

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

Present :-

THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA

IA. No. G.A.6 of 2021

in

C.S.212 of 2018

with

IA No. G.A.5 of 2021

in

C.S.212 of 2018

Harji Engineering Works Pvt. Ltd.

Vs.

Hindustan Steelworks Construction Ltd.

For the Plaintiff : Mr. Chayan Gupta, Adv.
Mr. Dwip Raj Basu, Adv.
Mrs. Sweta Gandhi, Adv.

For the Defendant : Mr. Suman Dutt, Adv.
Mr. Rittick Chowdhury, Adv.
Mr. Santosh Kumar Ray, Adv.

Reserved on : 31.08.2021.

Delivered on : 14.09.2021.

MOUSHUMI BHATTACHARYA, J.

1. The issue which falls for consideration is whether a Statement of Truth in a Written Statement in a Commercial Suit is a mandatory requirement under The Commercial Courts Act, 2015 and whether the absence thereof warrants striking out of the defence in the suit.
2. The plaintiff contends that a Written Statement without a Statement of Truth is an incurable defect while the defendant urges otherwise. The difference of view centres on the construction of Order VI Rule 15A of The Code of Civil Procedure, 1908, as amended by The Commercial Courts Act, 2015.
3. The two applications before this Court proceed on the respective stands taken by the parties as stated above; G.A. 5 of 2021 is of the plaintiff for striking out the defence while the defendant seeks to cure the defect by filing the Statement of Truth in G.A. 6 of 2021. Both the applications have been heard and are being decided in this Judgment.
4. Order VI Rule 15 of the CPC underwent two major changes brought about by The Code of Civil Procedure (Amendment) Act of 1999 with effect from 2002 and by The Commercial Courts Act in 2015.

(i) Order VI Rule 15 as it stood before the amendment with effect from 1.7.2002:

“15. Verification of pleadings.—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.”

(ii) Addition to Order VI Rule 15 after the amendment of 1.7.2002:

“15. Verification of pleadings.—

(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”

(iii) Order VI Rule 15A after the amendments brought in by The Commercial Courts Act, 2015;

“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.”

5. The change after 1.7.2002 indicates that the deponent was fixed with additional responsibility as to the truth of the facts stated in the pleadings; Ref *Salem Advocate Bar Association, T.N. vs Union of India (2005) 6 SCC 344*. The amendments with effect from October 2015 however brought in a wholly new procedural regime in matters of verification of pleadings and the competence of the party taking responsibility thereof.

“Statement of Truth”

6. The changes brought into the CPC in 2015 in the form of Order VI Rule 15A relate to verification of pleadings in a commercial dispute. The requirements introduced under Rule 15A is that every pleading in a Commercial Dispute shall be verified by an affidavit as prescribed in the Appendix to the Schedule to the 2015 Act. Appendix I to the Schedule contains the “Statement of Truth” – a lofty directive – which has been made applicable not only to Order VI Rule 15A but also to the amendments to Order XI Rule 3 introduced by the 2015 Act. The facts which a deponent has to solemnly affirm and declare in the Statement of Truth makes it clear that the purpose of Rule 15A read with Appendix I to the Schedule is to expedite disposal of commercial disputes and effectively bypass any procedural roadblocks which could result in delay in the disposal of a commercial dispute. This would also be evident from Order XI Rule 3, as amended by the 2015 Act, under which the plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the

plaintiff, pertaining to the facts and circumstances of the proceedings initiated by the plaintiff have been disclosed and copies thereof annexed with the plaint and that the plaintiff does not have any other documents in its power, possession, control or custody.

7. The contents of Appendix I - Statement of Truth – read with some of the provisions introduced by the 2015 Act, for instance, Order VIII Rule 3A (Denial by the defendant in suits before the Commercial Division of the High Court or the Commercial Court), Order XIX Rule 4(1) (Court may control evidence), Order XIX Rule 6 (Format and guidelines of affidavit of evidence) are further indicators of the legislative intention to expedite the process of trial in commercial disputes by minimising the evidence at the stage of trial. The introduction of fixed forms of affirmation of pleadings, case management hearings and empowering a court to regulate the evidence as to the issues, reinforces the object of the Commercial Courts Act, which is to provide for speedy disposal of high-value commercial disputes involving complex facts and questions of law.

The apparent inconsistency between Order VI Rule 15A Sub-Rules (4) and (5)

8. For ease of reference, Sub-rules 4 and 5 of Order VI Rule 15A are set out below;

“Order VI.

15. Verification of pleadings in a Commercial Dispute—

.....

(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.”

9. The plaintiff relies on Sub-rule (4) and the word “shall” therein while the defendant places emphasis on the word “may” in Sub-rule (5). The apparent conflict in the mandatory nature of Sub-rule (4) and the directory tenor of Sub-rule (5), on a proper construction thereof, does not admit of any real clash of purpose. Sub-rule (4) curtails the power of the court to receive a pleading as evidence if it is improperly verified, the prohibition essentially being on the party who is prevented from relying on a pleading as evidence. Sub-rule (4) however does not say that the defect in the pleading cannot be cured. Sub-rule (5) empowers the court to strike out a pleading which is not verified by a Statement of Truth where the word “may” clearly indicates that the court is vested with the discretion to allow a party to rectify or cure the defect. The discretion appears to be in consonance with a harmonious reading of all the Sub-rules of Rule 15A as otherwise the legislature would have expressly articulated its intention to non-suit a litigant in the absence of a Statement of Truth. In other words, introducing Sub-rule (5) as the last requirement - and the finishing line - to Rule 15A supports the inescapable conclusion that a party cannot be deprived of its claim or defence in a commercial dispute by reason of improper verification of its pleading. It can even be said that by vesting the court with the power to decide whether a

pleading should be struck out in Sub-rule (5), unquestionably qualifies and mitigates the harshness of Sub-rule (4). Any other construction of the sequence of sub-rules to Rule 15A would render Rule 15A(5) completely otiose and Rule 15A patchy and discordant.

10. Further, use of the words 'shall' or 'may' are not indicators of whether a particular provision in a statute is mandatory or directory. A more definitive marker would be the purpose of the provision set against the overall scheme of the statute and the context in which the words are used; Reference may in this connection be made to *Bachahan Devi vs. Nagar Nigam, Gorakhpur; (2008) 12 SCC 372* where the Supreme Court explained the difference in ordinary juxtaposition as 'may' being permissive and conferring discretion while 'shall' being imperative in tenor and imposing a duty. Hence, even if the other factors are discounted, the weight sought to be given to 'shall' in sub-rule (4) by the plaintiff becomes considerably lighter when contrasted with 'may' in sub-rule (5) and the overall scheme of the 2015 Act.

11. Taken in the larger context of procedure, reading 'shall' in sub-rule (4) as an express bar to relying on a pleading without a Statement of Truth would also fall foul of the wide berth given to matters of procedural nitty-gritties where the Supreme Court held that amendments to Order VI Rule 15 are directory in nature and non-compliance therewith would not render the plaint *non-est*; refer *Vidyawati Gupta vs. Bhakti Hari Nayak; (2006) 2 SCC 777*.

12. The *non-obstante* clause in Sub-rule (1) of Rule 15A;

“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”

does not assist the case of the plaintiff, as contended on its behalf. This is by reason of the fact that the *non-obstante* clause envelopes only Order VI Rule 15 pertaining to verification of pleadings and furnishing of an affidavit in support of the pleadings. Therefore, what ‘notwithstanding’, does is merely to add to the requirements already provided in Order VI Rule 15 without any further indication as to whether the absence of a Statement of Truth would warrant striking out of a pleading.

The Delhi versus the Bombay view :

13. A Single Bench of the Delhi High Court in *Shiv Ratna Paper (P) Ltd. vs. Ridhi Petrochem Pvt. Ltd.*; 2017 SCC Online Del 7681 disallowed reliance on the written statement filed by the defendant under Order VI Rule 15A Sub-rule 4 of the CPC on the ground that the defendant had not filed a Statement of Truth in support of its pleadings. On the other hand, a Division Bench of the Bombay High Court in *Haier Telecom (India) Pvt. Ltd. vs. Drive India Enterprise Solutions Ltd.*; 2018 SCC Online Bom 2829 held that the defect in pleadings under Order VI Rule 15A(4) is a curable defect.

14. None of the above decisions, however, have any real relevance in terms of the construction of Order VI Rule 15A, since the Delhi High Court did not decide the issue whether a defect, as contemplated under Order VI Rule 15A(4), is curable. The said decision therefore cannot be treated as a decision

on that particular point at all. Besides, the Delhi High Court was also of the view that the written statement was lacking in material particulars and that the defendant had chosen not to file any relevant documents in support of its contentions. The Bombay High Court spoke in favour of the defect being curable in nature only in the context of whether the suit was barred by limitation.

15. A co-ordinate Bench of the Calcutta High Court in *C.O. No.179 of 2021; Saptarshi Construction vs. Smt. Manjusree Singh* followed the Bombay High Court view in *Haier Telecom* to hold that the consequence of not filing a Statement of Truth in the prescribed form would not debar a party from proceeding with the pleading if such defect is cured. Counsel for the plaintiff seeks that the said decision be held *per incuriam* since the Single Bench of this Court did not consider the decisions of the Supreme Court and the Delhi High Court. This court, however, is not inclined to do so since both *Shiv Ratna Paper* (Delhi High Court) and *Ambalal Sarabhai Enterprises Ltd. vs. K.S. Infraspace LLP; (2020)15 SCC 585* do not apply to the present case. Counsel for the defendant has also not placed much emphasis on the Calcutta High Court decision.

What the Supreme Court held in *Ambalal Sarabhai* :

16. The issue before the Supreme Court in this decision was whether the dispute involved could be termed as a “commercial dispute” within the meaning of Section 2(1)(c) of The Commercial Courts Act, 2015. In agreeing with the purposive interpretation given by the Gujarat High Court to the

various provisions of the Act, the Supreme Court focused on the Statement of Objects and Reasons and the various amendments to the Code of Civil Procedure to conclude that the object behind the Act was to put matters on fast-track mode for speedy resolution of commercial disputes. It was in this context that the Supreme Court cautioned against giving a liberal interpretation to certain provisions which would have the effect of defeating the object of the Act. It is important to note that *Ambalal Sarabhai* did not consider Order VI Rule 15A or hold the same to be mandatory. Hence, accepting the decision as an authority for the proposition that Order VI Rule 15A empowers the court to strike out a defence which is not verified in line with what has been prescribed thereunder, would be reading into the judgment on a point that has not been considered at all. *Ambalal Sarabhai* therefore does not assist the case of the plaintiff in respect of the proposition urged.

17. The above discussion may be seen in addition to the general inclination of a court to treat procedural lapses with kindness unless a party disentitles itself to such benevolence by reason of its conduct or by operation of law. Without taking the avowed object of quick resolution of commercial disputes away from the 2015 Act, rules of procedure cannot be given precedence in a manner so as to defeat the substantive rights of the parties unless specifically prohibited by law. In the present case, Sub-rule (5) of Order VI Rule 15A can be pressed into service in aid of the defendant. If a purposive interpretation is given to the various provisions contained therein, the discretion conferred on

a court in the matter of striking out a pleading which is not verified by a Statement of Truth cannot be seen as a speed-breaker in the momentum of the Act.

18. G.A.5 of 2021 which is for striking off the defence of the defendant is dismissed for the above reasons. G.A.6 of 2021 which is for removing the defect by filing the Statement of Truth in the written statement is allowed. The defendant is granted leave to file the Statement of Truth in the written statement within three weeks from date. Both G.A. 5 of 2021 and G.A. 6 of 2021 are disposed of by this judgment.

Urgent Photostat certified copy of this Judgment, if applied for, be supplied to the parties upon compliance of all requisite formalities

(Moushumi Bhattacharya, J.)