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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 28th October, 2024***

+ CM(M) 3647/2024 & CM APPL. 61401-61403/2024

KORRA WORLDWIDE ADVERTISING PVT LTDPetitioner

Through: Mr. Suresh Kant Baxy, Mr. Sujoy C.
Datta, Mr. N.P.S. Chawla and Mr.
Asher Revi Job, Advocates

versus

HT DIGITAL STREAMS LIMITEDRespondent

Through: Mr. Amit Bajaj, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 61402-61403/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3647/2024 & CM APPL. 61401/2024

1. Petitioner is defending a commercial suit which seeks recovery of a sum of Rs. 11,81,700/-.
2. Undoubtedly, defendant was served with the process on 09.11.2023. The permissible outer limit to file written statement is 120 days and the defendant submitted his written statement within above i.e. on 07.03.2024 through electronic module. Along with aforesaid written statement, he also filed an application seeking condonation of delay in filing the written statement.
3. The plaintiff filed reply to the aforesaid application on 13.03.2024.
4. In the meanwhile, defendant moved another application seeking permission to cure some defects in the written statement and prayed that written statement, signed on each page, and statement of truth, in the



prescribed format, may be permitted to be taken on record.

5. It is admitted fact that when the written statement was, initially, filed, it was not bearing signatures of the defendant/authorized representative of defendant on each and every page and it is also admitted fact that the *statement of truth* submitted by the defendant was not in the *prescribed format*.

6. Learned Trial Court, by virtue of common order dated 25.09.2024, which is impugned before this Court, dismissed both the applications holding that the initial filing of written statement, though it was within the permissible outer limit of 120 days, was *non-est* because of the above-said procedural irregularities.

7. Learned counsel for respondent (plaintiff) is also present on advance notice.

8. Defendant relies upon *Rajesh Wadhawan Vs. Naveen Sabharwal: 2024 SCC OnLine Del 5187*, in which also the situation was almost similar and the written statement, which had been filed, was found to be defective as it was not signed on the each page and it was not supported by statement of truth, at all. This Court made reference to various precedents on the aforesaid issue and came to the conclusion that it was settled law that rigors of procedure are handmaid of justice and it has to be ensured that substantive justice is done to both the parties and technicalities should be applied in a manner that promotes fairness and upholds the rights of both the parties and, resultantly, the impugned order passed by the learned Trial Court whereby the written statement was directed to be taken off the record, was set aside and the written statement, as cured after removing the defects, was permitted to be taken on record. Reference be made to Para-17 to 29 of the aforesaid judgment which



read as under:-

17. Before coming to the factual matrix of the case, it will be apposite to produce the provision under Order VI Rule 15A of CPC as amended by the Commercial Courts Act, 2015, which is hereunder:

“[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.]

18. The aforesaid provision mandates the verification of pleadings by way of an affidavit, which ensures that the statements made in the pleadings are duly authenticated and verified under oath and in absence of such verification, the pleadings cannot be relied as evidence. Even if the pleading is to be amended, the same has to be abided by the rigors of Order VI Rule 15A CPC and non-compliance of which may result in the Court rejecting the pleading or would require the party to have such defects rectified.

19. The statement of truth accompanying a pleading is sworn by the deponent who on oath undertakes that the contents of the accompanying pleading have been drafted as under his directions and instructions and moreso are true and correct to his knowledge. The said affidavit has to be attested, signed and to be filed along with the pleading. Therefore, this reflects the importance of strict compliance with the mandate of verification of pleadings.

20. The learned Single Judge of this Court in Raj Kumar Gupta v. Narang Constructions & Financiers Pvt. Ltd., 2023 IV AD (Delhi) 535 held that non-attesting of a an accompanying affidavit was a mere irregularity which was a curable defect and would not render the filing as non-est.



21. In Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises (Sree), 2023 SCC OnLine Del 63, this Court while dealing with an application under Section 34 of the Arbitration and Conciliation Act, held that filing of an affidavit in support of an application is a procedural requirement. The statement of truth by way of an affidavit is also a procedural matter and it would not render the aforesaid application as non-est but only defective.

22. Further, the learned Division Bench of this Court in Prayag Polytech Pvt. Ltd. v. Raj Kumar Tulsian, 2023 SCC OnLine Del 6058 had categorically held that mere non-signing of each and every page of the pleadings is per se a defect, but the same could very well be cured.

Likewise, any defect in verification of an affidavit in the nature of Statement of truth is also curable.

23. Needless to say, after occurrence of such defects, whether the same can be condoned or allowed to be cured will depend on facts and circumstances of each case based on factor such as stage of proceedings in the suit as well as law of limitation.

24. In the present case, the written statement was filed by the petitioner on 04.01.2022 through email and also on 06.01.2022 physically in Court. It is also true that period of limitation with respect to all kinds of limitations was extended by Hon'ble Supreme Court vide Re : Cognizance for Extension of Limitation (supra), from 15.03.2020 till 28.02.2022 by granting further time up to May, 2022 for the purposes of limitation. Therefore, the filing of the written statement was not challenged on the ground of limitation.

25. It is not disputed that petitioner has taken considerable time in curing the defects. The learned Commercial Court while considering the application filed by the petitioner under Order V Rule 1 CPC and the application filed by the respondent under Order 6 Rule 15A CPC came to the conclusion that petitioner was negligent in filing the application for curing the defects by a period of more than four months specifically when the petitioner had already became aware of the defects in the written statement.

26. It is noticed that on 09.05.2022 the petitioner was proceeded ex-parte and the same was set aside on 26.11.2022, thereafter, time was granted to the petitioner to file reply to respondent's application under Order VI Rule 15A CPC and matter was directed to be listed on 24.01.2023. It is further noticed that on 24.01.2023, at the request of the petitioner matter was adjourned to 31.01.2023. On the said date, the petitioner took steps for curing the defects in the written statement.

27. Indisputably, the written statement initially filed suffered from defects inasmuch as each and every single page of the same were not duly appended by the signatures and moreso, the written statement was not supported by the statement of truth. Therefore, the written statement indeed suffered from



defects. However, It is now well settled that defects such as noted above, are not fatal defects and are very much curable. The said defects will also not render the written statement being non-est. From the aforesaid cited authorities, it is clear that the filing of statement of truth is a procedural matter and as well as no signatures appended on each and every page is also a curable defect.

28. The rectified written statement filed after curing the aforesaid defects was filed by the petitioner on 24.01.2023 by moving an application under Order V Rule 1 CPC seeking condonation of delay in filing the written statement duly supported by statement of truth and as well as signatures appended on each and every page of the written statement. Moreso, it is also undisputed that the subsequent written statement has not been changed in any manner in substance other than the defects being cured, thus written statement filed on 24.01.2023 relates back to having being filed on 04.01.2022. The respondent had already filed its replication to the written statement dated 04.01.2022/06.01.2022.

29. It is settled law, the rigors of procedure are handmaid of justice and it has to be ensured that substantive justice is done to both the parties. The technicalities should be applied in a manner that promotes fairness and upholds the rights of all the parties.

9. During course of consideration, learned counsel for respondent states that though the petitioner should have been vigilant enough in the first instance but keeping in view overall facts and circumstances of the case and without prejudice to his rights and contentions, he would have no objection if the petition is allowed, *albeit*, subject to imposition of reasonable cost.

10. In view of the facts and circumstances of the case, keeping in mind the aforesaid judgment of *Rajesh Wadhawan Vs. Naveen Sabharwal (supra)* and also the gracious concession given by learned counsel for respondent (plaintiff), the present petition is allowed with the direction that written statement filed by defendant on 31.07.2024, which is stated to be *ad verbatim* with the earlier filed written statement, with the bare addition that it is now signed on each page along with the verification clause and accompanied by statement of truth in the prescribed format, is permitted to be taken on record



subject to the cost of Rs. 25,000/-. As a necessary corollary, delay in initial filing of written statement also stands condoned.

11. Let cost be paid on the date fixed before the learned Trial Court.
12. Let replication, if any, be filed within four weeks with advance copy to the opposite side.
13. Learned Trial Court would, thereafter, proceed further with the matter in accordance with law.

(MANOJ JAIN)
JUDGE

OCTOBER 28, 2024/dr