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**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 14.02.2023

+ CM(M) 1118/2021 & CM APPL.43962/2021 (Stay)

THE EXECUTIVE ENGINEER, NOIDA CENTRAL DIVISION  
CENTRAL PUBLIC WORKS DEPARTMENT AND ANR

..... Petitioner

versus

SH. K.L MONGA

..... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Ms. Nidhi Raman, CGSC with Mr. Zubin Singh, Advocate and Mr. Pradeep Aggarwal, Asstt. Engineer (CPWD)

For the Respondent : None

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J. (ORAL)**

**[ The proceeding has been conducted through Hybrid mode ]**

1. The petitioners challenge the order dated 15.09.2021 passed in CS (Comm) No.1615/2019 titled '*K.L. Monga vs. The Executive Engineer, CPWD & Anr*', whereby the learned Trial Court has taken off the record the written statement as filed by the petitioners on the ground that though an affidavit was filed, however the same was not in the format of Statement of Truth as prescribed under Order VI Rule 15A of the CPC, 1908 and consequently, the defence was also struck off.

2. Ms. Nidhi Raman, learned Standing Counsel appearing for the

petitioners submits that the learned Trial Court wrongly relied upon the judgment of Coordinate Bench of this Court in CM(M) No. 346/2020 titled '**OK Play India Pvt. Ltd vs M/s AP Distributors and Anr**', which is not relatable to the facts of the present case inasmuch as in the aforesaid case, this Court was considering the delay of non-filing of the affidavit of admission/denial along with the written statement and also that there was no accompanying application seeking condonation of delay in filing the same.

3. Learned Standing Counsel for the petitioners submits that the entire edifice of the impugned order is the aforesaid judgment passed by the Coordinate Bench and submits that it is trite that the judgments rendered by Courts have to be considered in view of the issues and facts raised therein.

4. Learned Standing Counsel submits that in the present case, the written statement was admittedly filed within the prescribed period alongwith an affidavit in support thereof. However, the affidavit was not in the form as prescribed by Order VI Rule 15A of CPC.

5. Learned Standing Counsel submits that the provisions of Order VI Rule 15 A (4) & (5) of CPC are only directory and not mandatory and therefore, non-filing the Statement of Truth in the prescribed format would not render the written statement liable to be taken off the record nor can the defence be struck off on the mere irregularity. Ms. Raman submits that it is a mere procedural irregularity and cannot disentitle the party to the *lis* from contesting the case on merits.

6. Learned Standing Counsel draws attention of this Court to page 85 of the present petition which is the summons issued to the

petitioners/defendants by the learned Trial Court and submits that even the bare look at the summons would suggest that the same has not been issued in accordance with Order V Rules 1 and 5 of CPC as amended by the Commercial Courts Act, 2015. On that basis, learned Standing Counsel submits that the summons which were issued in the ordinary manner did not give any indication as to whether the written statement ought to be filed under the Commercial Courts Act or under the ordinary Civil procedure.

7. Learned Standing Counsel submits that this issue, in any case, is no more *res integra* on the basis of judgment rendered by Single Bench of Calcutta High Court in '**Saptarshi Construction vs. Manjusree Singh and Ors**' C.O. No. 179/2021 decided on 02.02.2021. Ms. Raman submits that a Coordinate Bench judgment of this Court in '**Sudhakar Singh & Anr vs. M/s Webkul Software Pvt. Ltd**' CM(M) 50/2020 decided on 28.01.2020 reported in 2020 SCC OnLine Del 436 had an occasion to deal with an issue where the defendant had not filed the affidavit of admission/denial alongwith the written statement in a commercial suit.

8. Learned Standing Counsel submits that the Coordinate Bench of this Court in **Sudhakar Singh** (*supra*) permitted the filing of the affidavit of admission/denial on the ground that no such reference was indicated in the summons of the suit which was originally filed as an ordinary civil suit. On that basis, learned Counsel submits that non-filing of statement of truth cannot be fatal at all and is a curable irregularity.

9. Ms. Raman also refers to sub-Rules (4) and (5) of Order VI Rule

15A CPC pertaining to verification of pleadings in a commercial suit to submit that the words employed in the said rule would make it clear that the same are directory and not mandatory, inasmuch, as the non-filing of an affidavit or delay in filing of an affidavit would not *ipso facto* entail disentitlement of filing the written statement nor of the consideration of the written statement as a pleading which is circumscribed by sub-Rule (5) of Rule 15A of Order VI of CPC as it is only affirmation on oath, which can be cured even subsequently.

10. Learned Standing Counsel submits that in view of the aforesaid submissions and judgments, this Court may permit the taking on record the Statement of Truth and consequently, the written statement may also be taken on record by quashing and setting aside the impugned order.

11. This Court has considered the aforesaid arguments of learned Standing Counsel for the petitioners as well as perused the impugned order and the judgments relied upon by learned Standing Counsel.

12. The respondent in the present case has been served and apart from advance service, he has been also been served by the Court process and yet, no one has entered appearance on his behalf for the past three hearings.

13. This Court proceeds to dispose of the petition in accordance with Delhi High Court Circular No. 69/Rules/DHC dated 05.12.2019.

*“5. Appearance on the first date of listing:-*

*(b) In case any opposite party does not appear before the Court upon advance service of the petition, the Court may not issue any further notice to such opposite party and may pass any order(s) as it may deem fit and proper in the facts and circumstances of the case.”*

14. Though the learned counsel for the petitioner/defendant had not

referred to the facts of the case in detail, upon perusal of the Trial Court's record filed with the present petition, and on the close scrutiny of the same, relevant facts which are necessary for the adjudication of the dispute in question, have been culled out as follows:-

14.1 The present suit was filed in the year 2019, appears to have been filed as ordinary suit on the basis of pecuniary jurisdiction of the subject value of the suit in question, but the same was initially listed in the Court of Additional District Judge, (Central), Tis Hazari Courts, Delhi for which the summons were issued on 31.08.2019.

14.2 In the meanwhile, during the lockdown period, the suit got transferred from the court of Additional District Judge (Central) and was marked and received by District Judge (Commercial Courts) on 21.08.2020 and therefore the same was listed for arguments on the application under Order XXXIX Rule 1 & 2 CPC, recording of the admission/denial of documents, framing of issues and for case management hearing under Order XV-A, Commercial Courts Act, 2015.

14.3 Thereafter, the written statement, which was initially filed on 28.11.2019 and was directed to be taken on record subject to payment of costs which was not paid then for different reasons, was finally allowed to be taken on record on 12.02.2021, by this Court's order in CM(M) 122/2021 upon payment of further costs.

14.4 Subsequently, on 22.02.2021, on the date of Case Management hearing, it was for the first time, that the learned

counsel appearing for the respondent/plaintiff had objected to the filing of written statement without the Statement of Truth and had therefore sought for the necessary consequences as envisaged under Order VI Rule 15 A CPC as amended by Commercial Courts Act, 2015. The learned Trial Court, considering the issue raised, had kept the matter pending for evidence subject to the determination of the controversy raised, after hearing the parties.

14.5 Thereafter, on 07.04.2021, the petitioner/defendant had moved an application under Section 151 CPC alongwith original unattested Statement of Truth dated 06.01.2020 seeking to place on record the Statement of Truth, which admittedly was not filed earlier citing non attestation of the same and subsequently was not filed due to COVID-19 lockdown. This was vehemently opposed by the learned counsel for the respondent/plaintiff before the learned Trial Court, which had culminated into the impugned order dated 15.09.2021.

**FINDINGS AND CONCLUSION:**

15. A perusal of summons placed at page 85 of the present petition makes it clear that while issuing the summons to petitioners/defendants, care was not taken to ensure that the same was issued in accordance with Code of Civil Procedure as amended by the Commercial Courts Act, 2015. To that extent, the arguments of learned Standing Counsel is sustained and it is obvious that the petitioners/defendants cannot be

faulted for not having filed the Statement of Truth as prescribed under the Commercial Courts Act, 2015 while filing their written statement.

16. It is also to be noticed that the written statement was indeed accompanied by an affidavit, though, not in the format of Statement of Truth, howsoever, was still an affidavit in support of the facts and contentions stated in the written statement. The procedural law is only a handmaid of justice which is a trite law and need not be dilated upon by this Court further.

17. The judgment of Learned Single Bench of Calcutta High Court in ***Saptarshi Construction*** (*supra*) has categorically held that defect of filing of affidavit/statement of truth is a curable defect and that the language of Order VI Rule 15A, CPC is directory only.

18. The judgment of the learned Single Bench of Calcutta High Court in '***Harji Engineering Works Pvt. Ltd vs. Hindustan Steelworks Construction Ltd***' decided on 14.09.2021 and reported in 2021 SCC OnLine Cal 2457, was cited across the Bar upon which Ms. Raman relies.

19. The learned Single Judge in ***Harji Engineering*** case (*supra*) had dealt with in detail the provisions of Order VI Rule 15 A Sub-Rule (4) and (5) of CPC and concluded that the words "shall" and "may" are not necessarily an indicator of whether a provision has to be construed as a mandatory or a directory provision. Learned Single Judge has further held that these are all procedural matters and ought not to entail serious and drastic measures which ordinarily could have been rectified.

20. This Court need not consider the judgments referred to above for the simple reason that in the present case no such interpretation is called

for in the facts of the case. The occasion for this Court to dwell upon the legality of the question of law, as involved herein, in the light of the judgments cited by the learned counsel for the petitioner/defendant, is left open.

21. The fact that summons were issued in the ordinary format, not indicating the commercial nature of the suit, coupled with the fact that the suit itself was transferred subsequently to the Commercial Court in the year 2020, after the filing of the written statement could not be held to be detrimental to the petitioner.

22. This coupled with the fact that the transfer to the designated Commercial Court was in the wake of COVID-19 and the extension of limitation by Hon'ble Supreme Court in *Suo Moto Writ Petition (C) 3/2020 "In Re: Cognizance For Extension of Limitation"*, the impugned order renders itself unsustainable.

23. That apart, it is a fact that the petitioner/defendant had moved the application for filing of Statement of Truth of 07.04.2021, which is within the time frame as excluded citing COVID-19, i.e., 15.03.2020 till 30.05.2022 by the Hon'ble Supreme Court.

24. This Court is of the view that the Statement of Truth as filed can be taken on record and as such the learned Trial Court is directed to take the Statement of Truth on record and proceed with the matter in accordance with law.

25. With the aforesaid directions, the present petition along with CM APPL. 43962/2021 (Stay) stands disposed of with no order as to costs.

**TUSHAR RAO GEDELA, J**

**FEBRUARY 14, 2023/Aj**