

CS (COMM.) 33/24

KARISHMA PAUL Vs. SATISH MALIK

14.11.2024

Present:- Sh. Rajat Asija, Ld. Counsel for the plaintiff.

Ms Nisha Dhaka, Ld. Counsel for the defendant.

Ld. Counsel for the defendant filed reply to the application under Order 12 Rule 6 CPC. The same is taken on record. Copy given. She submits that the defendant has already filed affidavit of admission and denial of documents in terms of order dated 11.09.2024. The same is taken on record.

Ld. Counsel for the plaintiff submits that the affidavit of admission and denial of documents so filed by the defendant, is again defective and not in accordance with the provisions of Commercial Courts Act, 2015.

Arguments heard.

Put up for order at 4:00 PM.

(Anurag Sain)
District Judge (Commercial Court-01),
Patiala House Courts Complex,
New Delhi/14.11.2024

14.11.2024 (At 4:00 PM)

Present:-

The present suit for recovery of Rs. 10,06,219/- along with pendentelite and future interest has been filed by the plaintiff against the defendant.

Perusal of the record shows that the defendant was served with the summons of the suit, on 07.03.2024 through email and

whatsapp and the defendant filed written statement on 24.04.2024 but, as has been observed by the court on 24.04.2024, the written statement so filed by the defendant was not in accordance with the provisions of Commercial Court Act, 2015 as the written statement was not signed on each page and also the same was not accompanied with statement of truth and affidavit of admission and denial of document and thus, the written statement was *non-est*. However, in the interest of justice, subject to the provisions of Commercial Courts Act, 2015, the court vide order dated 24.04.2024 granted three weeks time to the defendant to file written statement along with statement of truth, affidavit of admission and denial of documents and documents with list of documents and the matter was listed for 04.07.2024. On 04.07.2024, the defendant filed cured/corrected written statement however, the court observed that in the cured/corrected written statement so filed by the defendant, there were certain changes made by the defendant when compared with earlier written statement and as pointed out by the Ld. Counsel for the plaintiff, in the earlier written statement, there were some admissions made by the defendant but in the written statement so filed by the defendant on 04.07.2024, the defendant has disputed the same and the court observed that the defendant was trying to delay the matter. On the said date, Ld. Counsel for the defendant sought two days time to rectify the written statement in accordance with the provisions of Commercial Court Act, 2015 and seeing the conduct of the defendant and in the interest of justice, subject to cost of Rs. 5,000/- upon the defendant, two days time was granted to the defendant to file cured/corrected written statement in accordance with the provisions of

Commercial Court Act, 2015.

Perusal of ordersheet dated 11.09.2024 shows that the defendant filed cured written statement along with statement of truth and affidavit of admission and denial of documents and the court observed that the affidavit of admission and denial so filed by the defendant was not in accordance with the provisions of Commercial Courts Act, 2015. On the said date, Ld. Counsel for the defendant submitted that since she is inexperienced and has recently started practice independently and this is her first commercial matter, the mistakes have occurred again in the affidavit of admission and denial of documents being not in accordance with the provisions of Commercial Courts Act, 2015, the court considering the submissions and subject to cost of Rs.5,000/- upon the defendant, granted three days time to file the cured affidavit of admission and denial of documents. The defendant has filed affidavit of admission and denial of documents on 09.10.2024. The same is taken on record. Perusal of the same shows that the same is again defective and the same is also pointed out by the Ld. Counsel for the plaintiff.

In the present case, the defendant was served with the summons of the suit, on 07.03.2024 through email and whatsapp and period of 120 days as contemplated under the Commercial Courts Act, 2015 has already elapsed from the date when the defendant was served with the summons of the case.

Though the courts are lenient to allow to cure the defects by giving opportunities to the parties for curing the defects. At the time of filing of the pleadings i.e. plaint or the affidavit of statement of truth or

list of documents as per under Order 11 Rule 1(2) of the Commercial Courts Act, 2015 which are not in accordance with the Commercial Courts Act, 2015; Or at the time of filing of the written statement, if the defendant makes some inadvertent mistakes viz statement of truth is not filed or the same is defective, affidavit of admission and denial of the documents is not filed in accordance with the provisions of Commercial Courts Act, 2015 or the same so filed is defective, there is defect in the written statement or the written statement is not properly filed or signed. However, there is limit.

The object and spirit of the Commercial Courts Act, 2015 is that there should be expeditious disposal of the cases for which the Act has been enacted. The delay cannot be considered beyond a particular period.

The objects and spirit of the Commercial Courts Act, 2015 and the various amendments to Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for the purpose of providing an early disposal of high value commercial disputes. The literal as well as objective interpretation of the objects and spirit as well as the consequential various amendments to Civil Procedure Code leaves no room for doubt that the provisions of the Commercial Courts Act are required to be strictly construed and followed in their letter and spirit. Giving liberal interpretation, the provisions of Commercial Courts Act which entails fast and speedy disposal of commercial disputes, will be defeated. The legislature in its wisdom in drafting such a strict and rigorous provision is that the commercial suits should not be lingered on in courts for years

and ought to be resolved at the earliest as the same obviously would be in the commercial interest of this nation.

The court is aware of the fact that procedural hindrances should not come in the way of substantial justice however, keeping in mind the object and spirit of the Commercial Courts Act, 2015, the court is of the opinion that there cannot be indefinite time period for curing the defects and that too after being giving ample opportunities as it would defeat the entire object of Commercial Courts Act, 2015.

In the present case, the court has given ample opportunities to the defendant to cure the defects but the same has not been done.

Ld. Counsel for the defendant has relied upon the judgment bearing CS (COMM) 1052/2018 passed by the Hon'ble High Court of Delhi in Cosco International Pvt. Ltd. Vs. Jagat Singh Dagar and submitted that in view of the same, the written statement be taken on record. I have gone through the judgment so relied upon by the Ld. Counsel for the defendant. In the said case, the written statement as well as the affidavit of admission of documents were filed within prescribed, extended time lines, except they were not filed together, which is not the case here, as discussed above. As stated above, in the present case, the defendant was served with the summons of the suit on 07.03.2024 through email and whatsapp and despite ample opportunities having been granted to the defendant, the defendant did not cure the defects of filing the affidavit of admission and denial of documents within the period of 120 days as contemplated under Commercial Court Act, 2015. Hence the aforesaid judgment is not applicable to the facts of the present case.

Considering the facts and circumstances of the case, the court is of the opinion that no further opportunity can be granted to the defendant to cure the defects. Accordingly, the written statement so filed by the defendant, is taken off the record.

Put up this matter for PE, on 19.02.2025.

(Anurag Sain)
District Judge (Commercial Court-01),
Patiala House Courts Complex,
New Delhi/14.11.2024