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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO (COMM) 10/2023 & CM No.1256/2023

DELHI DEVELOPMENT AUTHORITY Appellant

Through: Mr. Kailash Vasdev, Sr. Adv. with
Mr. Sanjay Katyal, Mr. Shashi
Pratap Singh, Ms. Astha and Ms.
Shreya Kasera, Advocates

Versus

M/S AMARDEEP BUILDERS Respondent

Through: Mr. S.K. Jain, Mr. Akshu Jain, Ms.
Stuti Jain & Ms. Vishwa Bharti,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

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09.02.2024

1. The appellant has filed the present appeal impugning an order dated 20.10.2022 (hereafter '**the impugned order**') whereby the learned Commercial Court had dismissed the appellant's application [OMP (COMM) No.20/2020 captioned *Delhi Development Authority v. M/s Amar Deep Builders*] filed under Section 34 of the Arbitration & Conciliation Act, 1996 (hereafter '**the A&C Act**'). The aforesaid application was filed by the appellant impugning an arbitral award dated 21.02.2020 (hereafter '**the impugned award**').

2. The learned Commercial Court found that the appellant was negligent and careless in pursuing its application for setting aside the impugned award. The learned Commercial Court noticed that the respondent was a partnership firm. However, the appellant had filed an incorrect Memo of Parties reflecting the respondent as a sole proprietary concern. The Memo of Parties was not corrected by the appellant despite



the respondent filing objections in this regard. In addition, it was noticed that each page of the application was not signed by the appellant. More importantly, the application was not accompanied by a Statement of Truth, as is required under Order VI Rule 15A of the Code of Civil Procedure, 1908 as applicable by virtue of Section 16 of the Commercial Courts Act, 2015. The application, as filed by the appellant, was also not accompanied by a Certified Copy of the impugned award.

3. It is noticed that the appellant's application under Section 34 of the A&C Act before the learned Commercial Court was listed on 23.10.2020. The same was put up before the court for consideration on 12.11.2020. The notice of the said application was issued on that date and the application was again listed on 07.01.2021. On 07.01.2021, the learned counsel for the respondent entered appearance and undertook to file a reply within a period of fifteen days. On that date, the appellant also filed the Certified Copy of the impugned award, which was retrieved from the 'Drop Box'. The respondent filed its reply to the appellant's application under Section 34 of the A&C Act, on 28.01.2021. The respondent also filed an application seeking rejection of the appellant's application [OMP(COMM) No.20/2020] pointing out several irregularities including that the application had incorrectly described the respondent as a sole proprietorship concern and that the same was not accompanied by the Statement of Truth.

4. The orders passed on 30.01.2021 and 22.02.2021 indicate that the respondent's reply as well as the application seeking rejection of the appellant's application [OMP(COMM) No.20/2020] were taken out of the Drop Box. The learned counsel appearing for the appellant undertook to



file a reply to the respondent's application seeking rejection of the appellant's application under Section 34 of the A&C Act [OMP (COMM) No.20/2020].

5. However, despite sufficient opportunity the appellant did not file any response to the said application.

6. It is apparent from the above that although, the defects in filing of the application were duly pointed out to the appellant, the appellant did not take any steps to cure the same. It is noted that the matter was taken up by the learned Commercial Court on several hearings thereafter. However, the defects as pointed out, continued to persist. Concededly, the Statement of Truth was not filed before the learned Commercial Court till the date of passing of the impugned order.

7. It is well-settled that the filing of Statement of Truth is mandatory. A Co-ordinate Bench of this Court in *A V Industries v. Neo Neon Electrical Pvt. Ltd.:2023 SCC OnLine Del 5397* has observed as under:

“35. A perusal of the aforesaid provisions, particularly Order VI Rule 15A of CPC as amended by CC Act, would bring to fore that the Legislature had, in its wisdom, intentionally laid great stress on the filing of the Statement of Truth along with the plaint, in support thereof, to reduce the time spent in the litigation by parties. The delay in filing of the same may be considered as a procedural irregularity, however, the filing of the same, in our view, would be mandatory. Moreover, the filing of the Statement of Truth and the limitation thereafter provided for filing of the same, in our view is restrictive in nature and cannot be extended endlessly nor can the plaint and the documents annexed thereto be read in evidence. This has great significance since sub rule (4) and (5) of Rule 15A of Order VI of CPC as amended by CC Act mandate the filing of the Statement of Truth and also prescribe the effect of such non filing. It is clear that the parties are not permitted to rely upon the said pleadings by virtue of sub rule (4) and simultaneously the Court is empowered to strike out a pleading which is not supported by the statement of truth, prescribed by sub rule (5) of Rule 15A of Order



VI of CPC as amended by CC Act. Our endeavour in the present case is only to consider the effect of non filing of the Statement of Truth, since the facts obtaining in the present case do not give rise to any other question and thus, our views are restricted only to the said issue.”

8. Since the appellant had steadfastly refrained from curing the defects as pointed out, the learned Commercial Court passed the impugned order dismissing the appellant’s application [OMP(COMM) No.20/2020]. The learned Commercial Court noted that the defects had not been cured by the appellant for a period extending more than two years.

9. Mr. Kailash Vasdev, learned senior counsel appearing for the appellant referred to the decision of a Co-ordinate Bench of this Court in ***Prayag Polytech Pvt. Ltd. & Anr. v. Raj Kumar Tulsian: 2023 SCC OnLine Del 6058*** and drew the attention of this Court to paragraph 12 of the said decision. In the said case, the Court noted that whether the defects in the nature of failure to sign each page of the pleadings and / or defective verification of the Statement of Truth could be condoned and / or allowed to be cured will depend on the facts and circumstances of each case bearing in mind the stage of proceedings and judicial determination as to the law of limitation if any. The aforesaid decision is of no assistance to the appellant as despite being pointed out the defects, the appellant has steadfastly failed to cure the same. The learned Commercial Court has dismissed the appellant’s application not on the ground of limitation but on its failure to comply with the provisions of the Commercial Courts Act, 2015 for an extended period of two years. Undisputedly, the application for setting aside an arbitral award is required to be verified in the manner as provided. The question whether a person filing an application under Section 34 of the A&C Act, can be permitted to cure the same after the period of limitation



for filing the said application has expired, is a separate issue. This Court has held that a defective application under Section 34 of the A&C Act can be cured and refiled even after the period available for filing the application (three months in terms of Section 34(3) of the A&C Act) has expired. The delay in refiling is not covered under Section 34(3) of the A&C Act. However, given the legislative scheme of not countenancing delay, the court's approach in condoning such delay in refiling cannot be liberal (Ref.: *Delhi Development Authority v. Durga Construction Co.: 2013 SCC OnLine Del 4451*). However, in this case the appellant has not cured the defects despite the same being pointed out by the respondent.

10. We find no infirmity with this view of the learned Commercial Court.

11. The appeal is unmerited and is accordingly, dismissed. The pending application is also dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 09, 2024

‘gsr’

[Click here to check corrigendum, if any](#)