



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 05.02.2024
Judgment pronounced on: 20.05.2024

+ CM(M) 216/2024, CM APPL. 6750/2024—stay

DECCAN EDIBLES PRIVATE LIMITED Petitioner

Through: Ms. Sakshi Mehley, Ms. Harshita
Kumar, Mr. Sajal Manchanda and
Ms. Tiyasha Chatterjee, Advs.

versus

S P J CARGO PRIVATE LIMITED Respondent

Through: Mr. Laksh Khanna with Mr. Utkarsh
Joshi and Ms. Anjali Menon, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. Before dwelling into the facts of the case, it is vital to mention that the petitioner herein/defendant before the learned District Judge (Commercial Court-04), South-East District, Saket Courts (hereinafter referred as “Trial Court”) is aggrieved by an order of the learned Trial Court whereby petitioner’s application before the learned Trial Court under Order VI Rule 15A of the Code of Civil Procedure, 1908 (hereinafter referred as “CPC”) for striking of paragraph 24 to 38 of the plaint of the respondent has been dismissed. Consequently, the respondent has been allowed to rely upon



paragraph numbers 24 to 38 of the plaint which according to petitioner is in violation of Order VI Rule 15A (4) CPC.

2. The background of the present case unfurl that the respondent filed a commercial suit numbered as CS (COMM) No. 813/2023 titled as “Cargo Private Limited v. Deccan Edibles Private Limited” for recovery of Rs. 1,06,27,996/- (Rupees One Crore Six Lakhs Twenty-Seven Thousand Nine Hundred Ninety-Six) along with 24% interest rate till the date of realization against the petitioner. Summons were issued in the said suit by the learned Trial Court on 13.09.2023.

3. The petitioner herein filed its written statement along with affidavit of admission and denial and two applications, one being of condonation of delay in filing of the written statement and the other under Order VI Rule 15A CPC for striking out the pleadings of the respondent in the plaint for the same were not verified by the Statement of Truth.

4. The said application of the petitioner under Order VI Rule 15A CPC was listed before the learned Trial Court on 12.01.2024 and on the very same day the said application was dismissed. Aggrieved by the said decision of the learned Trial Court, the petitioner has impugned the order dated 12.01.2024 before this court under Article 227 of the Constitution of India, 1950.

Submissions by the Petitioners:

5. Ms. Sakshi Mehley, learned counsel for the petitioner submitted that the learned Trial Court mistakenly ignored the mandatory provisions of



Order VI Rule 15A CPC which makes verification of the pleadings in a commercial dispute mandatory. With regard to the plaint filed by the respondent, there is no verification of paragraph no. 24 to 38 therefore, the pleadings in the suit cannot be considered to have been verified in the manner provided under Order VI Rule 15A sub-rule (1) CPC and therefore the respondent cannot be permitted to rely on such pleadings as evidence or any of the matters set out therein and hence, the entire pleadings are liable to be struck out for non-filing of the appropriate Statement of Truth as non-est.

6. Learned counsel for the petitioner submitted that the learned Trial Court burdened the petitioner with cost for delay in filing of the written statement and has considered that the suit was properly instituted on 13.09.2023, when admittedly the same was not the case as the Statement of Truth in support of the plaint has been filed on 12.01.2024 and therefore the same should be considered as the date of institution of the suit. Consequently, the written statement of the petitioner was well within the statutory period of 30 days and it could not have been burdened with costs.

7. Ms. Mehley submitted that the learned Trial Court by allowing the respondent to bring on record a fresh Statement of Truth has rendered the objection taken by the petitioner in its written statement redundant. The fresh Statement of Truth, even if, in the nature of the rectification amounts to amendment of the suit and the same would have necessitated the respondent filing an application under Order VI Rule 17 CPC, yet the learned Trial Court renders the said provision to CPC to be redundant by



simply allowing the respondent to file a fresh Statement of Truth and takes the same on record without following the due process of law.

8. Learned counsel for the petitioner further submitted that on one hand the respondent has pleaded that the error pointed out by the petitioner was merely a typographical one and yet, the paragraph no. 3 of the new Statement of Truth filed by the respondent on 12.01.2024 has been changed substantially by the respondent and the learned Trial Court has allowed the same at a belated stage thus prejudicing the interest of the petitioner for not only the relief of striking out of the pleadings has being denied but now the respondent will have to rely on the said pleadings.

9. To conclude, learned counsel for the petitioner submitted that the verification contained in paragraph 3 of the Statement of Truth is not in consonance with the paragraphs as contained in the plaint and the same can be ascertained by the fact that the respondent has deposed on oath that paragraph numbers 16 to 23 are based on legal advice, whereas perusal of the said paragraphs describe the manner in which the petitioner and the respondent has been transacting with each other in the past. Therefore, only respondent could have been aware of the alleged facts as contained in paragraphs number 16 to 23 and the verification could have been based only on the personal knowledge of the respondent and not on legal advice. Consequently, the advice is untenable and cannot be considered to be a typographical error. Hence, the respondent in paragraph number 3 of the Statement of Truth has made substantial changes thus, the plea of defect being merely a typographical error is not tenable. Moreso, the respondent



has only verified paragraph numbers 1 to 23 of the plaint, whereas the plaint in total consists of paragraph 1 to 38 and paragraph numbers 24 to 38 are not verified.

10. Petitioner has placed reliance upon the following judgments to support his submissions:

- i) **A.V. Industries v. Neo Neon Electrical Pvt. Ltd.** [RFA (Comm) 02/2021 decided on 01.09.2023]
- ii) **State of Bombay v. Purushottam Jog Naik** [AIR 1952 SC 317]
- iii) **A.K.K Nambiar v. Union of India and Anr.** [AIR 1970 SC 652]
- iv) **Prayag Polytech Pvt. Ltd. &Anr. v. Raj Kumar Tulsian** [FAO (COMM)- 182/2023].
- v) **J. Samuel &Ors. V. Gattu Mahesh &Ors.** [(2012) 2 SCC 300].
- vi) **Estralla Rubber v. Dass Estate (P) Ltd.** [(2001) 8 SCC 97].

Submissions by the Respondents:

11. Mr. Laksh Khanna, learned counsel for the respondent has refuted the submissions made by the counsel for petitioner by stating that the petitioner has wrongly invoked the jurisdiction of this court under Article 227 of the Constitution of India, 1950 as the order is well reasoned and there is no perversity from the order which is impugned. The defect was typographical in nature and was curable and therefore no substantive harm was caused to the petitioner.

12. Learned counsel for the respondents submitted that the intention to file the present petition is to pre-empt the averments made in the replication and to 'correct' the contentions in the written statement by misusing the



plenary powers of this court. Further, the hyper-technical approach opted by the petitioner is likely to cause delay in trial of the suit.

13. Learned counsel for the respondent has relied upon following judgments:

- i) **Atcom Technology v. Rahul Gupta & Ors.** [2023/DHC/001263]
- ii) **Prayag Polytech v. Raj Kumar Tulsian** [2023 SCC OnLine Del 6058]
- iii) **Harji Engineering Works v. Hindustan Steelworks Construction** [2021 SCC OnLine Cal 2457]
- iv) **ONGC v. JV of Sai Rama Engineering** [FAO (OS) (COMM) 324/2019]

Analysis & conclusion

14. The Commercial Courts Act, 2015 introduced several amendments to the Civil Procedure Code (CPC), 1908 concerning commercial disputes, including provisions related to the verification of pleadings for which Order VI Rule 15A CPC was added. Order VI Rule 15A mandates the verification of pleadings by way of an affidavit. This requirement ensures that the statements made in the pleadings are authenticated and verified under oath in the absence of verification, the pleadings cannot be relied as evidence. If the pleading is amended, the same has to be verified. Failure to comply with the verification requirement can have legal consequences, as the court may reject the pleading or require the party to rectify the defect. This underscores the importance of strict compliance with the verification mandate.

15. The core question which arises for adjudication in the present petition is whether the first filing of the plaint when filed within prescribed



limitation period can be considered a valid filing in case it suffers from inherent defects.

16. For ready reference, Order VI Rule 15 (4) & (5) of the CPC whereby filing of Statement of Truth is made mandatory, is reproduced hereinbelow:-

"Order 6 Rule 15-A. Verification of pleadings in a Commercial Dispute

15-A. Verification of pleadings in a Commercial Dispute. -

(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."

17. Hence, the position of law is well settled by various judgments observing that in case, it is found that the filing of fresh suit consists of inherent defects, such filing then has to be held as nonest and when the defects have been found to be formal in nature, it can be rectified.

18. It is necessary to refer to the judgment of **A.V. Industries v. Neo Neon Electrical Pvt. Ltd.** (supra) as the facts of the case are akin to the facts in the present case. In **A.V. Industries v. Neo Neon Electrical Pvt. Ltd.** (supra), the plaintiff did not file the Statement of Truth as per Order VI Rule 15A CPC and as amended by Commercial Courts Act, 2015. The learned Division Bench of this Court observed as under:-

"28. A perusal of the aforesaid provisions, particularly Order VI Rule 15A of CPC as amended by CC Act, would bring to fore that the Legislature had, in its wisdom, intentionally laid great stress on the filing of the Statement of Truth along with the plaint, in support thereof, to reduce the time spent in



the litigation by parties. The delay in filing of the same may be considered as a procedural irregularity, however, the filing of the same, in our view, would be mandatory. Moreover, the filing of the Statement of Truth and the limitation thereafter provided for filing of the same, in our view is restrictive in nature and cannot be extended endlessly nor can the plaint and the documents annexed thereto be read in evidence. This has great significance since sub rule (4) and (5) of Rule 15A of Order VI of CPC as amended by CC Act mandate the filing of the Statement of Truth and also prescribe the effect of such non filing. It is clear that the parties are not permitted to rely upon the said pleadings by virtue of sub rule (4) and simultaneously the Court is empowered to strike out a pleading which is not supported by the statement of truth, prescribed by sub rule (5) of Rule 15A of Order VI of CPC as amended by CC Act. Our endeavour in the present case is only to consider the effect of non filing of the Statement of Truth, since the facts obtaining in the present case do not give rise to any other question and thus, our views are restricted only to the said issue.”

19. Reverting to the facts of the present case, the petitioner herein had pointed out before the learned Trial Court at the time of disposal of the application moved by the respondent under Order VI Rule 15A CPC, for striking of paragraphs from 24 to 38 of the plaint from the record as the Statement of Truth filed along with the plaint is incomplete inasmuch as there is no verification of the paragraphs 24 to 38, therefore, the said documents are liable to be struck off. However, the learned Trial Court declined the prayer of the petitioner and disposed of the application.

20. Needless to say, the defects pointed out by the petitioner as the paragraphs 24 to 38 of the Statement of Truth not being appropriately verified is a curable defect. Moreso, the said defect was cured by the respondent on the very same day before the learned Trial Court by filing the complete Statement of Truth, a copy of which was also supplied to the petitioner herein. Thus, there is no merit in the submission raised by the



petitioner that plaint should be considered of having only paragraphs 1 to 23 and remaining are liable to be struck off.

21. The other judgments relied upon by the parties are decided on their own facts distinguishable from the facts of the present case.

22. Accordingly, no reason is made out to set aside the impugned order. The present petition along with the pending application is dismissed.

SHALINDER KAUR, J.

MAY 20, 2024
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