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

+ **CM(M) 773/2022 and CM APPL. 34282/2022**

K K KAPOOR

..... Petitioner

Through: Mr. Kamal Bansal and Mr.
Kundan Lal Gupta, Advs.

versus

M/S. SR ASHOK AND ASSOCIATES

PVT LTD & ORS.

..... Respondents

Through: Mr. Raghughendram Sharma
and Mr. Manish Kaushik, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

08.08.2022

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1. The impugned order, dated 9th June 2022, passed by the learned Additional District Judge (Commercial Court) (“the learned Commercial Court”) in CS (Comm.) 61/2019 (*M/s. Ambience Services v. SR Ashok & Associates Pvt Ltd & Ors.*) adjudicates four applications. These are (i) an application under Section 151 of the Code of Civil Procedure, 1908 (CPC), by the petitioner, for amending the memo of parties in the plaint, (ii) an application under Order VIII Rule 1 of the CPC, for removal of the written statement filed by the defendants as not having been filed in accordance with the protocol prescribed by the CPC as amended by the Commercial Courts Act, 2015, (iii) a handwritten application dated 5th March 2020, by the defendants, to take on record the said written statement, Vakalatnama, affidavit of admission and denial and (iv) an application by

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Respondents-defendants, to take on record the statement of truth.

2. Though four applications have been thus adjudicated by the impugned order, two basic issues arise for consideration at the present point of time.

3. Apropos the application of the petitioner for amendment of the memo of parties in the plaint to substitute Ambience Services stated to be a sole proprietor firm by its sole proprietor K.K. Kapoor, the learned Commercial Court has rejected the application on the ground that, in the body of the plaint, the petitioner has referred to itself as Ambience Services and that, therefore, if the memo of parties was alone permitted to be amended, it would create absurdity in the plaint, as there would a discrepancy between the description of the plaintiff in the memo of parties and in the plaint.

4. To my mind, *prima facie*, that cannot be a relevant consideration for rejecting the application seeking amendment of the memo of parties. In fact, I can find, *prima facie*, no reasonable basis for rejecting the said request. In case there is any discrepancy between the description of the plaintiff in the memo of parties and in the body of the plaint, it would be always open to the plaintiff to rectify the discrepancy at a subsequent stage.

5. I may note, here, that, in this context, the learned ADJ has also held that the petitioner did not move an application under Order VI Rule 17 of the CPC to amend the plaint and bring it in sync with the



amendment proposed in the memo of parties. That, again, cannot be a basis to reject the request for amending the memo of parties. It would, *prima facie*, be open to the petitioner to move an application under Order VI Rule 17 of the CPC even subsequently.

5. *Prima facie*, therefore, the decision of the learned ADJ to reject the request of the petitioner to be permitted to amend the memo of parties to substitute K.K. Kapoor in place of M/s Ambience Services is not sustainable.

6. The second issue that arises pertains to the written statement filed by the respondents-defendants. The respondents filed the written statement within the condonable period of 120 days envisaged by Order VIII Rule 1 of the CPC as amended by the Commercial Courts Act but unaccompanied by any Statement Of Truth, as required by Order VI Rule 15A of the CPC as amended by the Commercial Courts Act.

7. Mr. Kamal Bansal, learned Counsel for the petitioner has invited the attention of this Court to the judgment of a coordinate Bench in ***Steel Stripes Wheels Ltd v. Tata AIG General Insurance Co Ltd***¹, which specifically holds that the plaint or the written statement, unaccompanied by a Statement Of Truth, would amount to a *non est* filing. This position also *prima facie* emerges from Order VI Rule 15A(1) read with (5) of ss the CPC, which read thus:

¹ 2020 SCC OnLine Del 2079



“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.

(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.

8. *Prima facie*, it does appear that the plaint or written statement unaccompanied by a Statement Of Truth cannot be taken on record. It is not possible to dichotomize the plaint and the written statement and the Statement Of Truth which is required statutorily to accompany it.

9. The periods of limitation stipulated in the Commercial Courts Act are required to be strictly followed as per the judgment of the Supreme Court in **SCG Contracts India Pvt Ltd v. K.S. Chamnakar Infrastructure Pvt Ltd**² and **Ambalal Sarabhai Enterprises Ltd v. K.S. Infraspace LLP**³. There is no scope for relaxation of the time limits stipulated beyond the statutory period of 120 days.

10. As such, in view of the judgment in **Steel Stripes Wheels**¹, it is disputable as to whether the learned Commercial Court could have permitted the written statement filed by the respondents to be taken on record despite the fact that the Statement Of Truth, which was

² (2019)12 SCC 210

³ (2020)15 SCC 585



required to accompany it, was filed beyond the maximum condonable period of 120 days from the receipt of summons in the suit.

11. Learned Counsel for the respondents has sought to raise two contentions. The first is that the summons of the suit as received by his client, did not call upon his client to file Statement Of Truth along with the written statement. The submission requires merely to be noted to be rejected. The requirement of filing the statement of truth along with the written statement is statutory and is meant to be expected to be within the knowledge of every litigant who is approaching the Commercial Court. It is not necessary that the litigant be informed by the Registry of such a statutory requirement. Even otherwise, as already noted, the Statement Of Truth is an inalienable adjunct to the written statement and, therefore, it cannot lie in the mouth of the respondents to state that the written statement, unaccompanied by the Statement Of Truth, should be treated as a written statement at all. Any such submission, *prima facie*, would be in the teeth of Order VI Rule 15A(1) of the CPC as amended by the Commercial Courts Act.

12. Learned Counsel for the respondents also sought to rely on the judgments of coordinate Benches of this Court in ***Sudhakar Singh v. Webkul Software Pvt. Ltd.***⁴ and ***Cosco International Pvt. Ltd. v. Jagat Singh Dugar***⁵, to support the above submissions. Neither of these decisions applies. These decisions dealt with non-filing of

⁴ 2020 SCC OnLine Del 436

⁵ 2022 SCC OnLine Del 1113



affidavit of admission and denial along with the written statement and not with a written statement unaccompanied by the required Statement Of Truth. There is no statutory requirement that the written statement should necessarily be accompanied by an affidavit of admission and denial, whereas there is a statutory requirement, clearly engrafted in Order VI Rule 15A(1) that the written statement should be accompanied by a Statement Of Truth.

13. Indeed, the statement of truth is nothing more than the affidavit which has to accompany the written statement, in the peculiar format prescribed for commercial suits. Unaccompanied by a statement of truth, therefore, a written statement *prima facie* cannot even be treated as a written statement in law.

14. As such, neither of the decisions on which learned Counsel for the respondents seeks to place reliance can advance his case.

15. For the aforesaid reasons, issue notice, returnable on 11th January 2023. Notice is accepted on behalf of the respondents by Mr. Mr. Raghughendram Sharma.

16. Reply, if any, be filed within four weeks from today, with advance copy to learned Counsel for the petitioner who may file rejoinder thereto, if any, before the next date of hearing.

17. Till the next date of hearing, there shall be a stay of further proceedings before the learned Commercial Court in CS (Comm.)



61/2019 (*M/s. Ambience Services v. SR Ashok & Associates Pvt Ltd & Ors.*).

C.HARI SHANKAR, J

AUGUST 8, 2022
r.bararia