

IN THE COURT OF THE LXXXVI ADDL. CITY CIVIL JUDGE  
AT BANGALORE [CCH.No.87]

Present:

Smt.NERALE VEERABHADHRAIAH BHAVANI, B.A., LLB(Hons)

LXXXVI ADDL. CITY CIVIL JUDGE

**Dated this the 18<sup>th</sup> day of November, 2022**

**Com.O.S.No.570/2021**

Plaintiff/s : Sudarshan.M.S.

**- Vs -**

Defendant/s : Broad vision Services Private  
Limited and others

**ORDER ON IA No.V**

The learned counsel for the defendants filed an application under order XIX rule 6 of Commercial Courts Act, 2015 R/w Sec.151 of CPC for striking out of affidavit of examination in chief of PW.1 on the ground that the plaintiff has merely reproduced the averments made in para No.2 to 14 of the plaint in his affidavit evidence and merely repetition of plaint in evidence in chief affidavit is not allowed under the Commercial Courts Act and sought for striking out the evidence of PW.1 by allowing the application.

2. On the receipt of the application, the counsel for the plaintiff has orally objected that the application is not

maintainable and sought for dismissing the application as not maintainable.

3. Heard the arguments.

4. The learned counsel for the defendant has vehemently argued that the affidavit should content only the facts which are with the personal knowledge of the deponent and cannot be a verbatim copy of the plaint. The affidavit of PW.1 is nothing but the verbatim of plaint except stating in singular form and the same is contrary to the provision of order 19 of CPC amended to the Commercial Courts Act. It is further contended that the provision of commercial courts act are mandatory in nature and the word "may" as referred in Order XIX rule 5 of Commercial Courts Act as to be construed as mandatory in nature and referred to the definition of the word "must" and "may" and the word "may" when used in a statute which imposes an imperative duty, is construed to mean "must" but the word "must" is peremptory and excludes all discretion and imposes upon the court an absolute duty to perform the requirement of the statute in which it is employed. The commercial court act is brought to force with an object to ensure speedy trial and

the time of the court is not wasted in recording the lengthy examination in chief. The affidavit of P.W.1 is nothing but the repetition of the plaint averment and the same is contrary to the provision of the commercial court act and relied upon the decision reported in [CM(m) 650/2019 & CM Appl.19603/2019 between Brij Prakash Gupta V/s Ashwini Kumar.

“In daily practice, it is noticed that the affidavits in evidence are a „cut and paste“ from the plaint, which is not how they are supposed to be. The affidavit should contain facts which are to the personal knowledge of the deponent and the same cannot be a verbatim copy of the plaint. The affidavit in evidence can factually expand on a plea taken in the plaint, it can also support factual assertions made in the plaint but it cannot contradict or state facts which cannot be derived from the plaint. The practice of filing affidavits in evidence which replicate the plaint is incorrect and ought not to be permitted by Courts”.

ii) (2020) 15 SCC 585 between Ambalal Sarabhai Enterprises Limite V/s K.S.Infraspac LLP & another

“A perusal of the statement of objects and reasons of the commercial courts Act, 2015 and the various amendments to the 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. A Purposive interpretation of the statement of objects and reasons and various amendments to the civil procedure code leaves no room for doubt that the provisions of the act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of commercial division of courts Viz, putting the matter on fast track a closer look at the statement of objects and reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.”

iii) (2008) 12 SCC 372 between Bachahan Devi and another V/s Nagar Nigam, Gorakhpur and another.

“it is well settled that the use of the word “may” in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word “may” as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word “may” , the court has to considered various factors, namely, the object and the scheme of the act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that

where the word “may” involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the act, the word “may” should be interpreted to convey a mandatory force. As a general rule, the word “may” is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word “shall”, which ordinarily is imperative as it imposes a duty. Cases, however are not wanting where the words “may” shall and must are used interchangeably, in order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be look into along with the pertinent circumstances.

19. "17. The distinction of mandatory compliance or directory effect the language depends upon the language couched in the statute under consideration and its object, purpose and effect. The distinction reflected in the use of the word 'shall' or 'may' depends on conferment of pow [Depending upon the] context, 'may' does not always mean may. Ma a must for enabling compliance of provision but there are cases which, for various reasons, as soon as a person who is within the statue is entrusted with the power, it becomes [his] duty to exercise [that Where the language of statute creates a duty, the special remedy is prescribed for non-performance of the duty."\*\*\*

20. If it appears to be the settled intention of the legislature to convey the sense of compulsion, as where an obligation is created, the use of the word "may" will not prevent the court from giving it the effect of compulsion or obligation where the statute was passed purely in public interest and that rights of private citizens have been considerably modified and curtailed in the interests of the general development of an area or in the interests or removal of slums and unsanitary areas. Though the power is conferred upon the statutory body by the use of the word "may" that power must be construed as a statutory duty. Conversely, the use of the term "shall" may indicate the use in optional or permissive sense. Although in general sense "may" is enabling or discretionary and "shall" is obligatory, the connotation is not inelastic and inviolate. Where to interpret the word "may" as directory would render the very object of the Act as nugatory, the word "may" must mean "shall".

21. The ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent; and the use of the words "may" and "shall" is not decisive of its discretion or mandates. The use of the words "may" and "shall" may help the courts in ascertaining the legislative intent without giving to either a controlling or a determining effect. The courts have further to consider the subject-matter, the purpose of the provisions, the object intended to be secured by the statute which is of prime importance, as also the actual words employed."and sought

for allowing the application.

5. On the other hand, the learned counsel for the plaintiff has vehemently argued that the present application is filed with an intention to protract the legal proceedings and on that ground alone the application is liable to be dismissed. It is further contended that the affidavits of PW.1 are relevant and the same is not a verbatim of the plaint and sought for dismissing the application.

6. Considering the rival arguments and the material on record, at first I would like to refer to the amended provisions of order XVIII rule 4 (1A) to (1C) and order XIX rule 5 of CPC to the Commercial Courts Act which are extracted here under:

7. In Order XVIII of the Code, in Rule 4, after sub-rule (1), the following sub-rules shall be inserted, namely:-

"(1A) The affidavits of evidence of all witnesses whose evidence is proposed to be led by a party shall be filed simultaneously by that party at the time directed in the first Case Management Hearing.

(1B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving

reasons, permitting such additional affidavit is passed by the Court.

(1C) A party shall however have the right to withdraw any of the affidavits so filed at any time prior to commencement of cross-examination of that witness, without any adverse inference being drawn based on such withdrawal: Provided that any other party shall be entitled to tender as evidence and rely upon any admission made in such withdrawn affidavit."

**(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."** (1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out under sub-rules (2) and (3).

8. It is clear from Order XVIII rule 4 (1A) to (1C), which speaks about the manner in which the evidence to be recorded in every case i.e., by filing affidavit in lieu of examination in chief of the party as well as the witnesses simultaneously as directed as per the case management hearing. It is also clear that if the party intends to be withdraw any affidavit and the same is permitted prior to the commencement of the cross examination.

9. It is also clear from Order XIX Rule 5, which speaks about the court in its discretionary "may" redacting or rejecting the evidence for the reasons that the affidavit do

not constitute evidence. Rule 6 speak about the guidelines or the requirement of the affidavit evidence such as the affidavit should contain the chronological sequence of event, the facts within the knowledge of the deponent, not mere reproduction of pleadings, paragraph, paragraph on each subject, source of information including the dates and the number should be express in figures and the particulars of the documents if relied upon. It is clear from order XIX rule 6, which provides for the guidelines or the requirement to be contained in the affidavit.

10. It is also clear from the each of the provisions as mentioned above are independent and at the same time ancillary to one another.

11. Keeping the intention of the statute I would like to refer to the present case. PW.1 has filed the affidavit in lieu of examination in chief and the content of the affidavit as narrated in the plaint. No doubt, there is a similarity between the plaint averments from para No.2 to 14 with the affidavit of PW.1 but the content in the affidavit are the narration of sequence of events with the documents and the same cannot be considered as irrelevant or not the part

constituting the evidence to reject the same. In such circumstance, the question of invoking the power vested under order XIX rule 5 of the CPC does not arise.

12. Secondly, it is the contention of the learned counsel for the defendant that the affidavit of PW.1 is a reproduction of the plaint averments and the court “may” by its order strike of the affidavit and the word “may” is mandatory in nature. No doubt, the Commercial Courts Act provides the procedural aspect in regard to the manner as well as the format and the guidelines to the court and the parties in conducting the matter pertaining to the commercial matters. The procedure are all in mandatory in nature. In fact, the Hon’ble Apex court in Ambalal case has held that the object behind the Commercial Court 2015 and the various amendment to the CPC are for the purpose of providing early disposal of high value commercial dispute and if the provisions are given a liberal interpretation the object will be defeated. The very wording of the Hon’ble Apex court makes it clear that the provisions of commercial court are mandatory in nature and the court are bound to follow the procedure as contemplated under the act without

giving any scope for exercising unreasonable discretionary powers of the court. Keeping the said aspect and the requirement of the affidavit as provided under order XIX rule 6 of CPC, this court is of the opinion that the narration of the sequence of events of the plaint from para No.2 to 14 in the affidavit evidence of PW.1 being only pertains to facts to the transaction and the same are relevant and constitute evidence to prove the plaint averments. That apart the affidavit containing all the relevant facts with the documents and each part are relevant and cannot be segregated to strike out any part of the affidavit as irrelevant or does not constitute the evidence. Infact, the application filed by the defendant does not specify which part of the affidavit is irrelevant except stating the affidavit of PW.1 is mere reproduction of the plaint. The said ground is not the ground for striking of the evidence as this court has already observed the affidavit as narrated are relevant for the purpose of proving the case of the plaintiff and the same cannot be considered as irrelevant to reject the same. Therefore, the contention of the learned counsel for the defendant that the affidavit of PW.1 contains the

reproduction of plaint and the same is liable to be rejected is unsustainable in the eye of law. Accordingly, I pass the following:

**ORDER**

The application filed by the defendant under order XIX rule 6 of Commercial Courts Act, 2015 R/w Sec.151 of CPC is liable to be dismissed.

Call on for cross examination of PW.1 by  
29.11.2022.

[Dictated to the stenographer, directly on computer, transcribed & computerized by her, corrected on computer and signed by me then pronounced in the Open Court, dated this the 18<sup>th</sup> day of November, 2022 ]

**(N.V.BHAVANI)**  
LXXXVI Addl. City Civil Judge  
Bangalore.