

CR No.3065 of 2014
CR No.3113 of 2014

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) **CR No.3065 of 2014**
Date of decision:09.03.2015

M/s Dabriwala Steel & Engineering Company Limited & anr. ...Petitioners
Versus

M/s Saket Steel Ltd. ...Respondent

(2) **CR No.3113 of 2014**
Date of decision:09.03.2015

M/s Dabriwala Steel & Engineering Company Limited & anr. ...Petitioners
Versus

M/s Saket Steel Ltd. ...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Aanand Chhibbar, Senior Advocate, with
Ms. Harpriya Khaneka, Advocate, for the petitioners.

Mr. Munish Jolly, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

This order shall dispose of two petitions bearing CR No.3065 of 2014 (here-in-after referred to as the “first petition”) and CR No.3113 of 2014 (here-in-after referred to as the “second petition”) as both are inter-connected. However, the facts are extracted from the first petition.

In brief, the defendant-company (petitioner no.1 herein) was wound up vide order dated 24.02.1995 passed in C.P. No.31 of 1995. The respondent-plaintiff filed a suit for specific performance against the defendant-company on 14.07.1990 on the basis of an agreement to sell

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dated 14.07.1987 in respect of Plot No.142, Sector 24, Faridabad (here-in-after referred to as the “suit property”). The said suit was decreed *ex parte* on 19.04.1996. In the meanwhile, the ex-management of the defendant-company filed a Company Petition under Section 391-394 of the Companies Act, 1956 (here-in-after referred to as the “Act”) bearing C.P. No.51 of 2006 on 23.03.2006 for revival of the company, making a proposal to pay to its creditors. The defendant-company was revived vide order dated 19.03.2009. In the said proceedings, the respondent-plaintiff moved an application bearing C.A. No.482 of 2006 on 05.07.2006 for the purpose of seeking execution of the decree dated 19.04.1996. The application was disposed of on 19.03.2009, declining the prayer, holding that the decree was null and void as no prior permission under Section 446 of the Act was taken by the plaintiff to continue the said suit, after passing of the liquidation order on 24.02.1995. However, the plaintiff was granted monetary compensation but order of the Company Judge was challenged by the plaintiff by way of a Company Appeal No.25 of 2009 before the Division Bench of this Court and the said appeal was disposed of with the following order:-

“The appeal is disposed of on the following agreed terms:-

- i) The winding up order of the respondent-company having been passed on 24.02.1995, all proceedings passed thereafter including a decree passed are set aside and the parties are relegated to the position

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as they were on 24.02.1995.

- ii) Both the parties are free to move appropriate legal proceedings by interim applications or otherwise before that court for consideration on merits as the winding up order no more stands.
- iii) The matter being relegated to the position of 1995 and the suit being quite old, we would expect the trial Court to take expeditious steps to dispose of the suit preferably within a maximum period of one year from the date of communication of the order.
- iv) The parties will appear in the suit titled as M/s Saket Steels Ltd. Vs. M/s Dabriwala Steel and Engineering Company Ltd. and another pending at the time of decree before the Court of Additional Civil Judge (Senior Division) on 01.08.2013.

The appeal stands disposed of accordingly.

In view of the appeal being disposed of, the pending applications are also disposed of.

Copy of the order be given dasti to the counsel for the parties.”

Thereafter, the defendant-company moved an application for amendment of the written statement in the suit thereby raising all necessary contentions and enclosing certain relevant documents. The amendment

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application was allowed by the trial Court on 13.12.2013 which was challenged by the plaintiff by way of CR No.443 of 2014. The said revision petition was disposed of by this Court on 21.02.2014 with the following order:-

“Parties are agreed that this petition is disposed of on the following terms:-

(i) The following words in para `xxvii` in sub para `r` shall stand deleted.

“The plaintiff had signed the cancellation agreement and taken the said 20 cheques”.

(ii) Para 17 of the amended written statement shall stand deleted from the record and para 17 of the original written statement would operate as pleadings.

(iii) The defendant would now file a fresh written statement after complying with the directions (i) and (ii) which will be treated as the written statement in defence of the suit.

(iv) Issues vii and viii as framed on 2.6.1992 will stand. The onus of both these issues is on the defendants. The defendants would be free to adduce evidence in support of those issues and the plaintiff would have a right of

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rebuttal in support of his case.

Mr. Anand Chhibbar, learned senior counsel states that the defendant would file the fresh written statement within a period of 10 days from today. The plaintiff would have a right to file his replication within a period of 4 weeks thereafter.

As a result of this order, in case the trial court feels that additional issues are required to be struck, it would remain free to do so and for this would take the assistance of both the learned counsel before the trial Court. On such additional issues, both parties would have a right to lead evidence pro and contra. The impugned order would stand modified mutatis mutandis. Since the suit is over two decades old, the trial Court will endeavour to conclude it as soon as possible.

This order will be read in continuation of the earlier order passed by the Division Bench dated 15.7.2013 in Company Appeal No. 25 of 2009.

Disposed of.

Order dasti.”

In pursuance of the aforesaid order, the defendant filed the amended written statement on 03.03.2014 which is reflected in the *zimni* order passed by the Court, which reads as under:-

“Present: Sh. Sandeep Gosain, proxy counsel on

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behalf of Sh. V.L. Vasistha, Adv. for plaintiff.

Sh. Pankaj Singh, Adv. for defendant.

In compliance of orders of the Hon'ble High
Court, amended written statement filed. Copy supplied.
To come up on 4.3.2014 for filing replication, if any.

Sd/-
(Puneet Sehgal),
ACJ(SD)/Fbd. 3.3.2014.”

Thereafter, the case was adjourned for filing of the replication to 04.03.2014, 07.03.2014, 11.03.2014 and 18.03.2014. When the case was listed on 18.03.2014 for filing of the replication by the plaintiff, an application under Order 6 Rule 18 read with Section 151 of the Code of Civil Procedure, 1908 (here-in-after referred to as the “CPC”) was filed by the plaintiff alleging that though the amended written statement has been filed within the time specified by this Court but the defendant has failed to amend the written statement in terms of the directions of this Court and, thus, the said written statement be taken off from the file of the suit.

Thereafter, it was realized by the defendant that due to clerical error, four words were inadvertently omitted to be incorporated in para No.17 of the amended written statement, which read as under:-

“17. Receipt of notices is admitted but the rest of the allegations are denied as incorrect. The real state of affairs is like this:

The agreement to sell dated 14.7.1987 was

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cancelled by the mutual consent of the parties in July, 1990, and a fresh agreement was arrived at according to which the plaintiff was to return the sum of Rs.2,00,000/- (two lakhs only) to the plaintiff in full and final settlement of the claim, and in pursuance of this agreement, the plaintiff sent written agreement to the defendants through M/s Reliance Estate Agency for signature, mentioning therein that after the written agreement was signed by the plaintiff, the defendant would deliver 20 cheques of Rs.10,000/- each, photostat copies of which were enclosed with the written agreement. But the plaintiff backed out and refused to sign the agreement. Photostat copy of that written agreement (which the plaintiff refused to sign) is enclosed herewith along with letter.”

In the aforesaid paragraph, the words which were omitted to be incorporated are “was arrived at according to which the plaintiff was to return the”. Realizing the inadvertent mistake, the defendant moved an application on 25.03.2014 under Section 151 of the CPC to bring on record the correct amended copy of the written statement but the said application has been dismissed by the impugned order and the case was adjourned to 28.03.2014 for filing of replication.

In the second petition, the defendant has challenged the order dated 22.04.2014 by which application filed by the defendants under Order

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12 Rule 2 read with Section 151 of the CPC for seeking admission and denial of the documents has been dismissed on the ground that once the defendants themselves had not complied with the order passed by this Court on 21.02.2014, therefore, they are precluded from moving the said application. Thus, the decision of the second revision petition rests upon the decision of the first petition and accordingly, vide order dated 05.05.2014, the second petition was rightly ordered to be heard along with the first petition.

Counsel for the petitioners has argued that the order of this Court dated 21.02.2014 was complied with as the amended written statement was filed within the period of 10 days which has also been admitted by the plaintiff in its application dated 18.03.2014 but due to oversight and error of omission, the words “was arrived at according to which the plaintiff was to return the” were omitted to be incorporated in paragraph No.17 of the amended written statement on merits because of the typographical error. It is submitted that the application was, thus, filed under Section 151 of the CPC to take on record the corrected copy of the amended written statement and pass any other order as it may deem fit. It is submitted that inadvertent errors can always be corrected by the Court while invoking its inherent powers under Section 151 of the CPC which are necessary to meet the ends of justice or to prevent abuse of the process of the Court. In support of his submission, he has relied upon the following judgments:-

1. **Kailash v. Nanhku and others**, JT 2005(4) SC 204;

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2. **Smt. Rani Kusum v. Smt. Kanchan Devi and others,**
JT 2005(7) SC 409;
3. **Uday Shankar Triyar v. Ram Kalewar Prasad Singh**
and another, JT 2005(9) SC 454; and
4. **Baldev Singh & ors. etc. v. Manohar Singh & anr.**
etc., JT 2006(7) SC 139.

On the contrary, counsel for the plaintiff has submitted that the defendants did not file any reply to the application filed under Order 6 Rule 18 of the CPC and has referred to the order dated 19.03.2014 passed by the trial Court, which reads as under:-

“Present: Sh. V.L.Vasistha, Adv. for plaintiff.

Sh. Pankaj Singh, Adv. for

Counsel for the defendant has made a statement that he does not file separate reply to the application under Order 6 Rule 18 of the CPC and his written statement may also be read as reply to the same. Statement recorded separately. Now case is adjourned to 21.03.2014 for consideration.

Sd/-
(Puneet Sehgal)
ACJ(SD)/Fbd. 19.3.2014”

While referring to Order 6 Rule 18 of the CPC, counsel for the plaintiff has submitted that the defendant had to file the written statement as per the order passed by this Court and since it has failed to abide by the

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order, the written statement has to be taken off from the record and the application filed by the defendant under Section 151 of the CPC has rightly been dismissed. In support of his submission, he has relied upon a decision of the Supreme Court in the case of **Union of India v. Pramod Gupta (D) by LR.s. & Ors.**, 2005(4) R.C.R. (Civil) 235.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The facts are absolutely clear, therefore, the question would be as to whether the trial Court has committed an error in the exercise of its jurisdiction while dismissing the application filed by the defendant under Section 151 of the CPC in view of the provisions of Order 6 Rule 18 of the CPC. In order to appreciate the controversy, it would be relevant to refer to the Order 6 Rule 18 and Section 151 of the CPC, which are as under:-

Order 6 Rule 18 of the CPC

“18. Failure to amend after order.- If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.”

Section 151 of the CPC

“151. Saving of inherent powers of Court.- Nothing in

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this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

Order 6 Rule 18 of the CPC sets up the time within which the amended written statement has to be filed. It has two parts. If the time is prescribed by the Court, the amended written statement has to be filed within the said time period and if no time is prescribed, then the defendant has to file the amended written statement within 14 days from the date of the order. In case the amended written statement could not be filed by the defendant either within the time prescribed by the Court or within 14 days if the time is not prescribed, he would still have an opportunity to file the amended written statement, before the expiry of the time, by moving an application to the said Court for the purpose of extension of time but if no extension has been obtained or granted, the defendant would not get any further opportunity to file the amended written statement and would lose his right once forever. The judgment in the **Union of India’s case (supra)**, relied upon by learned counsel for the plaintiff, lays down that provision of Order 6 Rule 18 of the CPC are mandatory in nature and if it is not complied with, its consequences would have to be faced by the defendant.

However, the question in this case is as to whether the defendant had actually filed the amended written statement within the period of 10 days prescribed by this Court vide its order dated 21.02.2014. The answer is not far to seek because it is also admitted by the plaintiff in

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his application and also evident from the *zimni* order dated 03.03.2013 that the amended written statement was filed by the defendant within the prescribed period, therefore, the provision of Order 6 Rule 18 of the CPC was complied with.

The next question would be as to whether in case of typographical error due to inadvertence or oversight, a line or two is missed in the amended written statement by the defendant, could it be allowed to be inserted and the corrected amended written statement could be allowed to be filed by the defendant in terms of Section 151 of the CPC which saves the inherent powers of the Court to make such an order as may be necessary for the ends of justice or to prevent abuse of the process of the Court? The judgments relied upon by learned counsel for the defendant are all in their favour in which the Supreme Court has held that the rules and procedures are the hand maid of the justice.

In **Udai Shankar Triyar's case (supra)**, the following observations have been made by the Supreme Court:-

“17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to

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deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are :-

- i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.
- ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;
- iii) where the non-compliance or violation is proved to be deliberate or mischievous;
- iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.
- v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant;

It has been held that unless the relevant statute or rules so mandates, procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice.

In the present case, if the amended written statement had not been filed at all by the defendant within the period prescribed by this Court, definitely, the plaintiff had an edge over the defendant in terms of Order 6

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Rule 18 of the CPC because the said provision is mandatory in nature but the fact is otherwise because the defendant had filed the amended written statement within the prescribed time and it was only an inadvertent error on its part which could be called an error of omission or a typographical error that a line or two were missed in para No.17 of the amended written statement on merits, which defect can always be cured with the aid of Section 151 of the CPC and the amended written statement cannot be ordered to be taken off from the record.

Thus, in view of the aforesaid discussion, I find that the order passed by the trial Court, dismissing the application filed by the petitioner under Section 151 of the CPC is patently erroneous. Hence, the first petition bearing CR No.3065 of 2014 is hereby allowed and the impugned order dated 25.03.2014 is set aside.

Since the second petition was dismissed primarily, by the trial Court, on the ground that the defendant has failed to comply with the order dated 21.02.2014 passed by this Court, therefore, with the success of the first petition, the second petition is also allowed and the impugned order passed therein is set aside. However, the trial Court is directed to decide the application afresh filed by the defendant under Order 12 Rule 2 read with Section 151 of the CPC on its own merits.

In the peculiar facts and circumstances, the parties to the lis should bear their own costs.

March 09, 2015
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(Rakesh Kumar Jain)
Judge