



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of decision: 19 September 2023**

+ **FAO (COMM) 182/2023 & CM APPL. 47294/2023 (Interim Stay)
 and CM APPL. 47296/2023 (Condonation of Exceeding Page
 Synopsis & List of Dates)**

PRAYAG POLYTECH PVT. LTD & ANR. Appellants
 Through: **Mr. Abhimanyu Garg and
 Mrs. Preety Makkar, Advs.**
 versus

RAJ KUMAR TULSIAN Respondent
 Through: **None**

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

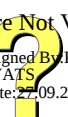
DHARMESH SHARMA, J. (ORAL)

1. Appellant No. 1, a Private Limited Company and appellant No.2 its Director, are defendants in a money suit filed by the respondent/plaintiff, purportedly falling under Section 2(1)(c)(xviii) of the Commercial Courts Act, 2015¹, which suit, after the framing of issues, is at the stage of recording of evidence of the parties. The appellants are assailing the impugned order dated 07 July 2023 passed by the learned District Judge (Commercial Court)-01, Tis Hazari Courts, Delhi² under section 13(1) of the CC Act, whereby the application filed by the appellants under Order VII Rule 11 of the Code of Civil Procedure, 1908, as amended upto date³ for rejection of the plaint on the ground of the same not having been filed in terms of

¹ CC Act

² District Judge

³ CPC





Order VI Rule 15 of the CPC due to deficient verification of the 'Statement of Truth' was dismissed while another application moved by the respondent/plaintiff under Section 151 of the CPC for permission to cure the defects in the plaint by taking on record the 'Statement of Truth' was allowed.

FACTUAL BACKGROUND:

2. Shorn off unnecessary details, the suit was instituted on 20 March 2021 and it appears that on the first hearing on 22 March 2021 certain defects in the plaint were pointed out to the respondent/plaintiff and thereafter an application under Order VI Rule 17 of the CPC for making necessary amendments in the suit was allowed vide order dated 17 November 2021. On completion of the pleadings, the issues were framed in the matter on 19 January 2023. Subsequent to the conclusion of recording of evidence of two witnesses for the respondent/plaintiff examined as PW-1 and PW-2, the appellants moved an application under Order VII Rule 11(d) read with Order VI Rule 15A CPC and also Section 26(2) of the CPC for rejection of the plaint. It is an undisputed fact that the respondent/plaintiff filed the plaint without complying with the provisions of Order VI Rule 15A of the CPC i.e., neither each page of the plaint had been signed nor the plaint was verified as per Appendix-I so much so that it is brought out that a list of documents had not been provided in terms of the format under the CC Act. It would be expedient to reproduce the view and reasons advanced by the learned District Judge



while passing the impugned order dated 07 July 2023, which reads as under:-

“23. In my view, curing of defects of Order 6 Rule 15A CPC would have to be allowed on the same ground as the application under Section 6 Rule 17 CPC is allowed for amendment of the plaint and one of the main grounds for dismissal of application under Order 6 Rule 17 CPC is that when the proposed amendment was brought, the suit would be barred by limitation or any other law. In **Naveen Kumar versus Meenakshi Goel**⁴ Hon’ble High Court while dealing with an application u/O. 6 rule 17 CPC for amendment in the verification of pleading being not in accordance with order VI rule 15A CPC has dealt with various law regarding amendment in pleading. The relevant paras are as under:

*“21. The principles governing Order VI Rule 17 of the CPC are trite and well settled, and copious reference to authorities is hardly required. The governing philosophy behind the provision, as pithily encapsulated in **Rajesh Kumar Aggarwal v. K.K. Modi**⁵, is that “the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side”. In **Revajeetu Builders & Developers v. Narayanaswamy & Sons**⁶, while reiterating, definitively, that “all those amendments must be allowed which are imperative for determining the real question in controversy between the parties”, the Supreme Court culled out the following defining principles, governing the exercise of jurisdiction, while dealing with applications for amendment (in para 63 of the report):*

- “(1) whether the amendment sought is imperative for proper and effective adjudication of the case;*
- (2) whether the application for amendment is bona fide or mala fide;*
- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;*

⁴ 2021 SCC OnLine Del 2882

⁵ (2006) 4 SCC 385

⁶ (2009) 10 SCC 84





(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

22. *Revajeetu Builders & Developers* is an instructive and important decision, as it digests several earlier authorities, which lay down authoritative principles, regarding the allowing of amendments, under Order VI Rule 17. Some of these may be enumerated thus:

(i) Amendments, of the plaint, which alter materially, or substitute, the cause of action or the nature of the claim, ought not to be allowed.

(ii) The object of courts is to decide the rights of the parties, and not to punish them for mistakes they made in the conduct of the cases by deciding otherwise than in accordance with their rights. There is no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct, if it could be done without injustice to the other party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and allowing such amendments is not a matter of favour or grace. As soon as it appears that the way in which a party had framed his case would not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it could be done without injustice, as anything else in the case is a matter of right.

(iii) Amendments, which introduce claims which would otherwise be barred by limitation are, ordinarily, not to be allowed. However, this rule is not universal and, while the consideration of whether the cause, sought to be introduced by the amendment, would be barred by time, is required to be taken into account by the court, it does not affect the power of the court to allow the amendment, if it is required in the interests of justice.

(iv) Mere defects in pleadings, the removal of which does not change the quality or quantity of the reliefs sought, or introduce a new case, are required to be permitted to be remedied by amendment.

(v) Rules of procedure are intended to be a handmaiden to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or infraction of the rules of procedure. The





court always grants leave, to amend the pleadings of a party, unless it is satisfied that the party applying was acting mala fide, or that, by his blunder, he has caused injury to his opponent which cannot be compensated by costs. "However, negligent or careless may have been the first omission, and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side."

vi) Courts are required to be extremely liberal in granting prayers for amendment of pleadings, unless serious injustice or irreparable loss is caused to the other side.

(vii) Courts cannot adopt a hyper technical approach in such matters. Technicalities of law cannot be permitted to hamper courts in the administration of justice between the parties.

(viii) Subject to the aforesaid principles, "full powers of amendment must be enjoyed and should always be liberally exercised".

23. More recently, in **Varun Pahwa v. Renu Chaudhary**⁷, it was held thus:

"The rules of Procedure are handmaid of justice and cannot defeat the substantive rights of the parties. It is well settled that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of the Rules of Procedure. The Court always gives lead to amend the pleadings even if a party is negligent or careless as the power to grant amendment of the pleadings is intended to serve the ends of justice and is not governed by any such narrow or technical limitations."

Hon'ble High Court further while allowing the application for amendment has held that:

24. Applying the above principles, it is obvious that the amendments, in the verification, below the plaint, and in para 3 of the Statement of Truth accompanying the plaint, as proposed in I.A. 5209/2020, are required to be allowed. Trial, in the case, is yet to begin. The defendant has not placed once scintilla of material, on record, or advanced any submission, whatsoever, to indicate that allowing the amendments, as sought by the plaintiffs, would result in irreparable prejudice to the defendant. Recitals, regarding the place and date, when the plaint was verified, and the basis for claiming the contents, of the various paragraphs, in the plaint, to be true and correct, are within the knowledge of

⁷ (2019) 15 SCC 628





the deponent and, if, as originally filed, any error, omission, existed in respect thereof, there can be no embargo, whatsoever, on the deponent rectifying the error, by invoking the jurisdiction, of the Court, to allow amendment of the pleadings. Processual justice cannot afford to be tight-fisted. The submission that the amendments had “a significant bearing on the whole case”, “a serious impact on cross examination” and “adversely impacted any possible of compliance with trial procedures” are, quite obviously, merely platitudes, with little substance. The submission that allowing the amendments, in para 3 of the Statement of Truth, and in the verification below the plaint, would impede cross examination, or due compliance with trial procedures, is completely incomprehensible; significantly, though these contentions have been advanced, in para 2 of the written submissions, placed on record by the defendant after reserving of judgment on these applications, Mr. Sai Deepak, with his experience, did not seek to so urge during arguments. The mere fact that the amendments may have been sought, consequent to the lacunae, in the verification and the Statement of Truth, having been pointed out by the defendant during arguments before this Court, cannot, either, constitute a ground to reject the prayer for amendment. At all times, it has to be remembered that the power to allow amendment is in furtherance of the duty, of the court, to decide the lis before it on merits, unencumbered by technical considerations and is required, therefore, to be exercised with the full awareness of the sweep and expansiveness it possesses. Disallowing the amendments, as sought, and allowing the suit to proceed to trial with the defects, in the verification below the plaint, and in the corresponding paragraph of the Statement of Truth, remaining unremedied, would go against the very grain and philosophy of Order VI Rule 17. Such an approach has, therefore, sedulously to be avoided.

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

24. Now reverting back to the case, in this case, suit was file as commercial suit. Thereafter plaintiff has filed an application for





amendment of plaint under Order 6 rule 17 CPC on 16.11.2021 which was allowed vide order dt. 17.11.2021 and plaintiff in the amended plaint also did not signed on each page. But it is worthwhile to say that defendants also in the written statement filed by him to both original plaint and amended plaint did not raise any such objection. Even issues were framed and plaintiff led evidence of two witnesses and even defendants No.1 and 2 and defendant file evidence affidavit on 16.02.2023 and case was fixed for cross examination of PW3 thereafter defendant filed the present application under Order 7 rule 11 CPC praying or rejection of plaint on the ground that pleading have not been verified in accordance with order VI rule 15A CPC and pleading in the suit has not been verified by a valid statement of truth as in the plaint it is not stated that how many pages the plaint consist of and plaint is not signed on page.

25. In my view objection raised by the defendants is also highly belated and its appears that it does not cause any prejudice to him therefore same were not taken at the time of filing of written statement. Further in my view since both unamended and amended plaint is accompanied with statement of truth though it is not as per format given in the Commercial Courts act as it does not contain paragraph total number of pages plaint is consist off as required in para 6, though it contain that total pages and each has been signed of which in my view is not a such a substantive defect that cannot be cured as it appear to be misunderstanding of the Counsel of plaintiff that page numbers of plaint are to be mentioned instead of total page. As far as non signing on each page of plaint is concerned in my view it would be too harsh under the circumstances to reject the plaint on this ground, because it is also appeared to be mistake of Counsel for plaintiff that he did not obtained signature of the plaintiff on each page of plaint. In my view these defects are not of such a nature the plaint needs to be rejected. Plaintiff after pointing out of the said defects has already file the application to cure the said defects, hence, considering all the facts and circumstances and the abovesaid Judgments, I allow the application of the plaintiff and permit him to file amended plaint having signatures of plaintiff on each page and statement of truth as per appendix given in Commercial Courts Act. Let the same be filed within 14 days. Further, as a consequence of allowing application of plaintiff I dismiss the application of the defendants No. 1 and 2 filed under Order 7 Rule 11 CPC for rejection of plain. Both the application are disposed off accordingly.”





GROUND OF APPEAL:

3. The impugned order is assailed in the present appeal primarily on the ground that once the learned District Judge had undisputedly found that the plaint had not been filed in compliance of Order VI Rule 15A read with Section 26 of the CPC, there was no option but to reject the plaint in terms of Order VII Rule 11(d) of the CPC and the impugned order has been passed in gross contravention of the settled position of law enunciated in the case of **National Highway Authority of India v. KNR Construction Limited**⁸ as also **Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)**⁹.

4. Advance notice was given to the respondent/plaintiff but none appeared.

ANALYSIS AND REASONING:

5. Having given our thoughtful consideration to the submissions made by the learned counsels for the appellant and on consideration of the case law cited at the Bar, we are unable to persuade ourselves to find any flaw in the impugned order passed by the learned District Judge. In order to appreciate the real controversy, it would be relevant to reproduce Order VI Rule 15 of the CPC as also Appendix-I under the First Schedule Order VI Rule 15A and Order XI Rule 3 CPC to arrive at a decision in the instant appeal, which reads as under:-

“15A. Verification of pleadings in a Commercial Dispute---

⁸ 2023 SCC OnLine Del 519

⁹ 2019 SCC OnLine Del 10456





(1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule.

(2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties.

(3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.

(4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein.

(5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule”.

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APPENDIX-I STATEMENT OF TRUTH

(Under First Schedule, Order VI Rule 15A and Order XI-Rule 3)

I the deponent do hereby solemnly affirm and declare as under:

1. I am the party in the above suit and competent to swear this affidavit.

2. I am sufficiently conversant with the facts of the case and have also examined all relevant documents and records in relation thereto.

3. I say that the statements made in paragraphs are true to my knowledge and statements made in paragraphs are based on information received which I believe to be correct and statements made in paragraphs are based on legal advice.

4. I say that there is no false statement or concealment of any material fact, document or record and I have included information that is according to me, relevant for the present suit.

5. I say that all documents in my power, possession, control or custody, pertaining to the facts and circumstances of the proceedings initiated by me have been disclosed and copies thereof annexed with the plaint, and that I do not have any other documents in my power, possession, control or custody.

6. I say that the abovementioned pleading comprises of a total of pages, each of which has been duly signed by me.





7. I state that the Annexures hereto are true copies of the documents referred to and relied upon by me.

8. I say that I am aware that for any false statement or concealment, I shall be liable for action taken against me under the law for the time being in force.

Place:

Date:

DEPONENT

VERIFICATION

I, do hereby declare that the statements made above are true to my knowledge.

Verified at [place] on this [date].

DEPONENT"

6. It is pertinent to mention that Order VI Rule 15¹⁰ of the CPC provides for verification of the pleadings and requires the deponent to verify as to which paragraphs of the pleadings are based on his own knowledge and what part of the pleadings are based upon information received and believed to be true. It also provides for signing of the verification along with the date and filing of the affidavit in support of the pleadings. It is but manifest that when it comes to the CC Act, there is a distinct departure from the *hitherto* prescribed norms of verification of pleadings, since the CC Act provides for a mechanism for speedy and timely disposal of high value commercial disputes that may entail complex facts and questions of law. It is in the said context that Section 16 in Chapter VI of the CC Act specifically provides that certain provisions under the CPC have been amended in the manner specified in the Schedule with regard to the format of the

¹⁰ 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.





affidavit to be filed along with the pleadings besides drastic changes in the provisions pertaining to imposition of costs, claim of interest, disclosure and discovery of documents, interrogatories, case management, summary judgments and so on. The legislative mandate behind the enactment of the CC Act is clearly discernible that the matters being high valued commercial disputes, a great deal of sanctity is warranted to be attached to the manner and form of the pleadings, verification and assertion of truth in the pleadings relied upon by the parties. Therefore, there is no quarrel with the position that the requirements spelt out by Order VI Rule 15A of the CPC are not empty technicalities or procedural formalities.

7. Thus, the moot question before us is as to what would be the legal effect of non-compliance with the provisions of Order VI Rule 15A of the CPC. Avoiding a long academic discussion, for interpreting the said provision, we must bear in mind the decision in the case of **D. Saibaba v. Bar Council of India**¹¹, wherein the following text from the “Principles of Statutory Interpretation” (8th Edn., 2001) written by Justice G.P. Singh was quoted with approval:

“If the language used is capable of bearing more than one construction, in selecting the true meaning regard must be had to the consequences resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results.”
(pp. 112-13, *ibid*)

¹¹ (2003) 6 SCC 186



8. Highlighting the said aspect of interpretation of statutes, reverting back to the instant matter, if as canvassed by the learned counsel for the appellants, a strict interpretation were to be applied thereby mandating the nature and form of verification of pleadings as per Order VI Rule 15A CPC, that, by necessary implication, would only warrant an order rejecting the plaint. We have no hesitation in saying that such an interpretation would lead to palpable hardships, grave inconvenience, and the derailment of the dispensation of justice. We find that the effect of such defects in the pleadings is provided for in the same provision itself, to the effect that the Court may strike out a pleading that is not verified by the 'Statement of Truth' i.e., the affidavit set out in the Appendix. In other words, where the pleading is not verified in accordance with Sub-Rule (1), the party may not be permitted to rely upon the said pleading in evidence. The rule of literal construction of Order VI Rule 15A (4) & (5) CPC rather invites an interpretation that the plaint cannot be struck off or rejected as a whole. At the cost of repetition, we find that placing such a construction would be absolutely absurd, harsh and would defeat the ends of justice. The objective of Order VI Rule 15A of the CPC as grafted in the CC Act is to ensure that the party concerned must be fully acquainted with the facts personally so as to verify and account for the truthfulness of the pleadings in high-value commercial suits. Indeed, mere non-signing of each and every page of the pleadings is *per se* a defective, but the same could very well be cured. Likewise,



any defect in verification of an affidavit in the nature of ‘Statement of Truth’ is also curable.

9. In the cited decision of *ONGC (supra)* relied upon by learned counsel for the appellants, an application under Section 34 of the Arbitration & Conciliation Act was filed challenging the arbitral award beyond the period of 120 days and it is in the said context relying on the decision of the Apex Court in the case of **M/s. Simplex Infrastructure Ltd. v. Union Of India**¹², it was held that the application even if filed a day beyond 120 days from receipt of the award cannot be condoned by the Court. Although, issues were raised about the filing of the application at the initial stage itself being *non est* for *inter alia* not filing the ‘Statement of Truth’ as per the format besides deficiency of Court fees and non-filing of the *Vakalatnama*, ultimately what weighed with the learned Single Judge of this Court was that the application was barred by limitation.

10. Likewise, in the cited case of *National Highway Authority of India (supra)*, primarily the application under Section 34 of the Arbitration and Conciliation Act challenging the arbitral award was held to be time barred. It was in the said context that the Court held that since the application was not authenticated by the signatures of the plaintiff on each page at the end and it was also not supported by the ‘Statement of Truth’, that such filing amounted to merely filing of a bunch of papers, and hence was a case of *non est* filing. We are unable to countenance any proposition of law in the aforesaid cases

¹² (2019) 2 SCC 455



that would invite a proposition of law that the pleadings in this case should have been struck off or the plaint should have been rejected for being *non est* in law.

11. Before parting with the instant appeal, we may also refer to the decision by a learned Single Judge of this Court in the case titled **Rupin Associates v. Axis Bank Ltd. & Ors.**¹³ It was a case where in a money suit, the plaintiff moved an application under Order XII Rule 6 of the CPC seeking a decree on admission to the effect that the defendants had failed to verify the written statement in terms of Order VI Rule 15A of the CPC and for non-filing of the ‘Statement of Truth’. Although, the main issue was that a civil revision against the rejection of such an application by the learned District Judge was not maintainable, it was also held that there was no case for rejection of the written statement in its entirety. Resultantly, the following direction was passed:

“37. Accordingly, it is directed that an issue would be framed by the Commercial Court in the suits, to the effect as to whether the Defendant had filed a proper Statement of Truth and had filed a proper Admission-Denial of documents or not, as also whether the defence would be liable to be taken on record in view of said defects. The said issue shall be decided by the Commercial Court with the main suits itself. It is made clear that the impugned orders shall not prejudice the final adjudication of the said issue, which shall be decided in accordance with law.”

12. However, we also hasten to add that whether such defects in the nature of failure to sign each page of the pleadings and/or defective verification of the ‘Statement of Truth’, or non-filing of the ‘Statement

¹³ 2021 SCC OnLine Del 4273



of Truth’ could be condoned and/or the defect could be allowed to be cured, will depend on the facts and circumstances of each case before the Court based on objective factors such as the stage of the proceedings and judicial determination as to the law of limitation, if any, prescribed under the general law and/or any special law. The said approach shall be in consonance with the well ordained legal understanding that the rules of procedure are the handmaidens of justice and cannot defeat the substantive rights of parties. There is no gainsaying that the test would always be whether the defect, if any, if allowed to be condoned or cured, would result in any irreparable legal injury or prejudice on facts or law to the opposite party. Before parting with this case, we also hasten to add that the appellant has not challenged the order dated 17 November 2021 whereby the learned District Judge allowed the amendment of the plaint and thereby curing the defects in the pleadings.

13. In view of the foregoing discussion, we find that there is no illegality, infirmity or incorrect approach adopted by the learned District Judge in holding that the objection as to the plaint suffering from any defect in terms of Order VI Rule 15A of the CPC was not such that would warrant rejection of the plaint under Order VII Rule 11(d) CPC. The objection was taken at a belated stage in the background of the case where the issues had already been framed and rather the respondent/ plaintiff had led substantial evidence on the matters in issue. There was nothing shown so as to suggest that the appellants have been prejudiced in any manner in filing the written



statement. In the end, if any prejudice has been caused, that can very well be espoused or prodded upon in the cross-examination of the witnesses of the respondent/plaintiff as well as by the appellants while leading their own evidence in the matter.

14. Accordingly, the present appeal is dismissed in *limine*. Nothing contained in this order shall tantamount to an expression of opinion on the merits of the matter pending between the parties. The pending applications also stand disposed of. Copy of this order be sent to the Court concerned for information and the records.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

September 19, 2023

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