

**Order below Exhibit-38
in Commercial Suit No. 1 of 2022.**

APPEARANCE :

On behalf of the plaintiff : Ld. Adv. Shree H. R. Dhoriyani.

On behalf of the defendant No. 2/1 & 2/2 : Ld. Adv. Dr. B. K. Joshipura.

Defendant Nos. 1 & 3 struck out. (As per order below Exhs.-16 & 17)

[1.1] The plaintiff has filed this application seeking permission to file Statement of Truth under the Commercial Courts Act, 2015.

[1.2] The defendant Nos. 2/1 and 2/2 (**hereinafter referred to as defendants**) have filed their objections at Exh.-40. This Court has gone through the same.

[2.1] The plaintiff has filed his written arguments at Exh.-45. Considered the written arguments. The Ld. Adv. for the plaintiff has orally argued that as per amended CPC, Order-VI, Rule-15-A (15) [amended Civil Procedure Code as per Sec.-16 of the Commercial Court Act, 2015] (**hereinafter referred to as the Code**), the words "the Court may" are written. Therefore, this is not mandatory provision. Therefore, the present application may be allowed.

[2.2] Heard the Ld. Adv. for the defendant Nos. 2/1 & 2/2. It is argued orally that the plaintiff has come with the reason that the suit had been filed before Morbi Court and the plaintiff had been suggested to filed the same

before Halvad Court; that the reason for delay is wrong; if the statement of truth is not filed, the suit could not have numbered; that there are changes in plaint with regard to "Halvad" and "Morbi"; that the plaintiff has filed an affidavit with suit, but the statement of truth has not been filed; that the present statement of truth is latest which does not contain the date of filing of the present suit; that there are allegations against the Court which is very serious; that the plaintiff has failed to show why the statement of truth has not been filed before this Court when filed; that the plaintiff must follow the provisions of Order-XI, Rule-1 of the Code. Ultimately, prayed to reject the present application.

[2.3] Considered the arguments of both the sides. Perused the record and proceedings.

[3.1] Considering the facts of the application on hand, the plaintiff is seeking permission to file statement of truth produced vide Mark-38/1. That the present application is permission application for filing of statement of truth. The defendants have come with the contention that the plaintiff has come with the wrong reason for delay in filing of statement of truth. Considering the provisions of Order-VI, Rule-15-A (5), it read as under :

"Order-VI, Rule-15-A

(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"

[3.2] In view of the afore noted provisions, it is clear that when the party does not filed statement of truth, the party shall nto be permitted to rely on such pleading as evidence or any of the matters set out therein. As per sub-rule (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. The said provision is having helping verb "may" which interprets that the same is not mandatory, but discretionary. Considering the question of non-filing of statement of truth is curable defect. Considering the provisions of Order-XI, Rule-1 of the Code, the same is for disclosure and discovery of documents; whereas the application on hand is for permission; therefore, the said provision has no application to the application on hand.

[3.3] This Court is of the clear view that the concept of substantial justice by keeping in mind the principles of equity, good conscience and natural justice cannot be achieved by entering into technicalities directly or indirectly; therefore, there would be proper and reasonable justification to permit, and simultaneously, there would be acceptance and acknowledgment of the

statutory right for invoking original jurisdiction. It is observed that it is a matter of statutory right to safeguard the wide object of justice.

[4] In view of the afore noted discussion, it shall be in the interest of justice to allow the application on hand. Considering the procedural and elemental provisions of the Commercial Court Act, 2015, the act of non filing of statement of truth has prolonged the matter. The very purpose of the act is for speedy disposal of the commercial litigation. Considering the entire record and proceedings, the plaintiff should be ordered costs. Considering the facts and circumstances on record, reasonable costs should be ordered. Hence, the following final order is passed in the interest of justice.

-:: ORDER ::-

- (a) The application at Exh.-38 is hereby allowed. The plaintiff is hereby permitted to produce original documentary evidence and statement of truth.
The statement of truth at Mark-38/1 is hereby ordered to be recorded and exhibited.
- (b) The plaintiff shall deposit the amount of Rs. 1,000/- (One Thousand Only) before the DLSA, Morbi.

Pronounced in the open Court today, on this 11th day of January, 2024.

Halvad.

Date : 11/01/2024.

(Anil Nanalal Gajjar)
Principal Senior Civil Judge,
Halvad, Dist. Morbi. (GJ-01166)