



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

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Judgment reserved on: 02.02.2024
Judgment pronounced on: 25.04.2024

+ CM(M) 1918/2023

RAJ KUMAR

..... Petitioner

Through: Mr. Ratnakar Maltiyar, Adv.

versus

USHA

..... Respondent

Through: Mr. Deepak Kohli and Ms. Chhavi Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The wrangle in the present case pertains to the defence of the petitioner being struck off and also the application seeking review of the same being dismissed by the learned trial court i.e. learned District Judge (Commercial), North West, Rohini, Delhi in the suit bearing no. CS(COMM) 481/2021 titled as “*Usha vs Raj Kumar*” vide orders dated 05.09.2023 and 13.10.2023, respectively.

2. It would be apropos to recite the facts beginning with the respondent filing the present commercial suit under Order XXXVII of Code of Civil Procedure, 1908 (“CPC”) read with Section 15 CPC read with Order VII Rule 1 of CPC read with Section 6 of the Commercial Courts Act, 2015,



against the petitioner seeking a recovery of Rs. 25.90 lakhs before the learned trial court back in September, 2021.

3. Thereafter, the petitioner received summon for judgement in the suit on 16.03.2022 and entered appearance as per procedure under Order XXXVII Rule 3(5) CPC and filed the application seeking leave to defend on 25.03.2022, which was allowed unconditionally vide order dated 31.01.2023 of the learned trial court. Further, the petitioner was granted 30 days' time to file the written statement in response to the suit.

4. As the written statement was not filed within the time granted, the learned trial court on 06.06.2023, granted additional 4 weeks' time to the petitioner to file the written statement, subject to payment of cost of Rs. 5,000. However, the petitioner filed the written statement belatedly on 13.07.2023 and the learned trial court vide order dated 05.09.2023 struck off the defence of the petitioner as the same was filed beyond the stipulated time granted by it. Aggrieved by the aforesaid, the petitioner filed an application under Section 151 CPC seeking to set aside the order vide which his defence was struck off.

5. The learned trial court vide order dated 13.10.2023 dismissed the aforesaid application of the petitioner and imposed a further cost of Rs. 2000 to be paid to the respondent herein. Dissatisfied by this, the petitioner has filed the present petition under Article 227 of the Constitution of India, impugning the orders dated 05.09.2023 and 13.10.2023 passed by the learned trial court.



6. Learned counsel for the petitioner submitted that the present suit is filed under Order XXXVII CPC and has not been treated as a commercial suit by the learned Trial Court.

7. The learned counsel also submitted that if the delay is reckoned from the date of the order of the learned trial court, only 7 days of delay has occurred in filing the written statement and irreparable loss will be caused if his written statement is not allowed to be taken on record.

8. The submissions of the petitioner were vehemently controverted by the learned counsel for the respondent, who submitted that the petitioner failed to deposit the cost as imposed by the learned trial court and moreso the written statement which was supplied to the counsel for the respondent was not in compliance with the provisions of Order VI Rule 15A(1) CPC inasmuch as it was not supported by statement of truth in the prescribed form under the said Rule. Further, the written statement was filed beyond the period allowed by the court and hence the defence was rightly struck off.

9. Learned counsel further submitted that the said provision is a mandatory requirement and where a pleading is not verified in a manner provided under sub rule (1), the party shall not be permitted to rely upon such pleadings as evidence or of matters set out therein. The court may strike out a pleading which is not verified by statement of truth. Learned counsel relied upon the judgement of this court in ***Shiv Ratna Paper vs Ridhi Petrochem Pvt. Ltd.*** [MANU/DE/0846/2017] wherein it was held



that the court will not permit reliance on written statement which is not in conformity with the provisions of Order VI Rule 15A(1) of CPC.

10. It is also submitted that since the written statement was not on record, the counsel for the respondent moved an application under Order XIII-A of Commercial Courts Act, 2015 Rule 2 read with Section 151 CPC for summary judgement in view of judgement of this court in ***Su-Kam Power Systems Ltd. vs Kunwer Sachdev and Ors.*** [MANU/DE/3503/2019]

11. Heard, record as well as impugned order perused.

12. Insofar as the argument of the petitioner is concerned that the suit filed by the respondent under Order XXXVII CPC has not been treated as a commercial suit by the learned Trial Court, there is no merit in it. The respondent has filed a summary suit under Order XXXVII CPC for recovery of a sum of Rs. 25,90,456/- along with pendent-lite and future interest against the petitioner under Order VII Rule 1 CPC read with Section 6 of the Commercial Courts Act. The same is registered as a commercial suit bearing no. CS (COMM) 481/2021 which is being tried by learned District Judge, Commercial Court. In case the learned Trial Court was convinced that the present suit was not a commercial suit within the meaning of Section 2(1)(c) of the Commercial Courts Act, the appropriate orders for transfer / return of the plaint would have been passed by the learned Trial Court according to the provisions of law. Moreso, the petitioner has also not raised any objection before the learned Trial Court, that the present suit being a non-commercial suit, it should not be tried by a



special court and instead should be transferred to civil court for being a non-commercial suit.

13. Apart from the above, two sets of arguments have been addressed on behalf of the respondent. First, that the written statement has been filed beyond the stipulated period of 120 days as provided under Order VIII Rule 1 CPC and second that the written statement was not in compliance of provisions of Order VI Rule 15A(1) CPC.

14. As far as the submission with respect to the written statement not being filed as per the provisions of Order VIII Rule 1 CPC is concerned, it is necessary to reproduce it, which reads as under:-

“1. Written Statement.—The Defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence: Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.”

15. It is also pertinent to note that a new proviso was substituted to Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act, 2015 which reads as follows:

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record.”

16. From a bare perusal of the provision, it is manifest that in non-commercial suits, the time limit for filing the written statement in a suit



expires after 30 days from the date of service of summons. Further, the written statement may be filed beyond this time but before the expiry of 90 days for which the Court is bound to record reasons in writing and the defendant is required to explain the reasons caused for such delay in filing the written statement. Needless to say, subject to payment of cost. However, in case of Commercial Suits, the same may be filed within a period of 120 days subject to reasons cause to be recorded in writing and upon payment of costs.

17. It is pertinent to note that there is a clear distinction between the procedures to be followed in non-commercial suits and commercial suits. In the latter the procedures are more rigorous as against in the non-commercial suits. Furthermore, there is no power bestowed upon the Court to condone a delay beyond the period of 120 days in a commercial suit.

18. Moreso, no application for condonation explaining the delay for not filing the written statement beyond 30 days and till expiry of 120 days, has been filed by the petitioner before the learned trial court or before this court. Further, the written statement has been filed after a delay of 164 days i.e. even after the expiry of stipulated period of 120 days which cannot be accepted to be brought on record.

19. It will also be apposite to reproduce Rule 15A of the Order VI which reads as under:

“15A. Verification of pleadings in a commercial dispute.— (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.”

20. From perusal of the record, it is apparent that the written statement filed by the petitioner is not in conformity to the Rule 15A of the Order VI CPC.

21. Also from reading of the impugned order, it is clear that learned Trial Court has not adhered to the Proviso to Order VIII Rule 1 CPC as the written statement has to be filed conforming to the above provision, with greater scrutiny and had earlier granted time before passing of the impugned orders to the petitioner to file the written statement in contravention of the provisions of law. Such ignorance of law is unexpected and uncalled for.

22. In due consideration of the submissions and discussion hereinabove, no interference is required with the orders of learned Trial Court. Petition is accordingly dismissed.

SHALINDER KAUR, J.

APRIL 25, 2024

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