

02.02.2021
Sl. No. 14
srm

C.O. No. 179 of 2021
Saptarshi Construction
Vs.
Smt. Manjusree Singh & Ors.

Ms. Sohini Chakraborty,
Ms. Prajaaini Das

...for the Petitioner.

Mr. Siddhartha Banerjee,
Mr. Avishek Guha,
Ms. Ruchika Mall

...for the Opposite Parties.

This revisional application has been filed by the plaintiff in Title Suit No.07 of 2019 pending before the learned Judge, Commercial Court at Asansol, District: Paschim Bardhaman.

The petitioner is aggrieved with the portion of the order dated December 7, 2020 passed by the learned Court below by which the learned Court allowed the application filed by the defendants to accept the statement of truth verification and affidavit as per Appendix-I under 1st schedule in terms of Order VI Rule 15A and Order XI Rule 3 of the Code of Civil Procedure as amended. The petitioner is further aggrieved by the imposition of costs of Rs.1,000/- by the learned Court below while dismissing the written objection filed by the petitioner.

Ms. Chakraborty, learned Advocate appearing on behalf of the petitioner, submits that the learned Court below

proceeded on a complete misconception of law while allowing the application of the defendants and directing the statement of truth affidavit be accepted as a part of the original written statement and the counterclaim, in view of the mandate of the law contained in Order VI Rule 15A and Order IV Rule 1(3) of the Code of Civil Procedure

Order VI Rule 15A has been incorporated by amendment of the Code of Civil Procedure and made applicable in case of commercial suits and the same is quoted below:

“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 may 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.”

Section 16 of the Commercial Courts Act, 2015 provides that the amendment to the Code of Civil Procedure in respect of commercial disputes shall apply in case of commercial suits.

Order IV Rule (1)(3) states that a plaint shall not be instituted unless it complies with the requirement of Order VI and Order VII of the Code so far as those are applicable.

Thus, the contention of the petitioner is that in case of a commercial suit compliance with the provisions of Order VI Rule 15A was mandatory and unless the counterclaim (which is treated as a plaint) was verified by a statement of truth in the manner prescribed in the appendix to the schedule the counterclaim could not be entertained by the Court and the Court was duty bound to reject such pleading from the written statement.

Mr. Siddhartha Banerjee, learned Advocate appearing on behalf of the defendants, submits that the defect was a curable one and once the defect was cured by filing the appropriate affidavit as contemplated under the provisions of Order VI Rule 15A of the Code of Civil Procedure, the written statement along with the counterclaim filed by the defendants could be entertained by the Court as being filed in the appropriate form and manner as prescribed under the schedule.

He further submits that the point has already been decided by the Hon'ble Division Bench of the Bombay High Court in the matter of Haier Telecom (India) Pvt. Ltd. vs. Drive India Enterprise Solutions Ltd. reported in 2018 SCC Online Bom 2829. Relevant portion of the order is quoted below:

“3. In this factual background, Mr. Bagla, the learned counsel appearing on behalf of the Appellant (original Defendant), canvassed only three points before us for our consideration. They are as under:—

(i) that in the present case, the Suit was clearly barred by the law of limitation as it was filed beyond the period of three years from the date of the last balance reconciliation statement. On this aspect, it was the contention of learned counsel that the last balance reconciliation statement was dated 31st March 2014 and therefore, the limitation expired on or before 30th March 2017. Though the present Suit was lodged on 22nd March 2017, the same was not properly verified as per the provisions of the Commercial Courts Act read with Order 6 Rule 15A of the Code of Civil Procedure, 1908. This verification was done only on 20th April 2017. Since the verification was done (as required by law) only on 20th April 2017, and which was beyond the period of limitation, the Suit was therefore barred under the law of limitation, was the contention of Mr. Bagla;

(ii) that the plaint has been verified by a person not authorized to do so viz. Mr. Vishal Shah who has not only signed the plaint but also verified the same;

(iii) that the Suit was also bad for non-joinder of necessary parties.

4. xxx xxx xxx

5. xxx xxx xxx

6. As far as first issue regarding limitation is concerned, it is not in dispute that the Suit was lodged on 22nd March 2017. It is also not in dispute that the period of limitation, even according to the learned counsel for the Appellant, was to expire on or before

30th March, 2017. We fail to see how the learned counsel can therefore submit that the Suit is barred by the law of limitation. The limitation stops on the day when the Suit is lodged in this Court. Merely because the Suit was to be verified in a particular manner as provided under the commercial Courts Act read with Order 6 Rule 15A of the CPC (and which was admittedly done on 20th April, 2017) would not affect the stoppage of time for filing the suit. In fact, Order 6 Rule 15A sub-rule (4) clearly states that where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely upon such pleading as evidence or any of the matters set out therein. In other words, the legislature has clearly set out what consequences would follow if the pleadings were not verified in the manner as set out thereunder. In our opinion, this defect, if at all, is a curable defect and is certainly not one that would affect limitation. This being the case, we find this argument to be wholly unmeritorious and therefore stands rejected.”

I am in agreement with the view of the Bombay High Court, inasmuch as, the reading of the Order VI Rule 15A reveals that the consequences of not filing a statement of truth in the affidavit in the form and manner prescribed would not debar the party from proceeding with the pleading, if such defect is cured. The Court has the option of either not accepting such pleadings, not allowing the party to lead evidence thereon or the Court had the option of striking out such pleadings.

Thus, the manner in which a pleading should be verified and/or affirmed is a procedural aspect and non-filing of the truth affidavit was a procedural defect which can be rectified. Procedure is the handmade of justice and can only be used in aid of doing justice and not for the purpose of non-suiting a litigant. Moreover, the language of Order VI Rule 15A

indicates that the Court may strike out such pleading and not allow the party to lead evidence thereon. Thus, the very language indicates that the Court has the discretion to allow a party to cure the defect.

The defect is a procedural defect and can be cured. Such defect does not go to the root of the matter. Thus, the court was justified in giving an opportunity to the opposite party to remove the defect by filing a proper affidavit. Non-compliance of the provision of Order VI Rule 15A with regard to verification of pleadings would not render the suit non-est in the eye of law. Thus, as the defect is a curable one, the limitation would also stop running at the institution of the suit and the contention of the petitioner is not accepted.

This revisional application is, therefore, dismissed.

However, the Court cannot penalise the plaintiff for having brought this to the knowledge of the Court that the written statement and the counterclaim were not properly verified. Thus, the imposition of costs of Rs.1,000/- upon the plaintiff is set aside. The other parts of the order remain unchanged.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)