the defects. The learned Commercial Court while considering the application filed by the petitioner under Order V Rule 1 CPC and the application filed by the respondent under Order VI Rule 15A CPC came to the conclusion that petitioner was negligent in filing the application for curing the defects by a period of more than four months specifically when the petitioner had already became aware of the defects in the written statement.

26. It is noticed that on 09.05.2022 the petitioner was proceeded ex-parte and the same was set aside on 26.11.2022, thereafter, time was granted to the petitioner to file reply to respondent's application under Order VI Rule 15A CPC and matter was directed to be listed on 24.01.2023. It is further noticed that on 24.01.2023, at the request of the petitioner matter was adjourned to 31.01.2023. On the said date, the petitioner took steps for curing the defects in the written statement.

27. Indisputably, the written statement initially filed suffered from defects inasmuch as each and every single page of the same were not duly appended by the signatures and moreso, the written statement was not supported by the statement of truth. Therefore, the written statement indeed suffered from defects. However, It is now well settled that

defects such as noted above, are not fatal defects and are very much curable. The said defects will also not render the written statement being non-est. From the aforesaid cited authorities, it is clear that the filing of statement of truth is a procedural matter and as well as no signatures appended on each and every page is also a curable defect.

28. The rectified written statement filed after curing the aforesaid defects was filed by the petitioner on 24.01.2023 by moving an application under Order V Rule 1 CPC seeking condonation of delay in filing the written statement duly supported by statement of truth and as well as signatures appended on each and every page of the written statement. Moreso, it is also undisputed that the subsequent written statement has not been changed in any manner in substance other than the defects being cured, thus written statement filed on 24.01.2023 relates back to having been filed on 04.01.2022. The respondent had already filed its replication to the written statement dated 04.01.2022/06.01.2022.

29. It is settled law, the rigors of procedure are handmaid of justice and it has to be ensured that substantive justice is done to both the parties. The technicalities should be applied in a manner that promotes fairness and upholds the rights of all the parties.

30. Having considered the aforesaid and taking into account the peculiar facts of the present case, the impugned order dated 10.04.2023 is set aside and the written statement, as cured after removing of the defects by the petitioner on 24.01.2023, is allowed to be taken on record, subject to the petitioner paying the cost of Rs. 35,000/- to the respondent, due to the delay caused by the petitioner in not pursuing the case diligently. The aforesaid cost to be paid before the learned Commercial Court on the next date of hearing.

31. Accordingly, the petition is allowed and the pending application stands disposed of.