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

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Date of decision: January 24, 2024

+ CM(M) 2144/2023

SANJAY GOEL

..... Petitioner

Through: Mr. Mayank Wadhwa with Ms. Niti Khanna, Mr. Shourya Goel, Ms. Tushita Arya and Ms. Harsha Khanna, Advs.

versus

BKR CAPITAL PVT. LTD & ORS.

..... Respondents

Through: Mr. Rajat Sharma, Adv. for R-1 (through VC).

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T (oral)

1. This petition filed under Article 227 of the Constitution of India impugnes the order dated 06.11.2023 passed by the learned District Judge (Commercial Court)-04, Central District, Delhi in C.S. (COMM.) No. 1432 of 2020, inter-alia, dismissing the petitioner's application under Order VI Rule 15A of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"), as amended by Commercial Courts Act, 2015 and consequently, took off the petitioner's written statement from the record.

2. The respondent no. 1 herein is the plaintiff and respondent nos. 2 & 3 herein are the defendant no. 2 & 3 before the learned Trial Court.



3. The petitioner herein was impleaded as defendant no. 6 upon filing of an application for his impleadment under Order X Rule 1 CPC moved by respondent no. 1.
4. It is the case of the petitioner that he filed written statement in the commercial suit CS (COMM.) No. 1432/2020 before the learned Trial Court on 11.10.2021 and vide order dated 10.12.2021, the learned Trial Court condoned the delay in filing of written statements of all the defendants and same were to be taken on record, subject to payment of Rs. 10,000/- by each of the defendants to the plaintiff / respondent no. 1 herein.
5. Subsequent thereto, respondent no. 1 on 10.01.2022 filed an application under Order VI Rule 15A for striking off written statements of the defendants from the record on the ground that the written statements were not duly supported by Statement of Truth and all the pages were not self attested / signed as per mandate under Order VI Rule 15A CPC. In the meanwhile, applications under Section 151 CPC were also moved by respondent no. 2 & 3 for placing on record the "Statement of Truth" to be annexed with their written statement. However, respondent no. 2 & 3 filed applications under Order VI Rule 15A for bringing on record written statements signed on every page along with "Statement of Truth" to cure the procedural irregularity and also withdrew the earlier applications filed by them under Section 151 CPC. The trial court vide impugned order allowed the applications of the respondents No.2 and 3 but the application filed by the petitioner under Order VI Rule 15A was dismissed as the filing of written statement along with statement of truth is not within prescribed statutory period.



6. The learned counsel for the petitioner submits that erstwhile counsel of the petitioner had also prepared a similar application under Section 151 CPC dated 11.03.2022 for taking on record the “Statement of Truth” along with his written statement, however, he could not place it on record. After perusing the order dated 14.03.2022, it came to notice of present counsel for the petitioner that the counsels for respondent no. 2 & 3 withdrew their applications filed on 11.01.2022 under Section 151 CPC but the application of petitioner under Section 151 CPC was not placed on record. Nonetheless, the counsel for the petitioner then filed an application under Order VI Rule 15A on 23.08.2022.

7. The learned counsel states that it is purely due to the negligence of the erstwhile counsel for the petitioner that the application for curing the defects in the written statement in accordance with Commercial Courts Act, 2015 could not be filed within the period of limitation for which negligence, the petitioner should not be made to suffer an irreparable loss.

8. It was submitted that on various dates, no substantial hearing took place and after hearing the arguments on the application on 06.10.2023, the learned Trial Court vide impugned order dated 06.11.2023 dismissed the application of the petitioner under Order VI Rule 15A and subsequently, struck off the defence of the petitioner.

9. The learned counsel placed reliance on the judgments delivered by learned single bench of this Court in the case of “**Unilec Engineers Ltd. Vs. HPL Electric and Power Ltd.**” bearing CM(M) No. 990/2023 decided on 17.08.2023 and “**Prayag Polytech Pvt. Ltd. & Anr. Vs. Raj Kumar Tulsian**”



bearing FAO (COMM.) No. 182/2023 decided on 19.09.2023 by Division Bench of this Court.

10. Aggrieved by the impugned order, the petitioner has preferred the present petition. At the outset, the learned counsel on behalf of the respondent no. 1 submitted that he has no objection in case the petitioner is allowed.

11. It is not disputed that written statement duly filed on behalf of the petitioner was taken on record on 10.12.2021 subject to cost, which is stated to have been paid to the respondent no. 1. It is undisputed that the written statement of respondent no. 2 and 3 signed on each page along with Statement of Truth has also been permitted to become part of the record and after removing the defects. Respondent no. 1 herein has given his unequivocal no objection, if the written statement on behalf of the petitioner is taken on record.

12. In view of the above peculiar circumstances, in the present case, the delay in filing the written statement along with Statement of Truth and appending signature on each and every page is hereby allowed. The impugned order to the effect of taking of written statement of defendant no. 1 off the record is set aside.

13. Petition is accordingly disposed of.

SHALINDER KAUR, J.

JANUARY 24, 2024/ss