

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.551 OF 2019
IN
NOTICE OF MOTION NO. 528 OF 2015
IN
SUIT NO. 175 OF 2014
WITH
INTERIM APPLICATION NO.543 OF 2019**

Sanjay Mishrimal Punamiya
of Mumbai Indian Inhabitant,
residing at 5th Floor, Flat No.21,
A1-Sabah Court, 73/105 Marine
Drive, Mumbai – 400 020

... APPELLANT

VERSUS

1. Sheikhah Fadiyah Saad Al Abdulla,
Al Sabah, through constituted
Mr. Firas El-Kurdi, having her
address at Arabian Gulf Street,
Shaab Palace, P.O.Box 841,
Hawalli – 32009, Kuwait
2. Amish Amir Shaikh
presently residing at Room Next
to Flat No.1, Ground Floor,
Al-Sabha Court, 73 Marine Drive,
Mumbai – 400 020.
3. Mahesh Rupnarayan Soni
having his business at
Shop No.3, Golden Nest, Phase 8,
Mira Bhayander Road, Thane – 401 107

... RESPONDENTS

**WITH
APPEAL NO.34 OF 2021
IN
NOTICE OF MOTION NO.534 OF 2015**

**IN
SUIT NO. 175 OF 2014
WITH
INTERIM APPLICATION NO.555 OF 2019**

Mahesh Rupnarayan Soni
having his business at Shop No.3,
Golden Nest, Phase – B,
Mira Bhayandar Road, Thane – 401 107

... APPELLANT

VERSUS

1. Sheikhah Fadiyah Saad Al Abdulla,
Al Sabah, through constituted
Mr. Firas El-Kurdi, having her
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to Flat No.1, Ground Floor,
Al-Sabha Court, 73 Marine Drive,
Mumbai – 400 020.

... RESPONDENTS

Mr. Anil V. Anturkar, Senior Advocate with Mr. Zal Andhyarujina, Senior Advocate i/by Mr. Vipul J. Shah, for Appellant in APP 551 of 2019 and for Respondent No.2 in APP 34 of 2021.

Mr. Sharan Jagtiani, Senior Advocate with Mr. Haresh Jagtiani, Senior Advocate with Mr. Yashpal Jain, Mr. Suprabh Jain, Ms. Apurva Manwani, Ms. Bhumika Chulani, Ms. Aditi Harsha, Ms. Jahn timer Vora, for Respondent No.1 in both Appeals.

Mr. Ashish Kamat with Mr. Shubhradeep Banerjee, Mr. Rajkumar Mishra i/by R.K.Mishra and Co., for Appellant in APP 34 of 2021 and for Respondent No.3 in APP 551 of 2019.

Ms. Twinkle Gadhiya i/by L.C.Tolat and Co., for Respondent No.2 in APP 551 of 2019 and for Respondent No.3 in APP 34 of 2021.

**CORAM: S.J.KATHAWALLA &
MILIND N. JADHAV**

**JUDGMENT RESERVED ON : 9th MARCH 2022
JUDGMENT PRONOUNCED ON : 23rd MARCH 2022**

JUDGMENT : (PER S.J.KATHAWALLA & MILIND N. JADHAV, JJ.)

1. These Appeals challenge a common Order of the Learned Single Judge dated 6th September 2021 (**“the Impugned Order”**). The Appellant in Appeal No.551 of 2019 is the Original Defendant No.1 (**“Defendant No.1”**) in the Suit and also Respondent No.2 in the Appeal No.34 of 2021. Defendant No.1 claims to be in possession of Flat No. 21 as a tenant. Flat No. 21 is located on the 5th Floor in the building known as Al Sabah Court located at Marine Drive. Respondent No.2 in Appeal No. 551 of 2019 is Defendant No.2 (**“Defendant No.2”**) in the Suit and Respondent No.3 in the connected Appeal No.34 of 2021. Defendant No.2 claims to be in possession of a room on the ground floor next to Room No.1 in the same building as a tenant. The Appellant in Appeal No.34 of 2021 is the Defendant No.3 in the Suit and Respondent No.3 in the Appeal No. 551 of 2019 (**“Defendant No.3”**). Defendant No.3 claims to be in possession of a room located adjacent to the terrace on the 6th floor in the same building as tenant. Respondent No.1 who is the original Plaintiff (**“Plaintiff”**) in the Suit is the landlord of the entire Building – Al Sabah

Court. Al Sabah Court belongs to the Plaintiff and the Royal Family of Kuwait of which the Plaintiff is also a member.

2. By the Impugned Order the Learned Single Judge has rejected Notice of Motion No.528 of 2015 and Notice of Motion No.534 of 2015. Notice of Motion No.528 of 2015 was taken out by Defendant No.1 for directions to the Plaintiff to prove to the satisfaction of the Court that Firaz El-Kurdi, the Power of Attorney holder of the Plaintiff (“**Constituted Attorney**”), being the person who has verified the Complaint and filed an Affidavit in Support of the Complaint, is acquainted with the facts of the case in terms of Order VI Rule 15 of the CPC 1908. Defendant No.3, the Appellant in the Appeal No.34 of 2019, challenges the Impugned Order dismissing Notice of Motion No. 534 of 2015 taken out by the said Defendant No.3 seeking dismissal of the Suit and / or rejection of the Complaint as filed by the Plaintiff under Order VI Rule 14 or under Order VII Rule 11 of CPC.

3. It is the case of the Defendants that the Plaintiff, who claims to be one of the heirs of the deceased landlord (Shaikh Abdullah Al-Salem Al- Sabah, Late Emir of Kuwait) of Al Sabah Court Building in which the Suit Premises are situated, has filed a suit through the Constituted Attorney, Firaz El-Kurdi, who is not personally aware of the facts and circumstances of the case. It is then contended that despite being unaware, the Constituted Attorney has affirmed the Complaint on the basis of Power of Attorney of the Plaintiff which, on the date of verification of the Complaint i.e. on 5th

December 2013 was not properly stamped as per the Maharashtra Stamp Act. It had therefore been prayed that the verification in the Plaint does not meet the requirements of Order VI Rule 15 and that the Plaintiff should satisfy the Court on the compliance of provisions of Order VI Rule 15 and/or the Plaint be dismissed on the grounds of defective verification.

4. Further, it has also been argued in these Appeals that there is non-compliance of provisions of Order VI Rule 15(4) that relates to an Affidavit in support of the pleadings. It is the case of the Defendants that since the Affidavit in support of the Plaint does not disclose sources of the information set out in the Plaint and since the deponent does not have any personal knowledge as regards the averments so made, the same does not meet the requirements of Order VI Rule 15(4).

5. Another issue that was argued, by placing reliance on the Bombay High Court (Original Side) Rules, 1958, is that if the verification does not comply with Order VI Rule 15, the Plaint ought not to be admitted to the register of suits under Rule 47 and should continue to remain under lodgement under Rule 45. It was also argued that for admitting the Plaint into the register, the Prothonotary and Senior Master of the Bombay High Court is the authority who must be satisfied in relation to the compliance of Order VI Rule 15, although the provisions uses the expression 'Court'.

BRIEF FACTS AS STATED IN THE PLAINT

6. Since the main issue that arises in these Appeals pertains to the verification of the Plaint, it would be relevant to note at the outset some of the salient facts as stated in the Plaint.

7. At paragraph 5 of the Plaint it is stated that in 1955, Al Sabah Court was taken on a long term lease by the late Emir of Kuwait namely Shaikh Abdullah Al-Salem Al- Sabah (“**Shaikh Abdullah**”). On 24th November 1965 Shaikh Abdullah passed away. It is also stated that on 1st May 1966, Shaikh Saad Al-Abdullah Al –Sabah (“**Shaikh Saad**”) being the heir of the Late Emir, Shaikh Abdullah obtained the inheritance certificate in his favour.

8. At paragraph 5 of the Plaint it is stated that on 13th May 2008, Shaikh Saad passed away and that the present heirs have obtained succession certificate from the state of Kuwait, Ministry of Justice Legal Authentication Inheritance Division Vide Succession Certificate No. 770/ 2008.

9. At paragraph 6 of the Plaint, it is the case of the Plaintiff that Faisal Essa was the caretaker of Al Sabah Court during the lifetime of Shaikh Saad. Faisal Essa used to visit the building regularly and had appointed full time staff to look after the Suit Premises. It has been stated in the Plaint that after the demise of Shaikh Saad his legal heirs including the Plaintiff granted necessary and specific authority to Faisal Essa to take care of their properties including Al Sabah Court.

10. At paragraph 9 of the Plaintiff, it has been stated that at the relevant point of time the entire building was occupied by tenants except the Suit Premises which were owned, occupied, possessed and fully seized by Shaikh Saad and after his demise by his legal heirs including the Plaintiff. The Suit Premises were in absolute use, occupation and possession of Mr Faisal Essa who was the caretaker since the lifetime of Shaikh Saad. The Suit Premises as mentioned in Exhibit A to the Plaintiff consists of :

- a) Flat No.21 on 5th floor admeasuring about 7000 sq. ft.;
- b) Office room on the ground floor admeasuring 270 sq. ft.
- c) Room on the 6th floor admeasuring 300 sq ft. in Al Sabah Court.

11. At paragraph 13 of the Plaintiff, the Plaintiff has stated that between 18th January 2013 and 16th February 2013, Mr. Faisal Essa had a kidney transplant at Breach Candy hospital in Mumbai and was admitted to the hospital for this duration.

12. At paragraphs 13 to 16, it has been stated that on 6th May 2013, Faisal Essa left India as he wanted to rest in Kuwait due to his surgery. The keys to the Suit Premises were handed over to the staff members. At this point of time the Defendant No. 1 was a tenant in respect of Flat No. 3 situated on the 1st floor of Al Sabah Court. The Plaintiff has further stated in the said paragraphs that upon Faisal Essa leaving the country, the Defendants took illegal possession of Suit Premises by colluding with the domestic staff and paying them substantial sums and bringing pressure upon them to toe their line. It has further been stated that the Plaintiff was unaware about this

incident at the relevant time.

13. At paragraph 19, the Plaintiff states that in order to legitimize their occupation, the Defendants have created forged and fabricated documents to create illegal tenancy over the Suit Premises.

14. At paragraph 33 of the Plaint, the Plaintiff has enumerated the grounds of challenge to the Tenancy Agreements dated 30th October 2012 and 31st January 2013 which *inter alia* are as follows :

(i) That the Tenancy Agreements have been executed by the Defendants with a dead person i.e. Shaikh Abdullah.

(ii) Signature of Faisal Essa (power of attorney holder of the late Emir, Shaikh Abdullah) has been forged.

(iii) Tenancy Agreements are not registered and no stamp duty has been paid on the same.

(iv) No amount of monthly rent was mentioned in the purported forged Tenancy Agreements.

15. At paragraph 26, the Plaintiff has stated that on 10th November 2012, Defendant No.1 filed a criminal complaint u/s. 406, 504, 506 of IPC r/w sections 3 and 25 of the Arms Act alleging that Faisal Essa threatened him with a revolver to vacate the premises. On 18th February 2018, the learned Magistrate passed directions for the complaint to be sent for investigation under section 156(3) of CrPC.

16. At paragraphs 36 and 37 of the Plaintiff, it is stated that on 12th December 2012, Defendant No.1 also filed a R.A.N Application bearing No. 47 of 2012 for fixation of standard rent. It has been submitted that the said R.A.N Application was filed against Shaikh Abdullah who expired in 1965 and Faisal Essa. It has been further stated that on 22nd December 2012, the Small Causes Court passed an ex-parte order directing the Defendants therein to deposit a lump sum amount of Rs.50,000/- on a quarterly basis as rent. It is the case of the Plaintiff that even the rent receipts attached to the RAN Application were forged. The Plaintiff further states that the Writ of Summons was not served for the aforesaid proceedings on the Plaintiff.

17. At paragraph 39 of the Plaintiff, the Plaintiff states that on 7th September 2013, R.A.N Application No.47 of 2012 has been dismissed for default.

18. At paragraph 40, the Plaintiff has mentioned that on 22nd January 2013, the Defendant No. 1 has also filed RAD Suit No.174 of 2013 in the Small Causes Court seeking declaration as a tenant with respect to Flat No.21.

19. At paragraphs 42 and 43, it has been stated that on 3rd April 2013 the Defendant Nos.2 and 3 also filed separate RAD suits bearing No. 606 of 2013 and 607 of 2013 in respect of premises on the Ground Floor and in respect of room adjacent to terrace on the 6th floor. It has been submitted that both the Small Causes Court suits have been filed against Shaikh Abdullah through his Constituted Attorney, Faisal Essa. The Plaintiff states that the Defendants have claimed that the summons in the

above suits have purportedly been served upon the Defendants in that Suit (one of them being Shaikh Abdullah) on 8th April 2018 at one of the Suit Premises. It has been mentioned in the Plaint that as per the Tenancy Agreements, the Defendant Nos. 2 and 3 claimed that they were in possession of that Suit Premise since August 2012. The Plaintiffs have brought certain documents on record in order to establish the occupation of the owners of the Suit Premises during this period (at least till May 2013), which are the Valuation Report to show that the Plaintiff was in possession of the premises at the time when the Defendant Nos.2 and 3 contended to be in possession, electricity bills for the relevant time and the Affidavits of other tenants.

20. At paragraph 44, it has been stated in the Plaint that the Suits have been decreed on 8th May 2013 i.e. within 30 days from the purported service of Writ of Summons.

21. The Plaintiff, in this background, has submitted that the Defendants have illegally and without the authority of law trespassed into the Suit Premises by perpetrating a serious and brazen fraud. It is the Plaintiff's case that Plaintiff was unaware about these events since none of the proceedings were served upon the Plaintiff. It is only after Faisal left for Kuwait on 6th May 2013 that the Plaintiff learnt about these events through some tenants.

22. At paragraph 68 of the Plaint, it has been further submitted that since the matter was of serious concern with long term implications involving Diplomatic

channels, the Royal family of Kuwait has written complaints to the higher ups in Police departments, Kuwait Consulate and to External Affairs Ministry of India regarding the illegalities committed by the Defendants.

23. In view of the above averments and cause of action, the Plaintiff *inter alia* seeks the relief of declaration that the abovementioned Tenancy Agreements are fraudulent, for recovery of possession from the Defendants as also a monetary claim for mesne profits for the period of illegal occupation by the Defendants.

24. The verification clause of the Plaintiff reads as under :

“VERIFICATION

I, Mr. Firas El-Kurdi, constituted attorney of Plaintiff, Having address at Arabian Gulf Street, Shaab Palace, P.O.Box -841, Hawalli-32009, Kuwait, presently in Mumbai do hereby solemnly declare that what is stated in paragraphs Nos. 1 to 60 is true to my knowledge and what is stated in remaining paragraph Nos. 61 to 94 is stated on information and belief and I believe the same to be true.

Solemnly declared at Mumbai)

S/d-

This 5th day of December, 2013)

Before me,

S/d-

Mzm Legal/Munir Merchant

Advocate for the Plaintiff

NOTICE OF MOTIONS FILED BY DEFENDANTS

25. Notice of Motion No. 528 of 2015 was filed by Defendant No.1 on the following grounds :

(a) That grave allegations of fraud, forgery, collusion and trespass are made against the Defendants and thus it is of relevance that this Court be satisfied that the person verifying the Plaint is acquainted with the facts of the case.

(b) The satisfaction of the Court about the person verifying the Plaint being acquainted with the facts of the case given the background of the dispute is a mandatory requirement and of grave importance and unless the same is done, the Suit should be stayed.

26. In this background, the following relief was sought in the Notice of Motion :

"(a) That without prejudice to the rights and contentions of Defendant No.1 that the Plaint was not filed as per law and rules of procedure and is not a legally instituted Plaint, this Hon'ble Court be pleased to direct the Plaintiff to prove to the satisfaction of the Court that Firas El Kurdi the person who has verified the Plaint and filed an Affidavit in support of the Plaint is acquainted with the facts of the case in terms of Order VI Rule 15 of the Code of Civil Procedure, 1908."

27. Notice of Motion No. 534 of 2015 was filed by Defendant No.3 on the following grounds :

(a) That Mr. Firas El-Kurdi who had signed the verification to the

Plaint and affirmed the Affidavit in support of the Plaintiff, had no personal knowledge of the facts alleged and stated in the Plaintiff;

(b) That there was no subsisting and binding Special Power of Attorney dated 29th July 2013 at the time of the Plaintiff and that no steps have been taken by the Plaintiff to comply by the undertaking dated 5th December 2013 given at the time of lodging the Plaintiff for this Court to admit the Plaintiff on the basis of the said Power of Attorney;

28. Notice of Motion No. 534 of 2015, filed by Defendant No.3 sought the following reliefs :-

"(a) That this Hon'ble Court be pleased to dismiss the suit as filed by the Plaintiff.

(b) That in the alternative to Prayer Clause "a" above, this Hon'ble Court be pleased to reject the Plaintiff as filed by the Plaintiff under Order VI Rule 14 or under Order VII Rule 11 and/or under Section 151 of the Code of Civil Procedure, 1908."

IMPUGNED ORDER DATED 6TH SEPTEMBER 2019

29. The Learned Single Judge whilst rejecting both the motions has analysed the Plaintiff in great detail in paragraphs 11 to 15. The Learned Single Judge after considering the Plaintiff and the law relied upon by both parties has held in paragraphs 27 and 28 the following :

"27. On going through the plaintiff in great detail, I am unable to agree with the argument of Mr Kapadia that there is a defect in the verification as such that would non-suit the plaintiff. Order VI Rule 14 of the CPC deal with how the pleadings are to be signed. It states that, every pleading shall

be signed by the party and his pleader (if any). The proviso to Rule 14 carves out an exception that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Order VI Rule 15 of the CPC deals with verification of pleadings. It states that, 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. It further stipulates that the person verifying shall specify, by reference to the numbered paragraphs of the pleadings, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. From what is stated in the plaint, it is quite apparent, at least prima facie, that the constituted attorney of the plaintiff, Mr Kurdi is acquainted with the facts of the case. Mr Kurdi has referred to and relied upon several documents in the plaint including the alleged forged and fabricated Tenancy Agreements, as well as the Succession Certificates granted by Kuwaiti Authorities, first to Sheikh Saad on the death of Sheikh Abdullah, and then to the plaintiff on the death of Sheikh Saad. In fact, the reliefs in the plaint revolve around the fact that the Tenancy Agreement dated 30th October, 2012 entered into with defendant No.1 and two Tenancy Agreements dated 31st January, 2013 entered into with defendant Nos.2 and 3 are forged and fabricated documents and do not bind the plaintiff. This is the real dispute in the suit. All the facts pleaded in the plaint are in relation to establishing that these Tenancy Agreements are bogus. The fact that Sheikh Abdullah expired on 24th November, 1965 is to the knowledge of the constituted attorney of the plaintiff. It is this fact, and which is to the knowledge of the constituted attorney of the plaintiff, which is really important. This is for the simple reason that everything else flows from this. The

contentions with reference to the Tenancy Agreements being forged and fabricated is on the basis that they are supposedly entered into with Sheikh Abdullah (through his constituted attorney Mr Faizal) who expired way back on 24th November, 1965. It is impossible that an agreement is entered into with a dead person. I am not going into greater details with reference to these Tenancy Agreements as that would prejudice the rights of the parties when they argue the main Notice of Motion No. 313 of 2014. However, at least to my mind, the plaintiff has satisfied the requirements of Order VI Rule 15 Sub-Rule 1 of the CPC which clearly stipulates that it should be proved to the satisfaction of the Court that the person verifying the plaint is acquainted with the facts of the case. I clearly find that this test is met in the facts and circumstances of the present case. As mentioned earlier, I have in great detail set out what is stated in the plaint. I have also perused the documents that have been annexed to the plaint in great detail. On going through the same I do not think that it is correct on the part of the defendants to contend that the verification clause is defective so as to non-suit the plaintiff by virtue of the provisions of Order IV Rule 1 sub-rule 3 of the CPC which stipulates that the plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2). In turn sub-rule 2 of Rule 1 of Order IV of the CPC stipulates that every plaint shall comply with the rules contained in Orders VI and VII of the CPC so far as they are applicable. What is important to note is that Order IV Rule 1 sub-rule 2 of the CPC uses the word “so far as they are applicable”. It does not mean that every rule of Order VI or Order VII of the CPC have to be complied with in its strict sense so as to non-suit the plaintiff. For example, Rule 2 of Order VI of the CPC stipulates that the pleadings should contain and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not

the evidence for which they are to be proved. If the argument of Mr Kapadia is to be accepted, then if the evidence is mentioned in the pleadings, there would be non-compliance of Rule 2 of Order VI of the CPC which would in turn, non-suit the plaintiff by virtue of Order IV Rule 1 sub-rule 2 of the CPC. I do not think, this was ever the intention of the Legislature. This is more so when one clearly takes into consideration that it is now well settled that the laws of procedure are the handmaidens of justice. Rules of procedure are to advance justice and not to scuttle or thwart the same. This being the position I am unable to agree with the arguments canvassed by Mr Kapadia that the verification clause is defective, and therefore, by virtue of provisions of Order IV Rule 1 sub-rule 3 of the CPC, the plaint is deemed to be not properly instituted.

28. I also find considerable force in the argument of Mr. Jagtiani that when the present Notices of Motion are being heard, the Court has to be satisfied that the person verifying the plaint is acquainted with the facts of the case (as contemplated under Order VI Rule 15). The question of proof is different from the question of establishing that the person verifying the plaint is acquainted with the facts. The question of proof would arise at the trial of the suit and not at this stage. If what is stated in the plaint is not proved by the plaintiff either through his constituted attorney or any other person, the suit will fail. This would be at the trial of the suit. However, that does not mean that the plaint has been incorrectly verified. These are two separate and distinct matters. Reading the plaint as a whole and which sets out in great detail what has transpired in the above matter and which is mainly based on documentary evidence coupled with the fact that those alleged documents have been entered into with a person who passed away as far back as on 24th November, 1965, I find that Mr. Jagtiani is correct in his submission that it is wrong on the part of the defendants to contend that the plaint is

defective as it is not properly verified.”

30. With these findings, the Notice of Motions were dismissed.
31. In the above background, the questions that arise for our consideration in these Appeals are as follows :
- (i) Whether the verification appended to the present Plaint fulfills the requirements of Order VI Rule 15 of CPC ?
 - (ii) Whether the Prothonotary and Senior Master of this Court is the authority who is to be satisfied in relation to fulfillment of requirements for the purposes of verification under Order VI Rule 15 as per CPC read with the Bombay High Court (Original Side) Rules, 1980?
 - (iii) Whether an Affidavit as contemplated under Order VI Rule 15(4) must meet the requirements as laid down under Order XIX Rules 1 and 3 of the CPC?

**SUBMISSIONS OF THE PARTIES IN REGARD TO THE QUESTION
“WHETHER THE VERIFICATION APPENDED TO THE PRESENT
PLAINT FULFILLS THE REQUIREMENTS OF ORDER VI RULE 15 OF
CPC**

32. Shri Anturkar, Ld. Senior Advocate along with Shri Zal Andhyarujina, Ld. Senior Advocate for the Appellant/Defendant No.1 made the following submission :

32.1 Shri Anturkar relying upon Order VI Rule 15 read with Order VI Rule 14 have contended that the signatory to the Complaint/verification ought to be acquainted with the facts of the case. Whilst explaining the rationale of verifying a Complaint, Shri Anturkar has submitted that this is to avoid an attempt to bring before the Court a case based on false and malicious averments. The purpose being to fix responsibility on a person for such averments and to avoid proxy litigations.

32.2 That the requirement as laid down in Order VI Rule 15 is mandatory without the compliance of which the Complaint cannot travel the distance between Rule 45 (lodgement of a Complaint) to Rule 47 (admission of a Complaint in the register of suits) of the Bombay High Court (Original Side) Rules, 1980 (“**High Court Rules**”).

32.3 That the relevant authority for the purposes of the verification being ‘*to the satisfaction of the Court*’ is the Prothonotary and Senior Master (“**Prothonotary**”) and the Prothonotary needs to be satisfied, even *prima facie*, about the personal knowledge of the person signing such verification. Thus, it is the obligation of the Prothonotary to ensure that the signatory has, on the basis of his own knowledge, verified the Complaint and if he is not, then the Complaint ought not to be admitted under Rule 47 of the High Court Rules.

32.4 That in case the Prothonotary has not been satisfied or has not conducted the enquiry as mandated under Order VI Rule 15 then, the Complaint ought to revert back to the stage of lodgement. This Court cannot entertain such a Complaint.

Thus, since the Complaint is not admitted, no interim reliefs can be granted.

32.5 That the knowledge may not be 'first hand' however it can be on the basis of acquaintance; acquaintance has to be something more than merely being aware. It must mean knowledge. It may not strictly speaking be to the signatory's personal knowledge. Acquaintance presupposes knowledge of fact or experience.

32.6 That in the present case, a bare reading of the Complaint would show that the signatory to the verification clause, i.e., Firas El- Kurdi who according to the Plaintiff is the Power of Attorney holder of the Plaintiff, does not have any personal knowledge or knowledge about the averments made in the Complaint and the case sought to be made out by the Plaintiff.

32.7 That the defect in the verification is curable, however, unless the same was cured, the Complaint could not have been numbered and the same could not be entered into the register.

32.8 That the Affidavit annexed to the Complaint was also a slipshod Affidavit and did not fulfil the requirements of CPC and did not indicate the sources / basis on which the averments were made in the Complaint. Also, the Affidavit must meet the requirements of Order XIX of CPC dealing with 'Affidavits'.

33. Shri Anturkar relied upon various judgments and legal dictionaries in his opening and rejoinder submission, which have been considered hereinafter.

34. Shri Ashish Kamat, Learned Advocate appearing for the Appellant in Appeal No.34 of 2021 (Original Defendant No.3) has argued / submitted :

34.1 That Order VI Rule 15 requires the Plaint to be signed/verified by a party who is proved to the 'satisfaction of the Court' to be 'acquainted with the facts of the case'. In order to make the aforesaid submission, reliance was placed upon the provisions of Order VI Rules 4, 9, 10, 14 and 15.

34.2 That the aforementioned provisions make it clear that only a person who has personal knowledge of the facts of the case ought to sign and verify the Plaint.

34.3 That the test that requires to be met is whether or not the person signing is "acquainted with the facts of the case and has personal knowledge regarding the same". The mandate of Order VI Rule 15 (2) requires the deponent to mention what he verifies of his *own knowledge* and what he verifies upon information received and believed to be true. However, in the present case the verification reads "my knowledge" and not "own knowledge".

34.4 That when the contents of the Plaint are stated to be on the basis of a party's "information" and "beliefs", the source of such information and beliefs needs to be shown i.e. on what basis are the assertions made in the Plaint which was absent in the present case. It was further argued that even the paragraph numbers have not been filled in the verification clause which further reflect the defect in the verification clause.

34.5. Relying on the aforementioned provision, it was submitted that the Affidavit must necessarily be confined to such facts as the deponent is able of his own knowledge to prove which was not complied with in the present case. Upon taking the Court through the Affidavit in support of the Plaint, it was further contended that the Affidavit is not confined to the facts derived from the deponent's personal knowledge and in fact does not even state the source of information.

34.6 That when the various incidents mentioned in the Plaint were taking place, the deponent was not in India and hence the test as laid down in Order VI Rule 15, CPC, 1908 was not met. It was further submitted that it seemed that Faisal who had personal knowledge of the events did not want to give his imprimatur to the averments in the Plaint.

33.7 That the Affidavit annexed to the Plaint did not fulfill the requirements of Order XIX Rules (1) and (3) and thus was not a compliant affidavit.

33.8. Upon reading of the aforementioned provisions, it was submitted that the Affidavit must necessarily be confined to such facts as the deponent is able of his own knowledge to prove which was not complied with in the present case. Upon taking the Court through the Affidavit in support of the Plaint, it was contended that the Affidavit does not even state the source of information.

33.9 Relying on Rule 44 of High Court Rules which deals with "*Plaint to be verified and before whom*", it was submitted that as per the said rule, the verification

ought to be in Form 3 of the said Rules. Upon taking the Court through Form 3, it was submitted that the said Rule takes the requirement of verification a notch higher and requires “own knowledge” of the party verifying the Plaint as mentioned in Form 3. It was further pointed out that as per section 129 of CPC, 1908, the High Court Rules prevail over CPC. Thus it was submitted that since the rules require the contents of the Plaint to be to the Party’s personal knowledge, any deviation from the same would make such verification defective.

33.10 In conclusion, the Learned Advocate also pointed out that there was no response to the Notice of Motion in order to establish the manner in which Mr. Kurdi has personal knowledge.

34. On the other hand, Shri Sharan Jagtiani, Learned Senior Advocate appearing for the Respondent No.1 (Original Plaintiff), submitted :

34.1 That Order VI Rule 14 contemplates signing of a pleading not only by a party but also by *any person duly authorized by him to sign the same*. In effect, as per Rule 14, a Power of Attorney holder would also be empowered to sign the pleading on behalf of the Plaintiff.

34.2 That Sub-Rule 1 of Order VI Rule 15 requires a Plaint to be verified at the foot by a party or some other person who is to the satisfaction of the Court *acquainted with the facts of the Court*. A person may be acquainted with the facts of a case either on the basis of knowledge gained through his direct involvement or

knowledge acquired through other means such as by relying upon and believing what is available in documents or from other persons or by drawing inferences from facts or forming opinions etc. Since the test is to prove 'acquaintance' to the satisfaction of the Court, that cannot be understood as any higher requirement by interpreting the word 'own knowledge' to mean personal knowledge in the sense of a person who is in a position to give direct evidence or testimony of the facts pleaded.

34.3 That sub-rule 2 of Order VI Rule 15 contemplates verification in two categories i.e. (i) on the basis of signatory's own knowledge and (ii) information obtained/received which the signatory believes to be true. In this light it was contended that the verification of a pleading is not confined only to facts within the personal knowledge of the person verifying the pleading as is sought to be argued by the Defendants.

34.4 That the Defendants are testing the verification clause of a Pleat by importing or borrowing principles from the law of evidence. There are various other provisions of Order VI, VII of the CPC which are indications that the requirements of a pleading and a verification on that pleading cannot be conflated with notions of evidence. Reliance was placed on Order VI Rules 2,4, 10, 12. On the basis of these provisions, it was contended that the mode of proof / question of whether the signatory has personal knowledge are not required to be gone into at the stage of the Pleading.

35.5 That the verification is in effect divided into two parts : (i) that a party or the power of attorney holder can state on the basis of his own knowledge and (ii) that which the party or the power of attorney holder states on the basis of information. On this basis it has been submitted that the requirement under sub-rule (2) cannot be higher than the requirement as mentioned in sub-rule (1) i.e. the party or the power of attorney holder ought to be 'acquainted' with the facts of the case.

34.6 In order to explain the meaning of the term 'acquaintance' and 'knowledge', reliance was placed on various judgments discussed hereinafter.

34.7. Shri Sharan Jagtiani, has taken us through the Complaint in great detail in order to show the acquaintance of the signatory with respect to the facts of the case and his sources of knowledge. On the basis of the Complaint it has been argued that in the present case apart from the signatory's own knowledge all the sources of the knowledge of the salient facts can be found in the Complaint and the documents annexed to the Complaint.

34.8. It was then contended that under Order VI Rule 15, it is the Court that has to be satisfied and that 'Court' can never mean the Prothonotary. Before the Learned Single Judge this is also how the Appellants understood the provision and made the application to the Court/Judge. In Appeal, in contradiction to their own Notices of Motion they now contend that this requirement is to be considered by the Prothonotary. The word 'Court' can never mean the Prothonotary. The powers of

the Prothonotary do not include making this kind of adjudication on a dispute between the parties. Under Rule 131 there is a delegation of powers to the Prothonotary and there is no power to decide issues of this nature. The Prothonotary has to only consider that a Plaintiff fulfils the procedural and requirements of form as set out in Rule 42, which can be considered by the Prothonotary. It was also submitted that Form 3 of the High Court Rules makes no substantive addition to the requirements of a verification clause in a Plaintiff.

34.9 On the Defendants' argument that the Affidavit as required under Order VI Rule 15(4) must be in compliance of the provisions of Order XIX Rules 1 and 3, Shri Sharan Jagtiani, has submitted that the provisions of Order XIX Rule 3 have no application to an Affidavit in support of a pleading or plaintiff. He has relied upon judgments, discussed hereinafter, in support of the submission that Order XIX applies to Affidavits that are described in Order XIX Rule 1 and not to Affidavits that are only to support a Plaintiff that already contains a verification clause.

34.10. Mr. Jagtiani submitted that in any event, the facts as set out in the Plaintiff including the basis for asserting those facts would constitute the 'knowledge', as properly understood, of the Constituted Attorney verifying the Plaintiff and therefore even if Order XIX Rule 3 were applied that requirement would also be satisfied.

FINDINGS AND CONCLUSIONS :

35. Question No.1 : Whether the verification appended to the present Plaintiff

fulfils the requirements of Order VI Rule 15 of CPC ?

36. In order to deal with this issue, it is important to understand the purpose of verification which can be gathered from various judgments cited by the parties such as **Shanti Prasad Jain V/s. Union of India**¹; **Consolidated Foods V/s. Brandon & Co.**²; and **State of Punjab & Another V/s Shri I. M. Lall**³.

37. Upon reading the aforementioned judgments, the purpose of verification can be explained as follows :

37.1 To fix responsibility on the party or person for statements made in the pleadings;

37.2 To prevent false cases/pleadings from being recklessly filed in Court and the Court having to invest their time for the same;

37.3 To ensure that pleading must have some sanctity and for that purpose the rule makes provision by insisting upon competency of the person verifying.

37.4 Reliability, in order to enable the Court to decide whether it is safe to act on the basis of Deponent's belief.

38. With this background, we now turn to provisions of Order VI Rule 14 and 15 dealing with verification of Pleadings. Order VI Rule 14 and 15 reads as follows :

“14. Every pleading shall be signed by the party and his pleader (if any) :

1 1968 Bom LR 431 at paragraph 28

2 1960 SCC Online Bom 74 at paragraph 3

3 ILR 1975 Delhi 332 at page 338

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

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.”

39. Order VI Rule 14 contemplates signing of a pleading not only by a party but also by any person duly authorized by him to sign the same. In effect, as per Rule 14, a Power of Attorney holder would also be empowered to sign the pleading on behalf of the Plaintiff. Further, sub-rule 1 of Order VI Rule 15 requires a Plaint to be verified at the foot by a party or some other person who is, to the satisfaction of the Court, acquainted with the facts of the case. Thus, this provision requires verification by the signatory who is familiar with the facts of the case. As discussed below, to be ‘acquainted’ is to be ‘familiar’ with the facts of the case.

40. For the purpose of being acquainted with the facts, knowledge can be gained either when a person himself experiences or is involved personally with certain

events or knowledge may be acquired or gained through some other means, such as by reading documents, drawing inferences, forming one's own opinion based on discussions with others etc. Additionally, as also provided for in sub-rule (2) of Order VI Rule 15, the verification can be made even by a Power of Attorney holder on the basis of information that is believed to be true and who is therefore acquainted with the facts of a case within the meaning of Order VI Rule 15(1). In our view, it is certainly not a requirement of the law that only persons who are witness to the events described or who have first-hand knowledge of the facts or who are present at a particular location at which the events have occurred, would alone be acquainted with the facts of a case.

41. We also find merit in the submission of Shri Sharan Jagtiani that the only requirement or test to be satisfied before the Court is 'acquaintance' with the facts as per sub-rule (1) of Order VI Rule 15. Therefore, the meaning of 'knowledge' or 'own knowledge' in sub-rule (2), which is one of the basis of a verification, cannot be higher than 'acquaintance'. Sub-rule (2) recognises two ways in which 'acquaintance' can be established but if 'own knowledge' were to be understood as meaning something higher or greater than 'acquaintance' then it would result in an inconsistency between sub-rule (1) and sub-rule (2). Accordingly, even the meaning of 'knowledge' must be understood as 'knowledge' resulting in 'acquaintance' with the facts of a case and no higher than that. This view is supported by the judgments that we have considered

below.

42. As noted above, sub-rule 2 of Order VI Rule 15 contemplates that a verification may fall within two categories, i.e., (i) on the basis of signatory's own knowledge and (ii) information obtained/received which the signatory believes to be true. Thus, it is clear that the verification of a pleading is not confined only to facts within the personal knowledge of the person verifying the pleading as is sought to be argued by the Defendants. It is open to the signatory to verify the contents on the basis of the information received by him and believed by him to be true. Thus, we are not in agreement with the contentions of the Defendants that the verification ought to be to the signatory's personal knowledge. It would be relevant to reproduce certain paragraphs of the judgment of this Court in the case of **Shanti Prasad Jain vs. Union of India** (supra) that the Plaintiff has placed reliance upon :

“23. The verification of a pleading is not confined only to facts within the personal knowledge of the person verifying the pleading. On the other hand, it is open to him to verify a pleading upon information received by him and believed by him to be true. It is true that the manner of verification of a pleading as prescribed in r. 15 is by signing the verification clause at the foot of the pleading. But the opening words of cl. (1) of r. 15 contemplate making of a different provision in other Acts as regards the manner of verification. If form No. 3 prescribed by r. 21 is compared with the provisions of cl. (2) of r. 15, of O. VI, it would be apparent that they are worded practically in identical terms as regards the material on the basis of which verification could be made.”

43. There is no quarrel with the proposition that the verification of Plaint is required to enable the Court to decide whether it should proceed with the Petition or the Plaint or to weed out cases based on false pleadings. The enquiry that the Court (exercising judicial powers) needs to undergo at this stage is that to examine the allegations made are not made recklessly but are made with due inquiry and with due care and diligence. The requirement in sub-rule (1) is for the party to only be 'acquainted with the facts of the case' and not set out the manner in which the Plaintiff seeks to prove the same.

44. The Defendants on the other hand are testing the verification clause of a Plaint by importing or borrowing principles from the law of evidence. During the course of their submission, it has been contended that the Plaint has been verified on the basis of 'hearsay' knowledge. For the reasons noted above, this is a completely incorrect approach in understanding the true meaning and requirement of Order VI Rule 15 (1), (2) and (4) of the CPC.

45. There are various other provisions of Order VI, VII of the CPC as relied upon by the Plaintiff which are indications that the requirements of a pleading and a verification in support of that pleading cannot be conflated with notions of evidence. Some of the provisions of Order VI that clearly make the distinction between rules of pleadings and evidence are as follows :

“Rule 2. Pleading to state material facts and not evidence.—(1) Every

pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.”

“Rule 4. Particulars to be given where necessary.- In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

“Rule 10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.”

“Rule 12. Implied contract, or relation.

Wherever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letter, conversations or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.”

46. On the basis of the aforementioned provisions of Order VI, it is clear that the pleadings exclude evidence and what is to be stated in the Plaint is merely facts without in any manner referring to the evidence by which such facts may be proved. The Rules only stipulate a requirement to aver material facts and not the evidence on the basis of which such averments are sought to be proved. The question

of proof is different from the question of establishing that the person verifying the Plaintiff is acquainted with the facts. The question of proof would arise at the trial of the suit and not at this stage and in the event the Plaintiff fails to prove what has been stated in the Plaintiff then the suit would fail.

47. In this view of the matter, the standard sought to be applied by the Defendants to the pleadings is not the requirement of the provisions of the CPC. At this stage the requirement is to articulate the case/cause of action in the form of a pleading and state material facts in that regard. Further, upon reading of Order VI Rule 15 itself it is clear that there is no concept/requirement of personal knowledge in Order VI Rule 15 sub-rule (1) which merely requires a pleading to be verified at the foot by the party or by one of the parties pleading who is 'acquainted' with the facts of the case.

48. Our views as expressed above are supported by various judgments relied upon by the Plaintiff as also the legal dictionary relied upon by the Defendant No. 1, which explain the meaning of the words 'acquainted' and 'knowledge'. Significantly, some of the judgments use these expressions effectively as synonyms. This also explains, perhaps, the choice of the expression 'acquainted' in sub-rule (1) and 'knowledge' in sub-rule (2) and the harmonious and consistent manner in which these provisions apply.

49. The judgment in **State of Punjab & Another V/s Shri I. M. Lall**

(supra) at Page 339 of the judgment, explains the term ‘acquaintance’. Here, the interpretation of the term ‘acquaintance’ in Order VI Rule 15 came up at the stage of First Appeal. The Suit was dismissed upon consideration of only one issue on which the Court returned a finding that the Plaint has not been proved to have been validly signed on behalf of the State of Punjab and that verification of the Plaint on the part of the State of Punjab has not been made by a duly authorized person acquainted with the facts of the case. In this context the issue of what would amount to a compliant verification came up for consideration. The judgment reiterates the threshold to be satisfied for a valid verification and the criteria to be fulfilled for the purposes of being ‘acquainted with the facts of the case’. The relevant portion of the judgment in this regard is reproduced herein below :

“Verification can, however, be made either from personal knowledge or on information received and believed to be true. Information derived from the records of a case and believed by the deponent to be true is certainly a good verification of the pleadings as its object is only to fix the responsibility for the pleadings. In the Port Canning and Land Improvement Co. Ltd. v. Dharanidhar Sardar, 9 CWN 608, (4) the Division Bench of the High Court of Calcutta construing a similar provision in the old Code of Civil Procedure, repelled the contention that deposition to the facts of the case could not be made from information believed. The court observed that the provision of law did not require actual personal knowledge on the part of the verifier and that the verifier could very well depose upon his opinion that he had acquired from other sources and believed and this amounted to a sufficient verification. The judicial Commissioner of Himachal Pradesh in Shiv Dutt’s case also took the

same view that a party could verify the facts on information received from others and it was not necessary for him to be in the know of the facts personally (Emphasis supplied).”

What does the acquaintance of the facts of the case mean? The word 'acquaint' is not used in the sense of knowing personally or being a witness to the events alleged in the pleading. It is used in the sense of being familiar with or cognizant aware of, the facts. The word 'acquaint' as defined in Shorter Oxford English Dictionary means "to make known or become acquainted or familiar with, acquire experimental knowledge of a thing". The word 'acquainted' according to the same dictionary also means "familiar, through being known, or having personal or experimental knowledge". To the same effect is the meaning given in Webster's Third New International Dictionary. It is "to let know or inform". "Acquainted" means "being known or having knowledge". It further specifies that the word means "being somewhat familiar with". In other words, the expression, in our opinion, does include personal knowledge, but it is not confined to the same and would cover within its ambit the acquisition of familiarity with the facts from the records or other persons believed and a person verifying need not have been a witness to the events mentioned in the pleading. It is enough if he has handled the file and is familiar with the facts either from the records or from other persons. Should a person familiar with the facts be in personal knowledge of some of them, so much the better, but it is certainly not a requirement of law that only such person, who is a witness to the event or has first hand knowledge of the facts that can make the verification. If the submission of the respondent were accepted, as confining the acquaintance with the facts only to personal knowledge (apart from records), it would lead to an absurd result as it would make it impossible to institute some of the suits in which the cause of action might have arisen so long ago that the actors in the drama or witnesses to the event might be dead or retired or were otherwise not available. This would be

more so in the case of an institution like an incorporated company or the State which is a legal personality, but has of necessity to act through various human hands, who may or may not be available at the appropriate time. Surely, this could not be the intention of the legislature in using the expression "acquainted" with the facts". **In our opinion, the expression is intended to exclude utter strangers who have absolutely nothing to do with the relevant papers or the case and who can reasonably not be fixed with the responsibility for the allegations made in the plaint. But, if any person happens to be authorised representative of the plaintiff and is familiar with the relevant files or the facts alleged in the plaint then, he certainly is allowed by the aforesaid provisions of law to make a valid verification. As we have seen, the verification can be made from personal knowledge or on information received and believed to be true. If this is permissible, in the state of law it necessarily follows that a person is competent to verify if he could do so without having the personal knowledge of the events, but is familiar with the relevant files or the facts of the case, through source whatsoever which he believes to be true. This fulfills the object of the statutory provision of fixing the responsibility for the allegations made in the pleading and also enables the parties to institute their suits without any unreasonable fetters, which may. In view of the contention of the defendant, be otherwise impossible to institute.**

We are, therefore, of the opinion, that the party himself or any other person who has made himself familiar with the facts of the case or the relevant papers and who has derived information stated in the pleadings from some other sources, which he believes to be true, is a fit and competent person to verify the pleadings. This would satisfy the requirements of the statutory provision.”

(Emphasis Supplied)

50. Even some of the legal dictionary meaning of the term ‘acquaintance’ relied upon by the Defendants have been considered in this decision. In our view, the

view taken in this judgment supports the view that the test to be fulfilled for a person verifying the pleading is not in the sense of knowing personally or being a witness to the events alleged in the pleading as has been contended by the Defendants. The test to be fulfilled is that of being familiar with or cognizant or aware of the facts. In other words, the expression does include personal knowledge, but it is not only confined to the same and would cover within its ambit the acquisition of familiarity with the facts from the records. It cannot be restricted to such signatory having personally witnessed the events mentioned in the pleading. Thus, for the purposes of being acquainted with the facts, the knowledge can be acquired by reading documents, by opinions or inferences reached on the basis of certain information acquired by such signatory. In our view, this would amount to the signatory's own knowledge.

51. In the case of **Shanti Prasad Jain V/s Union of India** (supra), a Division Bench of this Court was considering a challenge to an affidavit filed under Rule 21 of the Company Court Rules along with a Petition under Section 398 of the Companies Act, 1956, by the Union Of India. The affidavit was in effect the verification of the Petition. The office of Union of India filed the Petition entirely on the basis of information believed to be true and not on the basis of knowledge. The main question addressed by this judgment was whether Order XIX Rule 3 of the CPC would apply to such an affidavit. This aspect is dealt with below. However, the Court at paragraph 28 went on to hold that even assuming Order XIX Rule 3 would apply to such a

verification, a verification that is based on information would be compliant with the requirements of Order XIX Rule 3 which speaks of own knowledge. This establishes that the requirement of 'knowledge' cannot be understood as a high threshold and an affidavit made by an officer of Union of India based on information would satisfy that threshold.

52. As regards use of the term 'knowledge' in Order VI Rule 15(2), it is important to understand the term contextually. For this purpose, the decision relied upon by the Plaintiff in the matter of **R. S. Sharma V/s. State**⁴ would be relevant. The relevant portion of the decision, at page 252, dealing with the meaning and interpretation of knowledge is as under :

"It is common ground that the proviso is not applicable to the facts of the present case and we are concerned only with the main clause of [Section 106](#) of the Act. [Section 106](#) of the Act lays down a rule which affects the jurisdiction of the court. If the complaint, is not filed within the period prescribed, the court shall not have jurisdiction to try the same. The key word in the section is "knowledge". It has been contended on behalf of the state that there is a difference between 'knowledge' and 'information' and knowledge can be imputed to a person only at the stage when he believes the information to be true and that stage can only be reached after an enquiry has been made and satisfaction reached by the Inspector that the information is correct. It has been submitted that whether or not an Inspector had knowledge can be proved by him alone.

In Shorter Oxford English Dictionary, among other the following meanings have been given to the word "knowledge"-

4 1962 (1) Cri. L.J. 251

Acquaintance with a fact; state of being aware or informed: consciousness (of anything) Acquaintance with facts, range of information. Intellectual acquaintance with, or perception of, fact or truth; the fact, state or condition of understanding. Formerly, also, intelligence, intellect. A mental apprehension; a cognition. Theoretical or practical Understanding of an art, science, language, etc: The fact or condition of being instructed; information acquired by study; learning, Information, intelligence; intimation.

It would be seen from the above that the word "knowledge" is sometimes used also in the sense of information. When a person says that he has knowledge he is describing a state of his mind. That state may be reached either by what one sees or by what he hears and what he believes to be true. If an information is received which the inspector does not believe to be false or has no reason to believe it to be false he would be attributed a state of mind which may amount to his having knowledge of that matter. It may be noticed that the words used in [Section 106](#) of the Act are "came to the knowledge of an Inspector" and not "when the Inspector was satisfied about the correctness of the information". If the legislature intended that an enquiry should be made by an Inspector and only if he is satisfied about the correctness of the information he should make a complaint, the words used by the legislature would have been, "within three months of the date on which the Inspector is satisfied about the commission of the offence".

Both satisfaction and knowledge denote a state of mind. In order to be satisfied or in order to have knowledge there must be some basis. The basis may be, as we have said above, either what is seen or what is heard or the information received. Knowledge is that state of mind when the person believes a thing to be true or has no reason to believe that it is not true. The state of satisfaction is reached only when the man is certain after deliberate consideration over the matter that that thing exists beyond all doubt. When a person gets fully determined either by the subjective process of deliberating

over the matter or by the objective process of making an enquiry or by seeing the thing himself the stage of knowledge ceases and the stage of satisfaction sets in (Emphasis Supplied).”

53. On the basis of the aforementioned judgment, it can be concluded that the knowledge can be imputed either when a person himself experiences certain events and/or also to information obtained by such person who believes it to be true. Knowledge is merely a state of mind that may be reached either by what one sees or by what he hears and what he believes to be true. Thus, in our view, if a person signing the verification is satisfied of the correctness of the allegations made in the Plaint that would meet the test for the purposes of verification. The question of proof is a matter of trial and cannot be looked into at this stage.

54. In the present case, one of the crucial facts was that Shaikh Abdullah had passed away in 1965 and that the Tenancy Agreements were executed supposedly with Shaikh Abdullah in 2012. In our view, for the reasons stated above, the Defendants are not correct in contending that merely because the Constituted Attorney was not in India, he does not possess and fulfil the requirement under order VI Rule 15. In the present case there is no reason to doubt that the death of Shaikh Abdullah in 1965 would be to the Constituted Attorney’s knowledge.

55. In the present case, upon reading of the Plaint we are satisfied that the critical facts were to the knowledge of the Constituted Attorney and the other sources

of knowledge are in the documents annexed to the Plaint itself and certain inferences that he could draw on the basis of those documents and other circumstances that have been relied upon to plead the case of fraud. Shri Sharan Jagtiani has taken us through certain important events from the Plaint on the basis of which the signatory to the verification would have had knowledge of those events. In our view it is these events which constitute the Plaintiff's cause of action and which are, upon a reading of the Plaint and the important exhibits are sufficient to show the acquaintance of signatory with respect to the facts of the case and sources of knowledge. A few of significant events from the Plaint are as under :

- (i) That the Plaintiff has brought the Power of Attorney granted in favour of Firaz El-Kurdi on record on the basis of which the verification was signed by the said power of attorney holder.
- (ii) That the fact that Shaikh Abdullah passed away in 1965 and Shaikh Saad passed away in 2008 was well within Constituted Attorney's knowledge. This has not been disputed by the Defendants. It can be said that this fact was to Constituted Attorney's own knowledge and amongst other sources, evident from the Inheritance Certificates brought on record along with the Plaint.
- (iii) That the purported Tenancy Agreements dated 30.10.2012 and 31.1.2013 supposedly executed with Shaikh Abdullah (deceased since 1965) through his Power of Attorney holder were evident from the Tenancy Agreements itself. These documents

cannot and have not been denied by the Defendants since the said Tenancy Agreements form basis for Defendants claiming their rights on the Suit Property.

(iv) That the Plaintiff asserts that the Tenancy Agreements are forged and fabricated on the grounds stated in paragraph 33 of the Plaintiff. These grounds and the documents brought on record in support of these grounds account for the 'acquaintance' or knowledge of the Constituted Attorney.

(v) That Defendant No.1 under the forged Tenancy Agreement claims possession of the premises before 30th October 2012. However, the Valuation Report dated 28th March 2013 which was procured from an independent valuer indicates that as of 28th March 2013, the possession of the 5th floor flat (part of Suit Premises) was in the Plaintiff's possession. The reading and acceptance of this Report on the part of the Constituted Attorney amounts to his own knowledge and can form the basis of 'acquaintance' with the facts as regards possession.

(vi) That a handwriting expert's report has also been brought on record to contend that the signature on the Tenancy Agreements was not that of Faisal and which conclusion is confirmed by such expert. This is also evident from the document itself. The acceptance of the findings of the Expert Report would amount to the Constituted Attorney's own knowledge and on the basis of which he can rely upon the said report, which has been done in the present case.

(vii) That RAN Application bearing No. 47/2012 was filed in the Small

Causes Court by Defendant No.1 for fixation of Standard Rent under Section 8 of Maharashtra Rent Control Act in relation to Flat No.21 on the 5th Floor *inter alia* against Shaikh Abdullah. The RAN proceedings in this regard have been annexed to the Plaint, including an ex-parte order obtained against the deceased Shaikh Abdullah passed fixing interim rent and granting an injunction against the Defendants therein. Thus, the RAN Application could be relied upon and would constitute knowledge of fraud since Shaikh Abdullah has been made a party.

(viii) That Defendant No.1 filed RAD Suit 174/2013 against Shaikh Abdullah (since deceased), seeking declaration as a tenant with respect to Flat No. 21. The allegation with respect to even the RAD Suit being an attempt to create false record according to Plaintiff could be inferred from the Suit being filed against Shaikh Abdullah and due to various other reasons enumerated below.

(ix) That the Writ of Summons in the above suit is shown to be served upon Faisal at the Ground floor office in RAD Suit (174/2013). On the strength of this document and the Tenancy Agreement it has been argued that the Plaintiff and the Constituted Attorney could come to a conclusion that the service of Writ of Summons upon Faisal was not possible on the Ground floor premises since if Defendant No.2's case was to be believed, he himself was in occupation of the said premises since August 2012 hence Faisal could not be served summons at the said premises. This again is a circumstance to establish 'acquaintance' or knowledge to assert the case of

fraud alleged against the Defendants.

(x) That on 3rd April 2013, Defendant No.2 and Defendant No.3 filed RAD Suit (606 and 607 of 2013 respectively) in Small Causes Court seeking a declaration of tenancy on the ground that they were purportedly threatened by the representative of Faisal on 29th March 2013 to move out from their respective premises. This is evident from the record of Court proceedings available in this regard. It was further shown that this RAD Suit was also filed against Shaikh Abdullah (described as the landlord) who had passed away in 1965 itself through Faisal (described as the Constituted Attorney of the landlord).

(xi) That on 8th April 2013, the Writ of Summons was shown to be served on the 6th floor upon Faisal in RAD Suit 606 & 607 of 2013 filed by Defendant No.2 and Defendant No.3 respectively. Yet again, it was argued that the Defendants' own case belies the fact that the service of Writ of Summons upon Faisal could be done on the Top floor premises in Al Sabah because if defense of Defendant No.3 was to be believed, he himself was meant to be in occupation of the said premises since August 2012. It was argued that this fact could be inferred from noticing the date on which the summons were shown to be served and the case sought to be made out by the Defendants as per the Tenancy Agreements.

(xii) That on 8th May 2013 and 9th May 2013, ex-parte decrees were passed in RAD Suits (606 & 607 of 2013) filed by Defendant Nos.2 &3 and Suit No. 174/2013

filed by Defendant No.1 against the deceased Shaikh Abdullah (through his Constituted Attorney- Faisal). Upon taking us through certain dates as per the Court record in the case of Suit Nos.606 and 607 of 2013, it was argued that the decree has been obtained within a period of 30 days from the alleged service of the Writ of Summons in RAD Suit Nos.606 and 607 of 2013, although the time for filing written statement itself is 30 days which was further extendable as per CPC. Even in the other Suit No. 174 of 2013 the Writ of Summons was allegedly served upon the defendants therein in February 2013 and the Suit decreed on 9th May 2013. This fact alone can certainly constitute the basis of the signatories assertion in the Plaint of the possession of the Suit Premises being illegally taken through a brazen act of fraud because on inquiry or by applying any common sense any person would be able to infer that it is most unusual and unheard of for a suit for declaration of tenancy to be decreed in 30 days when the time for filing a defense is not even over at least as regards RAD Suit Nos. 606 and 607 of 2013. Even the time of about 3 months for obtaining a decree in the other RAD Suit is most rare and unusual and therefore may well form the basis for the Constituted Attorney to assert based on acquaintance or knowledge of the facts that the possession of the Suit Premises have been taken illegally by a brazen act of fraud.

(xiii) That in Suit No. 607 of 2013, the address of Defendant No.3 (Plaintiff therein) and Shaikh Abdullah (the Defendant therein) is one and the same. The fact

that the decree was against Shaikh Abdullah was undisputed and the fact that the decree was passed was undisputed by the Defendants. Thus, in our view, the Constituted Attorney was certainly in a position to draw inferences on the basis of the documents and the timelines as mentioned above.

56. On the basis of these facts, in our view, these circumstances are sufficient to show that the signatory of the verification was acquainted with the facts of the case so as to sign and maintain a case of fraud. The correctness of these allegations would be tested at the stage of trial or at the hearing of the Plaintiffs Notice of Motion for interim relief, at which stage it will be considered on a prima facie basis. From the point of view of acquaintance with the facts or knowledge to maintain a cause of action, the test has been satisfied by the Constituted Attorney to our satisfaction under Order VI Rule 15(1).

57. Considering that the purpose of a verification is to enable the Court to determine if it is safe for the Court to proceed with a case and if there is sufficient basis for the Court to believe that statements are made in a responsible manner and that the allegations are not wild or reckless, we are satisfied for the reasons stated above that all of these requirements are met in the present case.

58. The Defendants, in support of their submission on the issue of defect in verification, relied upon a decision of Bombay High Court in the case of **Consolidated Foods V/s. Brandon & Co.** (supra) This decision is not applicable in the present case

since the Court was considering the verification of a Petition that was affirmed by the advocate for the Petitioner in that case. That apart, the first requirement as regards a verification was a clear bifurcation between paragraphs being true to signatory's own knowledge and the rest of the statements being upon information and beliefs being clearly identified. This requirement is fulfilled in the present case as observed by the Learned Single Judge in paragraph 5 of the Impugned Order. In that verification, all the statements were verified on information and beliefs and none on personal knowledge and there was no attempt whatever to disclose the sources of such information nor to state the grounds of such information. None of these are applicable to the present Plaint because it is deposed to until paragraph 60 on the basis of knowledge. In any event to the extent it is based on information or for that matter knowledge, the Plaint discloses the sufficient basis of information and knowledge. It also discloses the grounds for the belief. Lastly, even after noticing the defect the court observed "*Although the affidavit in support is defective and Mr. Shah's contention is correct, I do not propose to dismiss this petition on that ground as such affidavits, though wholly improper and unjustified, have unfortunately become quite common.*" Further, this decision has been considered and distinguished in the case of ***Shanti Prasad Jain V/s. Union of India*** (supra).

59. In ***Raj Kumar Dhar V/s. Stuart Lewis***⁵, also relied upon by the

5 1956 SCC Online Cal 160 at paragraphs 2 to 6

Defendants in support of their submission, the Court reiterated that the object of verification is to fix a responsibility on the party verifying and to prevent false pleading being recklessly filed or false allegations being recklessly made. It is with this objective that the Rule makes provision for insisting upon competency of person where he is other than an actual party. To establish competency, the Court may require satisfaction of the acquaintance with the facts of the case. There is no quarrel with this proposition and the test of acquaintance has not been elaborated in this judgment but is explained in judgments cited by the Plaintiff. The objection in this case was failure to place proper material before the Court to satisfy the Court that the person who signed the verification was acquainted with the facts of the case. The Court found that the only thing that was put on record for this purpose was the Power of Attorney. The Court found this at paragraph 2. At paragraph 3, the Court observed that mere reliance upon the Power Of Attorney was wholly insufficient and this did not establish competence to verify. None of these apply in the present case where the Plaintiff discloses the various sources on the basis of which the signatory would be competent to verify. These are a combination of his personal knowledge, information that he would have gathered from person's who would be aware of events constituting the fraud, inferences, opinions formed by the deponent etc.

60. So far as the case of **BBN UK Ltd. V/s Janardhan**⁶ is concerned,

6 1993 SCC Online Bom 17

paragraph 37 discloses the reason for the Court's finding that the verification being defective. The reason was not based on competence or acquaintance or lack of acquaintance with the facts but the conflict that arises from an advocate in their personal capacity verifying the Plaint. This happens when the advocate is a constituted attorney who identifies with the litigant on whose behalf the verification is done. Moreover whilst the judgment in *Raj Kumar Dhar* (supra) and Consolidated Foods (supra) have been dealt with and explained/distinguished by the Division Bench in *Shanti Prasad Jain* (Supra), the Single Judge decision in *BBN UK Ltd* (supra). did not notice the Division Bench judgment in *Shanti Prasad Jain* (supra).

61. The decision in **Amit Yadav V/s Jayesh Prasad**⁷ cited by the Defendants also does not have any application in the present case. The defect in the verification was discussed in paragraphs 35, 38 and 39. The first defect, which is inapplicable to this case, is that some set of paragraphs are based on personal knowledge and on the basis of personal enquiry which the deponent believes to be true. This overlap was a defect which does not exist in our case. Further, at paragraph 35, it was noted that the sources of information are not disclosed. This too does not apply when the present Plaint is read as a whole. At paragraph 38, the fundamental defect was that the Petition was not verified in terms of Order VI Rule 15 because it was not accompanied by an Affidavit as required by sub clause (4) of the said rule. The

⁷ 2016 (3) ADJ 1495

Plaint in the present case is accompanied by an Affidavit. Lastly, at paragraph 39, the requirement emphasized by the Court was of clear bifurcation between paragraphs of pleadings based on one's own knowledge and those that are believed to be true. The present verification contains a bifurcation.

62. The decision in the case of **Hari Shankar Jain V/s Sonia Gandhi**⁸, also does not have application in this case since the finding was about the Petition not disclosing any basis for the averments made nor disclosing the source of knowledge for making averments. The Plaint in the present case discloses both.

63. The decision in **A. K. K. Nambiar V/s. Union of India & Anr.**⁹ is also of no assistance to the Defendants since in that case, there was no verification appended to the Petition or the Affidavit in support of the Petition which is clearly not the case so far as the present case is concerned.

64. The decision in **Manohar Narayan Joshi V/s. Ramu Mhatang Patel**¹⁰ also supports the stand taken by the Plaintiff with respect to Affidavit disclosing sources or grounds of information. Heavy reliance was placed in that case on the decision of **Virendra Kumar Saklecha V/s. Jagjiwan**¹¹ to say that though the form for an Affidavit in support of the Pleading did not require disclosure as regards sources of information and the grounds of belief, the Petitioner was duty bound to disclose these

8 (2001) 8 SCC 233

9 1969(3) SCC 864

10 1972 SCC Online Bom 100

11 1972 (1) SCC 826

in view of Order XIX Rule 3 of CPC. Whilst distinguishing this judgment the Court in Manohar Narain Joshi observed that in the case before the Supreme Court (cited in the judgment) the rules made by the Madhya Pradesh High Court positively required the statement about the source or grounds of information or belief when the affidavit to election petition was to be filed. There were no such rules prescribed by the Bombay High Court for the purposes of verification.

65. Having considered this aspect of the matter we are satisfied that the verification of the Plaint by the Power of Attorney holder of the Plaintiff satisfies the requirements of Order VI Rule 15(1) read with sub-rule (2). We are also of the view that there is no infirmity or perversity whatsoever in the reasoning set out in paragraphs 27 and 28 of the Impugned Order for recording satisfaction that the verification of the Plaint is legal and valid and in accordance with the CPC. The Learned Single Judge has given importance to one crucial fact namely that Shaikh Abdullah died in 1965 and the Defendants have supposedly entered into agreements with him post 1965 and have filed suits and obtained decrees against him. In our view the Learned Single Judge is correct in relying upon this assertion in the Plaint to explain how the Power of Attorney holder can rely upon these facts to establish acquaintance and knowledge in respect the facts of the case as pleaded.

66. For all of the above reasons we hold that the verification appended to the present Plaint fulfills the requirements of Order VI Rule 15 of CPC.

67. Question No.2 : Whether the Prothonotary and Senior Master of this Court is the authority who is to be satisfied in relation to fulfilment of requirements for the purposes of verification under Order VI Rule 15 as per CPC read with the Bombay High Court (Original Side) Rules, 1980?

68. Relying upon the High Court Rules it has been argued by Shri Anturkar and Shri Kamat that the Order VI Rule 15 buffers between Rule 45 to 47 and that the Plaintiff does not travel the distance between Rule 45 (dealing with lodgement) to 47 (dealing with admission of the Plaintiff) if the verification does not satisfy Order VI Rule 15 and that the verification has to be to the satisfaction of Prothonotary. In effect, the submission was that the Prothonotary must carry out the enquiry in order to ascertain whether the Pleading meets the requirement as laid down under Order VI Rule 15.

69. The relevant Rules read as under :

“45- All complaints shall be verified, within the local jurisdiction, before one of the officers of the Court appointed in that behalf and elsewhere in India before the officer indicated by the Code of Civil Procedure, section 139. The verification shall be in Form No. 3.

47- When a complaint is admitted in words “Admitted this day” shall be endorsed thereon and signed by the Prothonotary and Senior Master or by one of his assistants, the words “written statement” being added when such statement is required.”

70. In our view, the provisions of the Bombay High Court Rules above and Order VI would make it clear that the term ‘Court’ as used in the aforementioned Rule

and Order VI does not mean and include the Prothonotary. The term 'Court' has not been defined under CPC but has been defined under the Indian Evidence Act, 1872.

Section 3 of the Indian Evidence Act, 1872 defines Court as under :

“Court” includes all Judges and Magistrates and all persons, except arbitrators, legally authorized to take evidence.

71. Thus, a bare reading of the definition unmistakably conveys that the definition of Court does not include Prothonotary. In our view, even the Bombay High Court Rules do not use the term 'Court' and 'Prothonotary' interchangeably and when a reference is sought to be made to the Prothonotary, the Rules in term mention Prothonotary as an officer of the Court and vice versa. There is no quarrel with the proposition that certain aspects of the admission of the Plaint are to be verified by the Prothonotary being the officer of the Court who has been delegated the duty to ensure that the Plaint meets the basic procedural requirements as mentioned in Order VII Rules 1 to 8 of CPC. The relevant rule dealing with the requirement is Rule 42 (6) which is reproduced herein below :

“(6) The plaint shall be divided into paragraphs numbered consecutively and shall contain the particulars required by Order VII, rules 1 to 8 of the Code of Civil Procedure.”

72. Order VII Rules 1-8 enlists the particulars that ought to be covered/included in a Plaint. All the particulars mentioned as per this Order would constitute a pleading. For example, facts constituting cause of action, name of parties,

name of court in which such pleading is being filed, reliefs claimed etc. It is the obligation of the Prothonotary to determine that the relevant parts of a pleading or plaint are contained such as for example checking a plaint to see if it has a prayer clause. However, the sufficiency or correctness of the same does not fall under the realm of enquiry that the Prothonotary can enter into. Thus, the acceptability and correctness of such averments or the verification will have to be tested by 'Court'. The enquiry that the Prothonotary needs to carry out in order to enter the Plaint into the register is different from the requirement of satisfaction of the Court as required under Order VI Rule 15. The Prothonotary is not empowered to carry out any functions which require exercise of judicial discretion which only Courts are empowered to exercise.

73. In fact, the Defendants' argument that the term 'Court' used in Order VI Rule 15 includes Prothonotary, and not the Court performing judicial functions and exercising judicial power, would militate against various other provisions in the Order VI and other provisions of CPC since in that case the powers of the Court could then be exercised by the Prothonotary. For example, Order VI Rule 16 deals with striking of pleadings. If Court would have to be read as Prothonotary in the aforementioned provision, then, in that case the Prothonotary would have the power to strike out pleadings if he formed an opinion that such pleadings are unnecessary, scandalous, frivolous or vexatious.

74. In this regard, it would be apposite to reproduce paragraphs 14 and 18 from the decision of one of us (S.J. Kathawalla, J.) as a Single Judge of this Court in **Uday Singh Deshraj Rajput V/s Film Craft Production (India) Pvt. Ltd.**¹² where it has been categorically held that “Court” does not include “Prothonotary”:

“14. In my view, the word “Court” used in Section 149 of the CPC would not include the Prothonotary and Senior Master. The matters which are permitted to be disposed of by the Prothonotary and Senior Master are provided for by Rule 131 of the Bombay High Court (Original Side) Rules. Except these matters, where there is a delegation of the Chamber Judge’s powers to the Prothonotary and Senior Master, the Prothonotary and Senior Master cannot exercise powers of the Court/Chamber Judge/Judge concerned. The order to be passed by the Court under Section 149 is a judicial order, to be passed after exercise of a judicial discretion. The Hon’ble Supreme Court in the case of Buta Singh (Dead) by L.Rs v. Union of India considered the power of the Court under Section 149 and held that “the discretion conferred on the Court by Section 149 is a judicial discretion” and observed further as follows: “The aid of Section 149 could be taken only when the party was not able to pay court fee in circumstances beyond his control or under unavoidable circumstances and the court would be justified in an appropriate case to exercise the discretionary power under s. 149, after giving due notice to the affected party.” **There is, thus, no question of the Prothonotary & Senior Master passing any order under Section 149.**

...

18. The power under Section 149 of the Civil Procedure Code, 1908 to make up deficiency of Court fees cannot be exercised by the Prothonotary and Senior Master. The Prothonotary also has no power to allow parties and/or their Advocates to pay the admitted Court fees or any part thereof at a later date under Rule 986 of the Bombay High Court Original Side Rules, 1985. The

12 (2016) 6 Bom CR 557

power to use discretion and granting time under Section 149 of the CPC can only be exercised by the Court/Judge concerned. The order under Section 149 is, as the words “in its discretion” make clear, a judicial power, i.e., a power vested in Court. As already held, the expression “Court” does not include the office of the Prothonotary. Such a power cannot be delegated without an express Rule framed in accordance with law. This power cannot simply be assumed by the Prothonotary.” (Emphasis Supplied)

75. Thus, in our view, the expression “to the satisfaction of the Court” does not include satisfaction of Prothonotary since the delegation of powers to the Prothonotary are powers specifically enumerated and essentially procedural in nature. In effect, there can be no delegation of a substantial judicial enquiry. Further, if the Prothonotary was the authority who would have to be satisfied in relation to the requirements under Order VI Rule 15, then in that case the Applications made by the Defendants in this case would have to be argued before the Prothonotary and not before this Court. This was never the submission or stand before the Learned Single Judge and this entire argument is inconsistent with prayers in the Notice of Motion.

76. Further, even the Pleadings of the Defendants are at odds with the arguments now sought to be made before this Court. The Defendant in the Notice of Motion bearing No.528 of 2015 has prayed that the Plaintiff has not filed the Plaint as per law and that this Court be pleased to direct the Plaintiff to prove to the satisfaction of the Court that the person verifying the Plaint is acquainted with the facts of the case. There is no mention or prayer seeking directions for the matter to be remitted

back to the Prothonotary. Thus, in effect, the endeavour of the Defendants seem to be that of completely altering their application at this belated stage.

77. We also find no merit in the submission that the verification in the Plaint does not satisfy the higher requirements of the High Court Rules. Having considered the High Court Rules and Form 3 we find that there is no higher standard for a verification under the High Court Rules. There is no clear language to indicate any departure from the requirements of Order VI Rule 15(1) and (2).

78. For all of the above reasons we hold that the Prothonotary and Senior Master of this Court is not the authority who is to be satisfied in relation to fulfillment of requirements for the purposes of verification under Order VI Rule 15 as per CPC read with the Bombay High Court (Original Side) Rules, 1980.

79. **Question No.3** – Whether an Affidavit as contemplated under Order VI rule 15(4) must meet the requirements as laid down under Order XIX Rules 1 and 3, CPC?

80. Shri Kamat, Learned Advocate for Defendant No. 3, has argued that the Affidavit in support of the Plaint as required under order 6 Rule 15 (4) shall meet the requirements of Order XIX Rule 1 and 3 and the provisions of Order XIX in this regard ought to be complied with. We are not in agreement with these arguments for the reasons set out below.

81. The Code of Civil Procedure (Amendment Act) Act, 1999 introduced a

new requirement of an Affidavit to be annexed in support of the pleadings in addition to a verification. As a result, this requirement would have to be fulfilled in the case of filing of a Plaint. There is no dispute that the present Plaint is accompanied by an Affidavit in support of the Plaint.

82. An Affidavit as directed under Order VI Rule 15(4) does not require any additional details or information to be mentioned. The Affidavit as directed in Order VI Rule 15 (4) is only to be filed in support of pleading. A pleading includes a Plaint, which includes the verification clause. Further, the verification is based on acquaintance with the facts of a case and thus the same set of principles as applicable to the verification shall apply to Affidavit. In other words, the Affidavit ought to be seen in conjunction of the pleadings and verification made by the parties and hence the threshold requirement of acquaintance would apply to the Affidavits. There is no provision in law which states that the entire evidence has to be brought in support of a pleading in the form of an Affidavit at the stage of filing. The requirement of such an Affidavit is merely to fix additional responsibility on the deponent so as to ensure that a responsible person has given his oath to the averments made in the pleading. Thus, in our view, the requirement of having personal knowledge is wholly absent for the purposes of enquiring as to whether the Affidavit meets the requirement of Order VI Rule 15 (4).

83. In contrast to the above, it was the Defendants who have sought to import provisions of Order XIX and apply the same to the Affidavit in support of the Plaint. The Defendants have argued that the Affidavit as contemplated under Order VI Rule 15(4) must satisfy the requirements of Order XIX Rule 3 since the same deal with the 'Affidavits'. Order XIX Rule 1 to 3 reads as under :

Order XIX Rules 1-3 are reproduced herein below :

“Rule 1 - Power to order any point to be proved by affidavit

Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable :

Provided that where it appears to the Court that either party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Rule 2- Power to order attendance of deponent for cross-examination

(1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court or the Court otherwise directs.

Rule 3 - Matters to which affidavits shall be confined

(1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.”

84. A reading of Order XIX Rule (3) makes it clear that that an Affidavit filed under Order XIX must restrict itself only to facts as the deponent is able to prove of his own knowledge except in case of affidavits relied upon in interlocutory applications. In contrast to the position noted above, so far as the Affidavit as contemplated in Order VI Rule 15(4) is concerned, there is no positive provision in law that an Affidavit verifying the Pleint or a pleading must be on the basis of ‘own knowledge’. The sub-rule is conspicuously silent about the requirement of ‘own knowledge’ which is sought to be imported by the Defendants into Order VI Rule 15.

85. In fact, the provisions of Order XIX and in particular Rule (1) relate to affidavits ordered by Court to be filed in proof of facts, or to the affidavits on record which Court directs to be read at the hearing in proof of facts. Thus, Order XIX requires every Affidavit to be confined to such facts and only to such facts that the deponent is able to depose of his own knowledge. Order XIX is an enabling provision for a Court to make an order that certain facts be stated on an affidavit. An affidavit filed as per such an order of Court would have had to comply with the provisions of Order XIX. That provisions of Order XIX cannot be applied to the Affidavit in support of a pleading since as per Order VI, pleading includes both, facts which can be

deposed to the deponent's own knowledge and also that may be averred on the basis of information and the deponent believes to be true. An 'affidavit' is not 'evidence' within the meaning of the Evidence Act. In fact, Evidence Act does not apply to the Affidavits. Section 1 of the Evidence Act which excludes the application of the said Act is reproduced herein under :

“Section 1 - It extends to the whole of India 2 [except the State of Jammu and Kashmir] and applies to all judicial proceedings in or before any Court, including Courts-martial, [other than Courts-martial convened under the Army Act (44 & 45 Vict., c. 58)] 4 [the Naval Discipline [29 & 30 Vict., 109] Act or 5 *** the Indian Navy (Discipline) Act, 1934 (34 of 1934),] 6 [or the Air Force Act (7 Geo. 5, c. 51)] **but not to affidavits presented to any Court or officer, nor to proceedings before an arbitrator.**”

86. The Plaintiff placed much reliance on the judgment of Division Bench of the Bombay High Court in **Shanti Prasad Jain** (*supra*). In this decision, an Appeal arose out of an order of the Companies Tribunal dismissing an application wherein it was prayed that the Petition filed under section 397/398 be rejected. The Petitioner, Union of India, had in the Petition prayed for an order removing certain Respondents as directors from the board of the company. The allegations against the Respondents involved allegation of fraud, mismanagement, misconduct and misappropriation of the Company funds. In this case, the affidavit was verified by one

Mr. D. S. Dang, Deputy Secretary, Government of India, Ministry of Finance (Department of Revenue and Company Law) who according to the Respondents was not personally aware of the facts.

87. After a year of filing of the Petition, Respondent filed an application seeking dismissal of the Petition on the ground that since the Petition contained allegations of fraud, coercion, misrepresentation, misconduct, improper conduct, the application in law is required to be supported by an affidavit of person having personal knowledge. It was alleged that since the affidavit has not been sworn in by Mr. Dang of his personal knowledge, the Petition ought to be rejected. In order to assess whether the affidavit was sustainable in law and met the requirements of the Rules, this Court applied the principles as laid down in Order VI Rule 15 since even a Company Petition was a pleading and since it was observed that an affidavit to be filed for the purposes of verifying the Petition under Rule 21 in Form No.3 was nothing but verification of a pleading. The relevant portion of the judgment in this regard is reproduced herein below :

“22. We find it difficult to accept the arguments of Mr. Mody. We have already referred to the relevant provisions, and it is abundantly clear that the proceedings before the Tribunal are civil proceedings. There is also hardly any doubt that the intention of the Legislature as indicated in the various provisions of the Act is that the procedure that has to be followed by the Tribunal in dealing with the matters arising before it should be consistent with the procedure prescribed by the Civil Procedure Code. The power conferred on the Supreme Court to frame rules is to make rules consistent

with the Code of Civil Procedure, and the powers conferred on the Tribunal to frame regulations has to be exercised subject to the provisions of the Act and the rules made thereunder by the Supreme Court. It would necessarily follow that the expressions used in the rules or regulations connote the same meaning as the respective expressions used in the Civil Procedure Code connote. Rule 21 has provided that the petition shall be verified by an affidavit. The purpose of the affidavit required to be filed under r. 21 in form No. 3 is nothing but verification of the averments made in the petition. The verification of the contents of a pleading and evidence in proof of allegations made in the pleading are two distinct and separate terms well understood in the Civil Procedure Code. The relevant rule relating to the verification of a pleading is contained in rule 15(1) and (2) of O. VI, and it provides :

“(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.”

23.Mr.Mody has no doubt referred us to O. XIX in support of his contention that though the manner of verification as prescribed in the form is in identical terms with the provisions of cl. (2) of r. 15 of O. VI, there is a material difference. The verification of a pleading is required to be made at the foot of the pleading, the verification of a petition, however, is required to be made by an affidavit, and that, says Mr. Mody, would attract the provisions of r. 3 of O. XIX. The argument is not well founded. It is true that the heading of O. XIX is “Affidavits”. But, if the Order is read as a whole, it leaves no doubt that the provisions of O. XIX relate to affidavits ordered by Court to be filed in proof of facts, or to the affidavits on record which Court directs to be read at the hearing in proof of facts. An affidavit is not evidence within the meaning of the Evidence Act. The Evidence Act

applies to all judicial proceedings in or before any Court. Section 1 in express terms provides that the Evidence Act has no application to the affidavits presented to Court or Officer. “Evidence” as defined in s. 3 is confined only to oral evidence, that is, statements made by witnesses in Court, and documentary evidence, that is, documents produced in Court and proved in the manner prescribed by the Evidence Act. An affidavit thus in the strict sense is not evidence. Order XIX is an enabling provision, which enables a Court to make an order that any particular fact or facts may be proved by an affidavit, or any affidavit already filed on the record may be read at the hearing as evidence. The order of the Court, either explicit or implied, is a condition precedent to receive an affidavit in evidence at the trial of a suit. Rule 2 also is another enabling provision, providing that upon any application evidence may be given by affidavit.

25. It follows from this decision of their Lordships that O. XIX relates to affidavits directed to be filed by Court in proof of facts at the hearing. The provisions have application to substantive applications also, and that affidavits in absence of agreement between the parties either in suits or proceedings upon any applications are receivable in evidence only on an Order to that effect having been made by the Court or the Tribunal. Rule 3 of O. XIX provides that affidavits filed in proceedings other than interlocutory application shall be confined to such facts as the deponent is able of his own knowledge to prove. There is, however, no such limitation on affidavits which are filed in proof of facts alleged in an interlocutory application. Affidavits filed in an interlocutory application can be verified by the deponent both on his own knowledge as well as on information received and believed by him to be true, provided that the grounds of belief are stated by him. From the aforesaid provisions of r. 3 of O.XIX, it is not possible to infer that affidavits filed for any purpose whatsoever in proceedings other than interlocutory applications must be confined only to such facts as the deponent is able of his own knowledge to prove. On the other hand, it appears that verification of an affidavit simpliciter could be made by the deponent on his personal

knowledge as well as on information received by him and believed by him to be true. An affidavit is only a written declaration on oath by the deponent. The position has been made clear even in the two decisions to which Mr. Mody has drawn our attention. In *Padmabati Dasi v. Rasik Lal Dhar* , the question considered was whether the affidavit made in support of a petition by the respondent to the Court of Appeal from order that the appellants should be directed to furnish security for the costs was sufficient. In the course of their judgment, Jenkins C.J. and Woodroffe J., after referring to the provisions of O. XIX, r. 3, observed (p. 261):“...and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be safe to act on the deponent's belief.”

26. These observations have been cited with approval by their Lordships of the Supreme Court in *State of B'bay v. Purshottam* . In considering the affidavit tendered by the Home Secretary in a matter relating to the detention of a detenu under the Preventive Detention Act, their Lordships at page 876 of the report observed:“...Verifications should invariably be modelled on the lines of O. XIX, r. 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge, the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins C.J. and Woodroffe J. in *Padmabati Dasi v. Rasik Lal Dhar* and endorse the learned Judges' observations.”

27. In *Consolidated Foods Corp. v. Brandon & Co.* , the question which was being considered was an affidavit in support of the statements made in the petition filed under the Trade Marks Act. After considering the provisions of r. 3 of O. XIX, the aforesaid decisions of the Calcutta High Court, and that of the Supreme Court, the learned Judge observed (p. 801):
“It is clear that when statements are made in an affidavit on information and belief the sources of information should be clearly disclosed’ and the grounds of the belief also must be stated ‘with sufficient particularity to enable the

Court to judge whether it would be safe to act on the deponent's belief. These are but the basic requirements of verification of pleadings and the contents of affidavits and care must be taken to comply with the same.”

“28. These decisions indicate that the limitation placed in O. XIX, r. 3, that the affidavit must be confined to such facts which the deponent is able to prove of his personal knowledge, has application only to those affidavits which have been directed by a Court to be filed in proof of the facts at the hearing of matters other than the hearing of interlocutory applications. Other affidavits could be on personal knowledge as well as on the information received and believed to be true, provided the sources of information and the grounds of belief are stated with sufficient particularity. An affidavit which is required to be filed in verification of a petition under s. 398 of the Act is not an affidavit directed by Court to be filed under O. XIX in proof of facts. There is, therefore, no warrant to hold that it must be confined only to such facts as are within the personal knowledge of the deponent. The object of requiring a pleading or the contents of a petition to be verified is to ensure that false allegations are not freely and recklessly made therein. As pointed out by Mr. Justice Mody in Consolidated Foods Corp.'s case, the basic requirement of verification of a pleading is that the deponent must clearly disclose which of the statements in the affidavit are true to his knowledge and which of the statements are based on information and belief, disclosing the sources of his information and the grounds of belief with sufficient particularity, so as to enable the Court to decide whether it would be safe to act on the deponent's belief. The verification of plaint or petition is required to enable the Court to decide whether it should proceed with the petition or the plaint. All that is required at that stage is to ascertain that the allegations therein are not made recklessly but are made after due inquiry and with due care. That objective is achieved when the deponent clearly states the sources of information on the basis of which allegations in a plaint or a petition have been made. Assuming, therefore, that the provisions of O. XIX, have any application to an affidavit in verification of a petition, required to be made under r. 21, in our opinion, the

affidavits filed by Mr.Dang in this case fulfil the general requirements of O. XIX, r. 3. In our opinion, however, O. XIX, r. 3 has no application in view of the express provision made in r. 21 and in the prescribed form of verification of an affidavit required to be filed under the said r. 21. We have already reproduced the relevant portion of the form above, and it is apparent that it is open to a deponent of an affidavit in verification of a petition under s. 398 to verify it on information received by him and believed to be true. Clause (b)(v) of sub-s. (1) of s. 643 of the Act empowers the Supreme Court to make rules generally for all applications to be made to the Court under the provisions of the Act. The only limitation on the power is that the rules must be consistent with the Code of Civil Procedure. Rule 21 and the form prescribed cannot be said to be in any manner inconsistent with the provisions of O. XIX, r. 3. It has also not been argued that the form prescribed and referred to in r. 21 is bad in law because it is inconsistent with the provisions of the Civil Procedure Code. Having regard to the provisions of s.643, r. 21 and the form prescribed, in our opinion, O. XIX has no application to affidavits verifying a petition under s. 398 of the Act, it is not in dispute that verification of the affidavits by Mr. Dang was in accordance with the said rule and the form prescribed.”

88. We are of the view that there is much merit in the Plaintiffs reliance on this decision as it clearly holds that the provisions of Order XIX Rule 3 are not applicable to an affidavit in support of a petition, which is the basic pleading in that case. In fact the Court refers to the principles of verification under Order VI Rule 15 to hold that the affidavit which was basically the verification of the petition was valid and proper. The Court has clearly held that Order XIX Rule 3 must be read with Order XIX Rule 1 of the CPC to explain the situation to which it would apply. The Court has also considered and distinguished some of the judgments that the

Defendants/Appellants are relying upon to explain how those were cases in which Order XIX was attracted because the affidavits in those cases were not affidavits filed in support of a pleading or in the nature of a verification of a pleading. Thus, we are in respectful agreement with the said judgment and are of the view that it clearly supports our reasons to hold that Order XIX Rule 3 would have no application to an Affidavit in support of pleadings under Order VI Rule 15(4).

89. The decision in **Padmabati Dasi vs Rasik Lal Dhar**¹³ cited by the Defendants has no application in the present case since in that case, the Court applied the provisions of Order XIX to a Petition filed before the Court of Appeal seeking a direction against the Appellants/Orig. Plaintiffs to furnish security for costs. It is in this context that Order XIX Rule 3 was strictly applied. Even then it was made clear that an Affidavit may be on the basis of deponent's knowledge or statement of his belief and the grounds of beliefs must be stated with sufficient particularity. In other words, the judgment does not state that the basis of knowledge must be supported by particulars. This judgment does not state that the principles of Order XIX Rule 3 would apply to a pleading such as a Plaint filed under Order VI Rule 1, a pleading by which a suit is instituted. Resultantly, this decision does not have any application in the present case.

90. The Defendant also relied upon the decision in the case of **State of**

13 1909 SCC OnLine Cal 104

Bombay V/s Purshottam Jog Naik¹⁴ since the Supreme Court has endorsed therein the view of *Padmabati Dasi V/s Rasiklal Dhar (Supra)*. However, even in that case, Order XIX was being applied to an Affidavit and not to a pleading. In fact, paragraph 16 entirely supports the Plaintiff's submission. The Supreme Court disagreed with the High Court's view that an Affidavit to support the Order could only be made by the Minister. The Supreme Court stated that the question of whether the Minister's affidavit would have been of more satisfaction is not a question of law. The relevant observations are reproduced below :

“As a matter of abstract law, of course, the state of man's mind can be proved by evidence other than that of the man himself, and if the Home Secretary has requisite means of knowledge, for example, if the Minister had told him that he was satisfied or he had indicated satisfaction by his conduct and acts, and the Home Secretary's affidavit was regarded as sufficient in the particular case, then that would constitute legally sufficient proof. But whether that would be enough in any given case or whether the “best evidence rule” should be applied in strictness in that particular case, must necessarily depend upon its facts. In the present case, there was the element that 57 cases were dealt with in the course of 6 days and orders passed in all on one day. But we do not intend to enter into the merits. All we desire to say is that if the learned judges of the High Court intended to lay down as a proposition of law that an affidavit from the Minister-in charge of the department is indispensable in all such cases, then they went too far.”

91. Further, both these judgments are considered and distinguished in the

14 AIR 1952 SC 317

case of Shanti Prasad Jain V/s. Union of India & Ors. (Supra).

92. Reliance was also placed on **Barium Chemicals Ltd. Vs. Company Law Board and Others**¹⁵ by the Defendants. However, the decision does not have any application in the present case since the observations therein were not with respect to Affidavits in support of the Pleadings.

93. It has further been argued by Shri Anturkar that the source of the information ought to be disclosed in the Affidavit filed in support of the Plaint failing which the Affidavit would be a 'slipshod' affidavit which would not satisfy Order VI Rule 15 (4). We do not agree with this submission since CPC and/or the High Court Rules do not mandate disclosure of grounds or sources of information in the Affidavit as is sought to be contended by the Defendants. That requirement is wholly absent for the Affidavit to be annexed along with the Plaint and is sought to be introduced by the Defendants without any basis in law. An Affidavit is merely a written declaration on oath in support of the averments made in the Pleading, thus an attempt to mandate additional requirements, not recognized under law, cannot be entertained.

94. It would be relevant to produce certain paragraphs from the decision of the Supreme Court in the case of **F. A. Sapa and Others V/s. Singora and Others**¹⁶ which has been relied upon by the Plaintiff. The relevant portions of the Judgment are reproduced herein below :

15 1966 Supp SCR 311

16 (1991) 3 SCC 375

“From the text of the relevant provisions of the R.P. Act, Rule 94A and Form 25 as well as Order VI Rule 15 and Order XIX Rule 3 of the Code and the resume of the case law discussed above it clearly emerges (i) a defect in the verification, if any, can be cured (ii) **it is not essential that the verification clause at the foot of the petition or the affidavit accompanying the same should disclose the grounds or sources of information in regard to the averments or allegations which are based on information believed to be true** (iii) if the respondent desire better particulars in regard to such averments or allegations, he may call for the same in which case the petitioner may be required to supply the same and (iv) the defect in the affidavit in the prescribed Form 25 can be cured unless the affidavit forms an integral part of the petition, in which case the defect concerning material facts will have to be dealt with, subject to limitation, under [section 81\(3\)](#) as indicated earlier. Similarly the Court would have to decide in each individual case whether the schedule or annexure referred to in [section 83\(2\)](#) constitutes an integral part of the election petition or not; different considerations will follow in the case of the former as compared to those in the case of the latter.”

95. We do not find any merit in the submission made by Shri Anturkar that the judgment in *F.A. Sapa* (supra) is to be disregarded on the doctrine of sub-silenzio, as argued in rejoinder. This judgment notices certain prior decisions of the Supreme Court. After analysing those decisions it sets out the findings as noted above. We are bound by that decision and cannot disregard the same.

96. In any event, the Affidavit annexed to the Plaint in the present case incorporates the entire Plaint in the body of the Affidavit. Thus the sources and grounds as mentioned in the Plaint form a part of the Affidavit and the Affidavit cannot be termed as a ‘slipshod’ Affidavit as is sought to be argued by the Defendants.

97. In relation to the Defendant's Notice of Motion bearing No.534 of 2015 filed seeking dismissal of the Suit, we are of the view that even if there is defect in the verification, the Suit cannot be dismissed. The grounds on which the Plaint can be dismissed are covered under Order VII Rule 11, CPC. Non-compliance of Order VI Rule 15 in relation to verification is not one of the grounds on which the Plaint can be dismissed. It has been held in catena of judgments that the rules prescribed under Order VI Rule 15 are rules of procedure which can be rectified at any point of time. Thus, the legislature does not contemplate dismissal of the Plaint on a merely technical ground. The Plaintiff relies upon the judgment of this Court in the case of **All India Reporter Ltd. Vs. Ramchandra Dhondo Datar**¹⁷ and the relevant portion of the same reads as under :

“13. The question is whether the provisions contained in Order VI relating to signing, verification and presentation of the plaint relate merely to procedure or whether a plaint which does not strictly comply with the requirements of Order VI would cease to be a valid plaint and would be a nullity because of such de facts or irregularities. It is true that when a plaint is presented to the Court or to such officer as the Court appoints, it is open to the Court or to the officer to point out the de facts or irregularities to the person presenting the suit and to require him to rectify the de facts or irregularities. But can it be said that the de facts or irregularities would make the presentation of the suit itself invalid although the plaint is admitted and particulars of the plaint are entered in a register of suits as provided by Order IV, rule 2? **In this connection it is necessary to note that Order VII, rule 11, which refers to the rejection of a plaint, enumerates only**

¹⁷ AIR 1961 Bom 292

four cases in which a plaint has to be rejected, but it does not enumerate any of the facts or irregularities referred to in Order VI, Rules 14, Order VI, Rule 15, or Order VI, Rule 2. It is clear from the provision contained in Order VI that these rules relate only to procedure, and the better view would be to regard them as mere matters of procedure and to hold that if a plaint is not properly signed or verified but is admitted and entered in the register of suits it does not cease to be a plaint and the suit cannot be said not to have been instituted merely because of the existence of some defects or irregularities in the matter of signing and verification of the plaint.”

98. This is also the view that has been rightly been taken by the Learned Single Judge. We would like to add that we are not to be understood at all as saying that the verification clause of the present Plaint has to be cured but are merely noting this principle to state that even if there were a defect it cannot lead to dismissal of the Suit.

99. For all of the reasons stated above, we find no merit in the Appeals filed by the Defendants challenging the Impugned Order dated 6th September 2021 and the same are therefore, dismissed. Interim Applications also stand dismissed.

100. It has been pointed out to us that the Plaintiffs Notice of Motion No.313 of 2014 was directed to be heard expeditiously by an Order of the Supreme Court dated 8th January 2020. We accordingly direct the Learned Single Judge hearing such Notices of Motion to hear and decide the Plaintiffs Notice of Motion for interim reliefs at the earliest.

101. In view of the reasons and conclusions as stated above, the Appeals are dismissed. We are of the view that the Notices of Motion filed by the Defendants and this Appeal were filed with the intent to delay the hearing of the Plaintiffs Notice of Motion and the proceedings in the Suit. All Interim Orders passed in the above Appeals are forthwith vacated.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)