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

+ CM(M) 2009/2023, CM APPL. 63210/2023 & CM APPL. 63211/2023

Date of decision: 07.12.2023

SSR INTERNATIONAL THROUGH ITS PROPRIETOR ABHAY KUMAR SINGHAL Petitioner

Through: Petitioner in person

versus

TRIVENI ENGINEERING AND INDUSTRIES LIMITED SUGAR UNIT SABITGARH Respondent

Through: Mr. Anunaya Mehta, Advocate (through VC)

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 63210/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 2009/2023 & CM APPL. 63211/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 09.11.2023 passed by the District Judge (Commercial Court)-02, East District, Karkardooma Courts, Delhi ('Trial Court') in CS (COMM.) No. 454/2019, titled as '**M/s SSR International v. Triveni Engineering & Industries Ltd. and Anr.**', whereby the Petitioner's application filed under Order VI Rule 17 of Code of Civil Procedure, 1908



(‘CPC’) seeking amendment of the plaint after the conclusion of the final arguments, has been dismissed by the Trial Court.

1.1. The Petitioner is the plaintiff and the Respondent is the defendant. The suit has been filed seeking recovery of Rs. 5,29,507.50/- from the Respondent.

2. The Petitioner appears in person and has addressed the arguments. He states that the plaint was registered on 26.11.2019 and was duly accompanied with a supporting affidavit, however, no statement of truth was filed as the suit was instituted as an ordinary suit.

2.1. He states that the said suit was listed before the ADJ-01, East District, Karkardooma Courts, Delhi, on 26.11.2019, wherein the said Court marked the suit as a commercial matter and issued notice to the Respondents. He states that the suit was thereafter transferred on two different occasions i.e., on 06.02.2020 and on 03.09.2022, however, it was not pointed to the Petitioner that the plaint is defective as it is not accompanied with the statement of truth.

2.2. He states that counsel for the defendant failed to raise the objection that the plaint is liable to be rejected, at the threshold for the non-filing of the statement of truth along with the plaint. He states that it was during the course of final arguments that an objection was raised that the plaint instituted on 25.11.2019 was not with provision of Order VI Rule 15A of CPC as amended by the Commercial Courts Act, 2015.

2.3. He states that in view of the said objection, an application was moved by the Petitioner under Order VII Rule 10A read with Section 151 of CPC seeking return of plaint along with all ancillary documents and court fees to enable the Petitioner to file a fresh suit. He states that however, the said



application was dismissed by the Trial Court on 10.07.2023 along with legal costs of Rs. 25,000/- to be deposited with Legal Aid, Karkardooma Courts. He states that the said costs have been deposited by the Petitioner.

2.4. He states that in these circumstances, the Petitioner filed the application under Order VI Rule 17 CPC on 10.08.2023 seeking a limited amendment in the plaint at paragraph 47 and to enclose the statement of truth in support of the plaint.

3. Learned counsel for the Respondent enters appearance on advance service. He states that since final arguments have already been heard and judgment stands reserved, there is no infirmity in the impugned order of the Trial Court dismissing the Petitioner's application.

3.1. He, however, fairly admits that in view of the judgment of the Division Bench of this Court in *Prayag Polytechnic vs. Raj Kumar Tulsian, 2023 SCC OnLine Del 6058*, this defect in the plaint is curable.

3.2. He states that the Respondent does not propose to file any amended written statement to the amended plaint.

3.3. He states that, however, to balance the rights of the parties, the Petitioner may be permitted to amend the plaint to the extent prayed for in the application without re-opening the rights of either party to re-argue the matter afresh, since the amendment proposed is formal in nature.

4. In reply, the Petitioner states that he has no objection to the said submission of the Respondent and the only purpose of the amendment is to ensure that the plaint is not rejected on account of the non-filing of the statement of truth.

5. This Court has considered the submissions of the parties and perused the record.



6. In view of the judgment of the Division Bench in *Prayag Polytechnic* (Supra), wherein it was held that the defect of non-filing of statement of truth is curable, the Petitioner's application under Order VI Rule 17 CPC is liable to be allowed. Accordingly, the impugned order dated 09.11.2023 is set aside and the amended plaint is directed to be taken on record.
7. Further, with the consent of the parties, it is directed that no arguments are required to be addressed in this matter or any re-hearing necessary, since the amendment allowed is formal and it is clarified that while deciding the suit, the defect in the plaint for non-filing of statement of truth, will not form the basis of the dismissal of the suit.
8. The parties are directed to file an appropriate application and place this order before the Trial Court prior to the next date of hearing.
9. With the aforesaid directions, the present petition stands allowed. Pending application is disposed of.
10. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 07, 2023/msh/aa

Click here to check corrigendum, if any