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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 26TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE R. SUBRAMANIAN

A.No.3306 of 2021

in

C.S.(Comm.Div)No.829 of 2009

1. Kamal Haasan,
No.404, TTK Road,
Alwarpet,
Chennai – 600 018.
2. M/s. Raajkamal Films International,
a Partnership Firm, represented by
its Partner
- * Mr.Kamal Haasan,
No.4, Old No.172, Eldams Road,
Alwarpet, Chennai – 600 018.

... Applicants/Plaintiffs

-Vs-

- *1. Regent Saimira Entertainment Ltd
No.27, Pyramid Saimira Towers,
G.N.Chetty Road, T.Nagar,
Chennai – 600 017, rep by its
- * Whole time Director, Mr.K.S.Srinivasan,
2. K.S.Srinivasan,
No.27, Pyramid Saimira Towers,
G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

... Respondents/Defendants

- * Amended as per Order dated 08-09-2021
in Application No.3116 of 2021



A.No.3306 of 2021:-

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Application praying that this Hon'ble Court be pleased to order striking out of the pleadings of the defendant or preclude them from relying on the matters in their written statement / Pleadings.

This application having been heard on 07/10/2021 in the presence of Mr.K.S.V.Prasad, advocate for the applicants herein and Mr.A.Chidambaram, advocate for the respondents herein and upon reading the judges summons and the affidavit of R.Muralikrishnan and the counter affidavit of K.S.Srinivasan filed herein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that Rule 15 prescribes the procedure for verification of pleadings in a civil case, Rule 15A as introduced by the Commercial Courts Act, 2015 prescribes a different procedure for verification of pleadings in a commercial cause, therefore it is, the legislature has used the non-obstante clause and the said non-obstante clause is not all pervasive inasmuch as sub-Rule (1) reads “non withstanding anything contained in Rule 15,” the above language was put in place only to distinguish or to make Rule 15 of Order VI of Code of Civil Procedure inapplicable to



Courts Act, 2015 applicable to the same, therefore the use of non-obstante clause in sub-Rule (1) of Rule 15A alone cannot lead to a inference that the legislature intended to make Rule 15A all pervasive and mandatory, and the object sought to be achieved by the introduction of the Commercial Courts Act, 2015 is fast track resolution of the commercial disputes, the provision under consideration i.e., Rule 15A of Order VI does not in any manner aid such fast tracking, it is only procedural requirement of verification of pleadings, an enactment brought in with the object of fast tracking resolution of disputes cannot be used to throw out defence on the technical grounds as has been repeatedly pointed out by the Hon'ble Supreme Court in adversarial litigative process, the Courts are saddled with the burden of providing equal opportunity to the parties and it becomes obligation on the part of the Courts to see that the procedural technicalities do not scuttle the legal process and the dispensation of justice and it was further observed that the judiciary is respected not on the account of its power to legalise injustice but because it is capable of removing injustice and it is expected to do so and **it is ordered as follows:-**

That the A.No.3306 of 2021 be and is hereby dismissed.

2) That the respondents herein, viz., the defendants are hereby

directed to file an appropriate affidavit of verification in the form prescribed



as required under sub-Rule (1) and (2) of Rule 15A of Order VI of the Code of Civil Procedure as amended by Commercial Courts Act, 2015 within 15 days from this date (ie) on or before 09/11/2021.

3) That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
26th DAY OF OCTOBER 2021.

Sd/-
ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)
From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



ED

02.11.2021

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A.No.3306 of 2021
in
C.S. No.829 of 2009

ORDER :-

DATED : 26.10.2021

THE HON'BLE MR.JUSTICE
R. SUBRAMANIAN

FOR APPROVAL : 10.11.2021

APPROVED ON : 15.11.2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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ORDER RESERVED ON : 07.10.2021**ORDER PRONOUNCED ON : 26.10.2021****A.No.3306 of 2021****in****C.S.No.829 of 2009**

1.Kamal Haasan,

2.M/s.Raajkamal Films International,
A Partnership Firm, represented by
its Partner, Mr.Kamal Haasan
No.4, Old No.172, Eldams Road,
Alwarpet, Chennai – 600 018.

..Applicants/ Plaintiffs

Vs.

1.Regent Saimira Entertainment Ltd.
No.27, Pyramid Saimira Towers,
G.N. Chetty Road, T.Nagar,
Chennai – 600 017, rep. by its
Whole time Director, Mr.K.S.Srinivasan.

2.K.S.Srinivasan

..Respondents/ Defendants

PRAYER:- This Application has been filed seeking to order striking out of the pleadings of the defendants or preclude them from relying on the matters in their written statement/ pleadings.

For Applicants : Mr.K.S.V.Prasad

For Respondents : Mr.A.Chidambaram

**ORDER**

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The applicants who are the plaintiffs in the suit seek to strike out the pleadings of the defendants under Order VI Rule 15A (4) and (5) of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015 read with Section 7 of the Commercial Courts Act, 2015, on the ground that there is a non-compliance with the requirement of filing of the verifying affidavit as mandated by Order VI Rule 15A (1) and (2) of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015.

The facts leading to the filing of the present application are as follows:-

2. The suit was filed by the plaintiffs even before the advent of the Commercial Courts Act, 2015 seeking a money decree for a sum of Rs.11 Crores with interest at 10% per annum for the loss suffered by the plaintiffs due to the defaults committed by the defendants in honouring their financial commitments for production of a tamil movie titled 'Marmayogi'.

3. Since the defendants did not file their written statement they were set exparte on 21.12.2016. The Commercial Division took cognizance of the suit on 01.09.2020. Subsequently on 17.03.2021, the exparte order was set aside and the defendants were granted time to file written statement by 16.04.2021, vide order made in A.No.918 of 2021. Thereafter, the

defendants had filed their written statement.



4. It is after the filing of the written statement, the plaintiffs have come up with this application seeking to strike out the written statement on the sole ground that the requirement of filing of verifying affidavit as mandated under Order VI Rule 15A of the Commercial Courts Act, 2015 has not been complied with and the said non-compliance shall result in consequences prescribed under sub-Rule (4) and (5) of Rule 15A of Order VI of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015. The said consequence according to the plaintiffs is the rejection or striking out of the pleadings.

5. The respondents/ defendants while admitting the fact that the written statement filed by them was not accompanied by a verifying affidavit would contend that the effect of non-compliance with the provisions, particularly sub-rules (1) to (5) of Rule 15A of Order VI of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015, is not a mandatory rejection and the Court has power to require the party to cure the defect and once the defect is cured the consequence prescribed under sub-Rule (5) need not follow.

6. The sum and substance of the contentions of the respondents is that the provisions of Rule 15A of Order VI of the Code of Civil Procedure as



amended by the Commercial Courts Act, 2015 are not mandatory and the provisions being procedural, the general law that a procedural statute cannot be so read in order to defeat the ends of justice and in the absence of prescription of irredeemable penal consequence, even the word 'shall' used in a procedural enactment like the Code of Civil Procedure or Commercial Courts Act, 2015 should be read only as 'may'.

7. Analogy is also drawn to the language of proviso to Order V Rule 1 sub-rule (1) of the Code of Civil Procedure introduced by the Commercial Courts Act, 2015 to buttress the contention that the provisions of Order VI Rule 15A cannot be treated as mandatory so as to strike out the defence for the mere non-filing of the verifying affidavit.

8. I have heard Mr.K.S.V.Prasad, learned counsel appearing for the applicants and Mr.A.Chidambaram, learned counsel appearing for the respondents.

9. Mr.K.S.V.Prasad, learned counsel appearing for the applicants would reiterate the averments in the affidavit filed in support of the application and contend that the provisions of Order VI Rule 15A are mandatory and any non-compliance therewith should necessarily lead to the



consequence of striking out the pleadings. He would lay considerable stress on sub-Rule (1) which starts with a non-obstante clause to buttress his submission that Rule 15A should be held to be mandatory. He would also rely upon various decisions of the Hon'ble Supreme Court in support of his submissions.

10. Before going into the precedence on the issue, it will be useful to extract the provisions of Rule 15A of Order VI of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015:-

"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.



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(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.";

11. Mr.K.S.V.Prasad, learned counsel appearing for the applicants would also rely upon the objects of the Commercial Courts Act, 2015 and the reports of the Law Commission which led to the passing of the Commercial Courts Act, 2015. According to Mr.K.S.V.Prasad, the reports of the Law Commission and the objects of the enactment can be considered as a tool in interpreting the scope, object and the intentment of the legislature in introducing a provision in the enactment. Drawing my attention to the statement of objects and reasons of enactment, Mr.K.S.V.Prasad would contend that the very object of introduction of these provisions in the Code of Civil Procedure by the Commercial Courts Act, 2015 is to prevent undue delays in disposal of the commercial causes.

12. Pointing out the very intendment of the legislature i.e., to initiate



to attract more foreign investments, Mr.K.S.V.Prasad would contend that the provision of the statute so introduced will have to be construed strictly and interpreted in such a way that it would advance the cause of the statute.

13. Reliance is placed by Mr.K.S.V.Prasad, learned counsel for the applicants on the following decisions in support of his contentions:

In *Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others* reported in **2006 (1) LW 779**, while considering the scope and ambit of Rule 1 Order VIII of the Code of Civil Procedure as amended by the Act of 1999, the Hon'ble Supreme Court has in paragraph 10 and 11 of the said judgment observed as follows:-

10. Order VIII, Rule 1 after the amendment casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Further, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Substituted Order VIII,



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Rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried.

11. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.



14. The Hon'ble Supreme Court has also pointed out that no person has a vested right in the procedure and if the procedure is altered pending litigation, such altered provision would apply to the further proceedings in the litigation.

15. In ***Bharat Singh Vs. Management of New Delhi Tuberculosis Centre, New Delhi and others*** reported in ***AIR 1986 Supreme Court 842***, the Hon'ble Supreme Court had considered the effect of Section 17B of the Industrial Disputes Act, 1947 which was inserted by the amendment Act of 1982. The Hon'ble Supreme Court had considered the extent to which the objects and reasons of enactment could influence the interpretation of the statutes by the Courts. In doing so, the Hon'ble Supreme Court had observed as follows:-

10. The Objects and Reasons give an insight into the background why this Section was introduced. Though Objects and Reasons cannot be the ultimate guide in interpretation of statutes, it often times aids in finding out what really persuaded the legislature to enact a particular provision.

11. In interpretation of statutes, Courts have steered clear of the rigid stand of looking into the words of the Section alone but have



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attempted to make the object of the enactment effective and to render its benefits into the person in whose favour it is made. The legislators are entrusted with the task of only making laws. Interpretation has to come from the Courts.

16. In *Ibrahim Bachu Bafan Vs. State of Gujarat and others* reported in ***AIR 1985 Supreme Court 697***, the Hon'ble Supreme Court had considered the Rule relating to interpretation of statutes when the same word occurs more than once in the same statute, in doing so the Hon'ble Supreme Court had observed as follows:-

7. The rule relating to interpretation of statutes is too well settled to be disputed that unless a contrary intention is expressly or by necessary implication available, words used in a statute should be given the same meaning. This position is all the more so where the word occurs in two limbs of the same section.

17. In *Suresh Chand Vs. Gulam Chisti* reported in ***AIR 1990 Supreme Court 897***, the three Judge Bench of the Hon'ble Supreme Court had reiterated the position of law stated in ***Ibrahim Bachu Bafan Vs. State of Gujarat and others*** referred to *supra*.



18. *Sonia Bhatia Vs. State of U.P and others* reported in *AIR 1981*

Supreme Court 1274 has been relied upon by Mr.K.S.V.Prasad, learned counsel for the applicants to reaffirm the well settled position of law relating to statutory interpretation that every word used by the legislature must be given due import and significance.

19. In *Babaji Kondaji Garad and others vs. Nasik Merchants Co-operative Bank Ltd., Nasik and others* reported in *AIR 1984 Supreme Court 192*, the Hon'ble Supreme Court had while interpreting Section 73-B of the Maharashtra Co-operative Societies Act which deals with the provision for reservation of seats for Scheduled Caste or Scheduled Tribes in Board of Directors of certain specified societies held that the provision should be so interpreted so as to advance the cause of the legislation viz., to give adequate representation to the members of the oppressed communities. While doing so, the Hon'ble Supreme Court held that the word 'shall' shall be read as a mandate which signifies the obligation to reserve such seats and not as a mere direction.

20. In *Rameshwar Prasad Vs. State of U.P. and others* reported in *AIR 1983 Supreme Court 383*, while considering the scope of Section 43A



Section 47 as amended by Central Act 47 of 1978, the Hon'ble Supreme Court had held that while interpreting the statute, the Court will have to bear in mind the history of the provision, the mischief which the Legislature attempted the remedy, the remedy provided by the amendment and the reasons for providing such remedy.

21. In *Kailash Vs. Nanhku and others* reported in *AIR 2005 Supreme Court 2441*, the Hon'ble Supreme Court considered the effect of the amendment to the provisions of Order VIII Rule 1 of the Code of Civil Procedure by the amending Act of the year 1999, wherein, the Hon'ble Supreme Court again pointed out the difference in Rules of interpretation of the procedural enactment and substantive law. Mr.K.S.V.Prasad would however rely upon the sub-paragraph (iv) of paragraph 45 of the said judgment, wherein the conclusions were summarized by the Hon'ble Supreme Court. The said sub-paragraph (iv) reads as follows:-

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the



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time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away.

22. I think it will be useful to re-produce sub-paragraph (v) of paragraph 45 also and it reads as follows:-

(v) Though Order VIII, Rule 1 of the CPC is a part of Procedural Law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded the Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for asking, more so when the period of 90 days has expired. Extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on



record in writing, howsoever briefly, by the Court on its being satisfied. Extension of time may be allowed if it was needed to be given for the circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended.

23. In *Smt. Bachahan Devi and another Vs. Nagar Nigam, Gorakhpur and another* reported in **2008 (2) LW 674**, the Hon'ble Supreme Court had considered the use of the words 'may' and 'shall' and the circumstances under which they could be interchanged, while interpreting Rule 25 of Order XLI of the Code of Civil Procedure which relates to the power of remand. While doing so, the Hon'ble Supreme Court had culled out two relevant considerations viz., (i) absence of any provision for the contingency of any particular Rule not being complied with or followed, and (ii) serious general inconvenience or the prejudice to the general public would result if the act in question is declared invalid for non-compliance with the particular Rule.

24. The Hon'ble Supreme Court also pointed out that ultimate Rule in construing auxiliary verbs like 'may' and 'shall' is to discover the legislative intent and use of the words by themselves cannot be made as decisive



factor. In paragraph 34 of the said judgment the Hon'ble Supreme Court has also observed as follows:-

34. Obviously where the legislature uses two words may and shall in two different parts of the same provision prima facie it would appear that the legislature manifested its intent to make one part directory and another mandatory. But that by itself is not decisive. The power of court to find out whether the provision is directory or mandatory remains unimpaired.

25. In *Uday Shankar Tiryar Vs. Ram Kalewar Prasad Singh and another* reported in **2006 (1) LW 769**, the Hon'ble Supreme Court had laid down the effect of non-compliance with the procedural requirement. While reiterating the law declared to the effect that any non-compliance with the procedural requirement relating to a pleading/ memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection. The Hon'ble Supreme Court had called out five well recognized exceptions which reads as follows:-

The well recognized exceptions to this principle are :-

i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.



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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;

26. Mr.A.Chidambaram, learned counsel appearing for the respondents would submit that even in some of the decisions which are relied upon by Mr.K.S.V.Prasad, the Hon'ble Supreme Court has pointed out that unless the relevant statute prescribes capital punishment as a consequence of non-compliance, even if the verb 'shall' has been used, it should be read as 'may', inasmuch as the provisions of both the Commercial Courts Act and the Code of Civil Procedure are only procedural in nature and they do not form part of the substantive law.

27. Mr.A.Chidambaram, learned counsel for the respondents would



Kalewar Prasad Singh and another, which has been relied upon by Mr.K.S.V.Prasad. Mr.A.Chidambaram would draw my attention to certain observations made therein to contend that the non-filing of the verifying affidavit cannot lead to the consequence of the defence being struck off. He would also add that the Court has got every power to remedy the defect and require the party concerned to file such verifying affidavit.

28. Mr.A.Chidambaram, learned counsel would also rely upon the judgment of the Calcutta High Court in **Harji Engineering Works Pvt. Ltd., Vs. Hindustan Steelworks Construction Ltd.** reported in **2021 SCC Online Cal 2457**, wherein, the scope of the very provision viz., Rule 15A of Order VI was considered by the Calcutta High Court. The Calcutta High Court after examining the scope and object of the particular Rule had held that even though Rule 4 uses the verb 'shall' it cannot be construed as mandatory and the Court has power to remedy the defect.

29. I have considered the submissions of the counsel for the parties. From the various decisions cited at the bar it is clear that in interpreting a procedural statute, the Court will have to bear in mind the intention of the legislature and if it is an amendment introduced, the Court can go a step further and examine as to what is the malady that is sought to be cured by



the amendment and the manner in which the legislature has sought to cure such malady. It is also to be borne in mind that use of the words 'shall' or 'may' which are auxiliary verbs can be interchanged depending upon the circumstances under which the legislation is brought.

30. As I had already pointed out, the Commercial Courts Act, 2015 was introduced with the object of fast tracking resolution of commercial disputes. Various provisions were incorporated to the Code of Civil Procedure and various provisions of the Code of Civil Procedure were amended and were made applicable only to commercial cases and commercial disputes. Powers of the Courts were enhanced and, under certain circumstances curbed by the said enactment.

31. A very important provision which has been held to be mandatory is the substituted second proviso to Order VIII Rule 1 of the Code of Civil Procedure which reads as follows:-

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and payment of such costs as the Court deems fit,



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*but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement **and the Court shall not allow the written statement to be taken on record.** (Emphasis supplied)*

32. It has been held that the language of the proviso indicates that the time lines fixed therein for filing of written statement are mandatory and the power of the Court to extend the time line beyond the period allowed has been specifically taken away by the enactment. Under such circumstances the Hon'ble Supreme Court had held that the said provision has to be held to be mandatory and not directory. If we are to examine the language used in Rule 15A of Order VI of the Code of Civil Procedure as amended by the Commercial Courts Act, 2015 we have to necessarily come to the conclusion that the same cannot be held to be mandatory.

33. As already pointed out sub-Rule (1) and (2) of Rule 15A requires the pleadings filed in a commercial dispute to be verified by an affidavit. The form in which the affidavit has to be filed is also prescribed in the Schedule. Sub-Rule (2) requires that the said affidavit 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 is duly authorised by such party or parties. Sub-Rule (3) provides that such a verifying affidavit shall accompany any amended pleading also. Sub-Rule (4) prohibits the party from relying upon such pleading as evidence or any of the matters set out therein unless such affidavit is filed. Sub-Rule (5) empowers the Court to strike out the pleadings which is not verified by such an affidavit. In contrast to Sub-Rule (4), Sub-Rule (5) introduces the element of discretion to the Court inasmuch as it uses the verb 'may' and not 'shall'.

34. Even in *Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others* referred to *supra*, the Hon'ble Supreme Court had held that in an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. The Hon'ble Supreme Court went on to reiterate that unless the Court is in a compulsion by express and specific language of the Statute, the provisions of the Code of Civil Procedure or any other procedural enactment shall be construed in a manner which would leave the Court to meet extraordinary situation in the ends of justice.



35. Even in *Kailash Vs. Nanhku and others* referred to supra, relied upon by Mr.K.S.V.Prasad, the Hon'ble Supreme Court while considering the provisions of Rule 1 of Order VIII of the Code of Civil Procedure as amended by the Act of 1999 had held that the provisions as such cannot be held to be mandatory. The Hon'ble Supreme Court however hastened to add that departure from the Rule should be an exception and not a Rule itself.

36. An analysis of the judgments cited at the bar particularly the guidelines that were summed up in paragraph 45 of *Kailash Vs. Nanhku and others* referred to supra, shows that a procedural statute will have to be held to be directory and not mandatory unless the statute itself prescribes a particular consequence (striking of defence in the case on hand) for non-compliance. Such an intention should be gathered from the language of the statute. I have already extracted the provisions of Rule 15A and the necessary requirements also. No doubt, sub-Rule (4) uses the word 'shall' and prohibits the litigants from relying upon such pleadings. But there is a change in the language used by the legislature in sub-Rule (5), when it comes to striking out the pleadings. There, the word 'may' is used, thereby investing a discretion in the Court to reject the pleading or to strike out the pleading as a consequence of non-compliance with sub-Rule (1) and (2) of Rule 15A.



37. This in my considered opinion would definitely lead to the conclusion that the intention of the legislature was not to prescribe striking out of defence as a necessary consequence of non-filing of an affidavit of verification. To put it in other words, the legislature did not intend to curb the power of the Court to remedy the defect by directing the party to file an affidavit which would satisfy the requirement of sub-Rule (1) and (2) of Rule 15A.

38. In fact, the Calcutta High Court in the recent judgment reported in ***Harji Engineering Works Pvt. Ltd., Vs. Hindustan Steelworks Construction Ltd.*** referred to *supra* has also reached the above conclusion. In paragraph 17 of the said judgment, the Hon'ble Mr. Justice Moushumi Bhattacharya observed as follows:-

17. The above discussion may be seen in addition to the general inclination of a court to treat procedural lapses with kindness unless a party disentitles itself to such benevolence by reason of its conduct or by operation of law. Without taking the avowed object of quick resolution of commercial disputes away from the 2015 Act, rules of procedure cannot be given precedence in a manner so as to defeat the substantive rights of the parties unless specifically

prohibited by law. In the present case, Sub-rule (5) of Order VI Ruel 15A can be pressed into service in aid of the defendant. If a purposive interpretation is given to the various provisions contained therein, the discretion conferred on a court in the matter of striking out a pleading which is not verified by a Statement of Truth cannot be seen as a speed-breaker in the momentum of the Act.

I do not see any reason to differ from the said conclusion reached by the Calcutta High Court.

39. I should also refer to the submissions of Mr.K.S.V.Prasad on the language of sub-Rule (1) of Rule 15A which starts with non-abstanti clause 'Not withstanding'. Mr.K.S.V.Prasad, would contend that use of such non-obstante clause in sub-Rule (1) would demonstrate the legislative intent to make it mandatory and not directory.

40. I am unable to concur with the submission of the counsel for the applicants. The provisions of Rule 15A are introduced and added in the Code of Civil Procedure by the Commercial Courts Act, 2015. Rule 15 of



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15. Verification of pleadings.-- (1) *Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

(2) *The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

(3) *The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

(4) *The person verifying the pleading shall also furnish an affidavit in support of his pleadings.*

41. As could be gathered from the above provisions, Rule 15 prescribes the procedure for verification of pleadings in a civil case. Rule



different procedure for verification of pleadings in a commercial cause.

Therefore it is, the legislature has used the non-obstante clause and the said non-obstante clause is not all pervasive inasmuch as sub-Rule (1) reads “non notwithstanding anything contained in Rule 15.” The above language was put in place only to distinguish or to make Rule 15 of Order VI of Code of Civil Procedure inapplicable to commercial causes and to make Rule 15A introduced by the Commercial Courts Act, 2015 applicable to the same. Therefore the use of non-obstante clause in sub-Rule (1) of Rule 15A alone cannot lead to a inference that the legislature intended to make Rule 15A all pervasive and mandatory.

42. No doubt the objects and reasons of enactment would have a bearing on the interpretation. But, the same shall not be the sole guide or the ultimate guide. This has been pointed out by the Hon'ble Supreme Court in *Bharat Singh Vs. Management of New Delhi Tuberculosis Centre, New Delhi and others* referred to supra. The object sought to be achieved by the introduction of the Commercial Courts Act, 2015 is fast track resolution of the commercial disputes. The provision under consideration i.e., Rule 15A of Order VI does not in any manner aid such fast tracking. It

is only procedural requirement of verification of pleadings. An enactment



brought in with the object of fast tracking resolution of disputes cannot be used to throw out defence on the technical grounds is has been repeatedly pointed out by the Hon'ble Supreme Court in adversarial litigative process, the Courts are saddled with the burden of providing equal opportunity to the parties and it becomes obligation on the part of the Courts to see that the procedural technicalities do not scuttle the legal process and the dispensation of justice.

43. As observed by the Hon'ble Supreme Court in *Collector Land Acquisition, Anantnag and another Vs. Katiji and others* reported in *100 LW 676*, when technical considerations are pitted against the cause of substantive justice, it is substantive justice that should prevail. It was further observed that the judiciary is respected not on the account of its power to legalise injustice but because it is capable of removing injustice and it is expected to do so. These observations of the Hon'ble Supreme Court, though made in the context of condonation of delay, would in my opinion equally apply to the case on hand also.

44. In view of the above conclusions A.No.3306 of 2021 is

dismissed. The respondents viz., the defendants are directed to file an



appropriate affidavit of verification in the form prescribed as required under sub-Rule (1) and (2) of Rule 15A of Order VI of the Code of Civil Procedure as amended by Commercial Courts Act, 2015 within 15 days from today. In the circumstances there will be no order as to costs.

Sd./-R.S.M.J.

26/10/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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