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

+ **FAO (COMM) 224/2024**

GURDEV SINGH

.....Appellant

Through: Mr. Saurabh Rohilla and Mr. Pramod
Bhardwaj, Advocates

versus

ANIL VERMA

.....Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

20.11.2024

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1. The present appeal under Section 13 of the Commercial Courts Act, 2015 seeks to assail the order dated 28.08.2024 passed by the learned District Judge (Commercial Court)-01, (SW), Dwarka Courts, Delhi. Vide the impugned judgment, the learned Trial Court has rejected the pliant in the suit preferred by the appellant by holding that the appellant/ plaintiff had not signed on each page of the plaint and also left paragraph 6 of the 'Statement of Truth' blank.

2. Learned Trial Court further observed that since despite opportunity, the appellant/ plaintiff had not rectified the said defects, it was evident that the appellant had failed to comply with the mandatory provisions of the Commercial Courts Act, 2015. Consequently vide the impugned order, the plaint was directed to be rejected.

3. It is in these circumstances that the appellant who was the plaintiff before the learned Trial Court has approached this Court. In support of the appeal, learned counsel for the appellant submits that while dismissing the



suit, the learned Trial Court has erroneously presumed that the appellant was not willing to cure the defects despite opportunity being granted.

4. By drawing our attention to the list of dates, he submits that when the suit that the suit was listed before the learned Trial Court for the first time on 24.07.2024, the appellant was granted ten days time to cure the defects. The said defects, he submits were duly cured within the said period but the corrected copy of the plaint could not be filed on account of the counsel's personal difficulty, who was not present in Delhi on the date when the matter was next listed before the Court i.e., on 28.08.2024. On the said date though a request for an adjournment was made by the proxy counsel for the appellant/ plaintiff, the said request was declined and consequently, the impugned judgment rejecting the plaint was passed.

5. He, therefore, contends that once the appellant was on 24.07.2024 granted time to cure the defects, the learned Trial Court ought to have appreciated the personal difficulty of the learned counsel for the appellant and ought not to have rejected the plaint on the very next date i.e. 28.08.2024. He, therefore, prays for setting aside of the impugned judgment and restoration of the suit to its original position before the learned Trial Court.

6. Having considered the submissions of the learned counsel for the parties, we find that the plaint was rejected by the learned Trial Court even without issuing summons to the respondent/ defendant. We are, therefore, of the view that taking into account the nature of the order which we proposed to pass there is no requirement for issuance of notice to the respondent. Consequently, we take up the appeal for disposal today itself.

7. Further, upon perusal of the record and consideration of the



submissions made by the learned counsel for the appellant, we are of the view that even though the learned Trial Court was correct in holding that non compliance with the mandatory conditions of the Commercial Courts Act would render the plaint liable to be rejected, sufficient opportunity ought to be granted to the plaintiff which in the present case pertain to non signing of each page of the plaint as also leaving paragraph 6 of the 'Statement of Truth' as blank. In our considered opinion, once the learned Trial Court itself granted time to the plaintiff to cure the defects, there was no reason for the Court to hasten to reject the plaint by declining the request for adjournment made by the learned Proxy Counsel for the plaintiff/appellant.

8. We may note, that in the present case, in order to substantiate his plea that the plaintiff had indeed cured the defects noted in the order passed by the learned Trial Court on 24.07.2024, learned counsel for the appellant has drawn our attention to the copy of the amended plaint as also the application for amendment annexed as Annexure A-4 with the present appeal. From the aforesaid, it is evident that the appellant had sought to cure the defects in the plaint as originally filed but could not be filed only on account of his counsel not being available which fact the learned Trial Court failed to appreciate.

9. In the light of the aforesaid, we have no hesitation in accepting the appellant's plea that the learned Trial Court instead of adopting a hyper-technical approach ought to have acceded to the request of the proxy counsel, for the appellant/ plaintiff for time to file the amended plaint, more so, since the same was a curable defect and which was noticed by the Court even prior to the issuance of summons in the suit. Even otherwise, grant of



an adjournment to the appellant for this purpose on 28.08.2024 would have caused no prejudice to the respondent.

10. For the aforesaid reasons, we set aside the impugned judgment and restore the suit to its original position. Consequently, the same stands remanded back to the learned Trial Court for adjudication as per law.

11. The appeal, is accordingly, disposed of.

REKHA PALLI, J

SAURABH BANERJEE, J

NOVEMBER 20, 2024/So