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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 17.08.2023*

+ CM(M) 990/2023 & CM APPL. 31716/2023

M/S UNILEC ENGINEERS LTD Petitioner

Through: Mr. Puneet Jaiswal, Advocate

versus

HPL ELECTRIC AND POWER LTD Respondent

Through: Mr. Naveen Tyagi, Advocate for R-2

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CORAM:**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J (ORAL):**

1. This petition filed under Article 227 of Constitution of India impugns the order dated 19.04.2023 passed by the DJ (Commercial)-01, Central District, Tis Hazari Courts, Delhi ('Trial Court') in CS (Comm.) No. 3014/2019, whereby the Trial Court dismissed the application filed on 16.01.2023 by the Petitioner for curing the defects in the written statement filed on 26.10.2021 and struck off the written statement filed by the Petitioner.

1.1. The Trial Court struck off the written statement on the ground that (i) the same was not signed on each page, (ii) it was not accompanied with the statement of truth, and (iii) and the defendant had not filed an affidavit of admission/denial of documents.

1.2. The Trial Court held that the application for curing the defects was



filed after the maximum period of 120 days to file the written statement as described under Order V Rule 1 Code of Civil Procedure, 1908 ('CPC'), as amended by the Commercial Courts Act, 2015 ('Act of 2015').

2. The Petitioner is the defendant no.1 and the Respondent is the plaintiff in the commercial suit filed for recovery of an amount of Rs. 28,18,062/- along with interest at 15% per annum.

3. The learned counsel for the Petitioner states that the written statement was filed by the Petitioner on 26.10.2021 after serving an advance copy of the same to the Respondent.

3.1. He states that the replication to the written statement was duly filed by the Respondent on 07.12.2021. In the said replication, no objection was raised by the Respondent as regards non-signing of each page of the written statement or non-filing of the statement of truth or the affidavit of admission/denial of documents.

3.2. He states that on 04.07.2022, when the matter was listed before the Trial Court, it was the learned Judge who made an observation that the written statement was not compliant with the provisions of Order VI Rule 15A of CPC as amended by Act of 2015. He states it was thereafter, that the Respondent herein raised said objection and filed a formal application on 25.07.2022, under Order VI Rule 15A(1) and (5) of CPC, as amended by Act of 2015 for taking off from the record the written statement.

3.3. He states that the Petitioner herein as well filed an application on 16.01.2023 seeking permission of the Trial Court to cure the defects and file the statement of truth. He states that the said defects are curable in nature and in this regard, he relies upon the judgment of the High Court of Calcutta in *Harji Engineering Works Pvt. Ltd. v. Hindustan Steelworks*



Construction Ltd., 2021 SCC OnLine Cal 2457.

3.4. He states that the Petitioner be subjected to reasonable legal costs and be permitted to cure the said defects.

4. The learned counsel for the Respondent has entered appearance. He states that the Petitioner herein was duly served on 17.03.2021 with the summons and he unreasonably delayed the filing of the written statement by filing the same on 26.10.2021.

4.1. He states that though the defects in the written statement were made known to the Petitioner as early as on 04.07.2022, the application seeking to cure the said defects was filed belatedly on 16.01.2023.

4.2. He states therefore, due to this lackadaisical approach of the defendant, the Trial Court has rightly declined to grant permission to the Petitioner to cure the said defects.

5. This Court has considered the submission of the parties and perused the record.

6. The Petitioner on 17.07.2023 has filed before this Court a copy of the written statement duly signed on each page accompanied with the statement of truth and the affidavit of admission/denial of the documents filed by the plaintiff.

7. It is matter of record that Petitioner entered appearance on 17.03.2021 and the written statement was filed on 26.10.2021. In view of the judgment of the Supreme Court in ***Suo Motu Writ Petition 3/2020 in 'Re: Cognizance for extension of limitation'***, the limitation period stood suspended during the period 01.03.2020 to 28.02.2022. Since the Petitioner herein admittedly filed its written statement on 26.10.2021 i.e., within the said suspended period, the written statement was filed within limitation.



8. With respect to the objections of non-compliance of Order VI Rule 15A CPC raised by the Petitioner in its application dated 25.07.2022, the Petitioner has taken steps to rectify the same and placed on record the duly signed written statement, the statement of truth and the affidavit of admission/denial of documents.

8.1. No change has been made to the pleading and the defence raised in the written statement filed initially on 26.10.2021, and to that extent the pleading remains intact.

9. The Trial Court as well was of the opinion that the defects as pointed out by the Respondent in its application filed on 25.07.2022 are curable in nature; however, what weighed with the Trial Court was the delay caused by the Petitioner between 04.07.2022 and 16.01.2023 in taking steps to rectify the said errors.

9.1. A learned single Judge of this Court in ***Sudhakar Singh and Anr. v. Webkul Software Pvt. Ltd., 2020 SCC OnLine Del 436*** held that striking of the defence despite the written statement being placed on record, on the ground that the affidavit of admission/denial was not filed is not tenable. In the said judgment, this Court additionally also permitted the defendant therein to file a statement of truth. The facts of this case are similar to the facts therein. The relevant portion of the judgment reads as under:

“5. A perusal of the summons which were issued shows that in the said summons, there is no mention of the Defendants being called upon to file the affidavit of admission/denial along with the written statement. The summons were also not issued as per the format for commercial disputes notified by Delhi High Court on 27th November, 2015, which may be due to the fact that the said format applies only to the Original Side of the Delhi High Court. The summons in the district courts, insofar as they concern the Commercial Courts and commercial disputes, would be required to be amended in accordance with the Commercial Courts, Commercial Division and Commercial



*Appellate Division of the High Courts Act, 2015 (“Commercial Court Act, 2015”). Moreover, under Order VIII CPC as amended by the Commercial Courts Act, 2015 filing of the affidavit of admission/denial as applicable to Commercial Courts, is not compulsory. The filing of the affidavit of admission/denial has been made compulsory only in the Delhi High Court (Original Side) Rules, 2018. **Thus, striking off the defence, despite the written statement being placed on record, on the ground that the affidavit of admission/denial was not filed is not tenable.** The same is accordingly set aside.*

6. The Defendants are permitted to file the affidavit of admission/denial within two weeks. The written statement already filed by the Defendants shall be taken on record. Ld. counsel for the Defendants, at this stage, submits that even the statement of truth has not been filed and the trial court has wrongly recorded in the impugned order that the defence is struck off due to non-filing of affidavit of admission/denial. A perusal of the impugned order shows clearly that the defence is struck off due to non-filing of the affidavit of admission/denial. In order to avoid any ambiguity, if the statement of truth is not filed, let the same be filed within two weeks in accordance with the provisions of the Commercial Courts Act, 2015”

(Emphasis supplied)

9.2. In this regard, it would be relevant to also refer to the judgment of this Court in ***FMC Corporation and Anr. v. NATCO Pharma Ltd., 2020 SCC OnLine Del 2074*** wherein similarly the Court held that an application for amendment seeking to cure the defects in verification and pleading should be permitted liberally and a party should not be non-suited on these grounds.

“24. Applying the above principles, it is obvious that the amendments, in the verification, below the plaint, and in para 3 of the Statement of Truth accompanying the plaint, as proposed in I.A. 5209/2020, are required to be allowed. Trial, in the case, is yet to begin. The defendant has not placed once scintilla of material, on record, or advanced any submission, whatsoever, to indicate that allowing the amendments, as sought by the plaintiffs, would result in irreparable prejudice to the defendant. Recitals, regarding the place and date, when the plaint was verified, and the basis for claiming the contents, of the various paragraphs, in the plaint, to be true and correct, are within the knowledge of the deponent and, if, as originally filed, any error, omission, existed in respect thereof, there can be no embargo,



whatsoever, on the deponent rectifying the error, by invoking the jurisdiction, of the Court, to allow amendment of the pleadings. Processual justice cannot afford to be tight-fisted. The submission that the amendments had “a significant bearing on the whole case”, “a serious impact on cross examination” and “adversely impacted any possible of compliance with trial procedures” are, quite obviously, merely platitudes, with little substance. The submission that allowing the amendments, in para 3 of the Statement of Truth, and in the verification below the plaint, would impede cross examination, or due compliance with trial procedures, is completely incomprehensible; significantly, though these contentions have been advanced, in para 2 of the written submissions, placed on record by the defendant after reserving of judgment on these applications, Mr. Sai Deepak, with his experience, did not seek to so urge during arguments. The mere fact that the amendments may have been sought, consequent to the lacunae, in the verification and the Statement of Truth, having been pointed out by the defendant during arguments before this Court, cannot, either, constitute a ground to reject the prayer for amendment. At all times, it has to be remembered that the power to allow amendment is in furtherance of the duty, of the court, to decide the lis before it on merits, unencumbered by technical considerations and is required, therefore, to be exercised with the full awareness of the sweep and expansiveness it possesses. **Disallowing the amendments, as sought, and allowing the suit to proceed to trial with the defects, in the verification below the plaint, and in the corresponding paragraph of the Statement of Truth, remaining unremedied, would go against the very grain and philosophy of Order VI Rule 17. Such an approach has, therefore, sedulously to be avoided.**

25. Applying the principles governing Order VI Rule 17 of the CPC, as enunciated in the various authorities to which reference has already been made hereinabove, I am of the clear opinion that the interests of justice would mandate allowing of the amendments, as sought in I.A. 5209/2020. I.A. 4274/2020 would not, consequently, survive for consideration.”

(Emphasis supplied)

9.3. The nature of the relief sought by the Petitioner in its application for correcting the verification of the written statement is in essence invoking the provisions of Order VI Rule 17 of CPC. Therefore, in view of the judgment of this Court ***FMC Corporation and Anr.*** (supra), the application filed on



16.01.2023 for correcting the said defects in verification was maintainable under the said provision.

10. This Court is of the opinion that the intent of the legal proceedings is that the claims raised by a plaintiff should be decided on its merits after adjudicating upon the defence of the defendant. The intent of the Act of 2015 is to ensure a time bound disposal of the claims raised by the plaintiff on merits and to this effect regulate accuracy in pleadings of the parties and to ensure that parties do not indulge in dilatory tactics. The intent of the rigours of the Act is not to afford a decree in default to the plaintiff. In the opinion of this Court striking off a written statement which was filed within the statutory period of limitation would defeat the ends of justice rather than advancing the dispensation of justice in a time bound manner, which is the true intent of the Act of 2015.

In this matter the suit is still at the stage of framing of issues. No objection to verification of the written statement was raised by plaintiff in the replication. Subsequently, when the plaintiff first raised the objection, the defendant has immediately offered to cure the said defect of verification.

In these facts and circumstances, the defendant should not be precluded from having its defence adjudicated, solely on account of the defect in verification considering that the defendant has at this initial stage itself taken steps to have the defects cured and bring its written statement on record in compliance with the provisions of Act of 2015. No prejudice will be caused to the plaintiff if the defect in verification is permitted to be cured because as noted above, importantly, no change is being carried out to pleadings in the written statement. The corrections in defective verification are sought to be carried by the defendant at the outset and therefore, they



have to be permitted.

11. This Court is of the opinion that the Petitioner should be granted permission to cure the defects, however, the Petitioner is liable to pay costs for this default. Accordingly, the Petitioner is directed to pay legal costs of Rs. 10,000/- to the Respondent, within a period of two (2) weeks from today.

12. Accordingly, the impugned order dated 19.04.2023 is set aside. The written statement duly signed on each page; accompanied by the statement of truth and affidavit of admission/denial of documents under the cover of the index dated 17.07.2023 already stands filed by the Petitioner before the Trial Court and the Trial Court is requested to take the said pleadings and affidavit on record.

13. With the aforesaid directions, the present petition is disposed of. Pending application stands dismissed.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 17, 2023/hp/aa

Click here to check corrigendum, if any