

(2025) 03 DEL CK 1098
In the Delhi High Court
Case No : CS (COMM) No. 589 Of 2021

MS Himalayan Flora And Aroma Private Limited	APPELLANT
Vs	
Uttar Pradesh Irrigation Department & Anr	RESPONDENT

Date of Decision : 18-03-2025

Acts Referred:

Code of Civil Procedure, 1908 — Section 151, Order 6 Rule 15A
Arbitration and Conciliation Act, 1996 — Section 34

Citation : (2025) 03 DEL CK 1098

Hon'ble Judges : Vikas Mahajan, J

Bench : Single Bench

Advocate : Anand Mishra, Vandita Nain, Ayushi Rajput, Anil Mittal, Atul Chauhan, Rachit Mittal, Parish Mishra, Kanishk Raj, Adarsh Srivastava, Kriti Jain

Final Decision : Disposed Of

Judgement

Vikas Mahajan, J.

I.A. 13987/2023 (by defendant no. 2 under Section 151 CPC seeking to place on record the statement of truth in compliance of order dated 13.07.2023)

1. The present application has been filed by the applicant/defendant no.2 (Noida Authority) seeking to place on record the statement of truth in support of written statement filed by the defendant no.2.

2. The facts leading to filing of the present application in brief are that the present suit has been filed by the plaintiff praying, inter alia, for decree of declaration, permanent injunction, recovery and damages against the defendants. The summons in the suit were issued by the court vide order dated 16.01.2023. It is not in controversy that the defendant no.2 was served with summons on 27.02.2023 and a written statement was filed by it along with a supporting affidavit as well as affidavit of admission and denial of documents on 28.03.2023. However, the said written statement was not accompanied with the statement of truth in terms of Order VI Rule 15A of CPC, as applicable to the

Commercial Courts Act, 2015 [hereinafter referred to as 'Act'].

3. The order dated 13.04.2023 passed by the learned Joint Registrar reveals that the written statement, affidavit of admission/denial of documents, vakalatnama and reply to the I.A., were filed by the defendant no.2. Likewise, certain documents were also separately filed by the defendant no.2, which were returned under objections. Accordingly, the learned Joint Registrar directed the learned counsel for the defendant no.2 to check-up with the Registry and have the said documents placed on record. The learned Joint Registrar also observed that the learned counsel for defendant no.1 has sought time to file the written statement and affidavit of admission/denial of documents. The matter was accordingly adjourned for completion of pleadings and admission/denial of documents to 13.07.2023.

4. On 13.07.2023, the learned counsel for the plaintiff, for the first time, pointed out that the written statement filed by the defendant no.2 cannot be taken on record as the defendant no.2 has not filed the statement of truth. At this, the learned counsel for defendant no.2/applicant submitted that he will be filing a statement of truth along with an appropriate application. That is how the present application has been filed by the defendant no.2/applicant seeking to place on record the statement of truth.

5. The application has been opposed by the plaintiff/non-applicant.

6. Mr. Rachit Mittal, the learned counsel appearing on behalf of the defendant no.2/applicant submits that the written statement was filed by the defendant no.2 along with the supporting affidavit, as well as, an affidavit of admission/denial of documents, on 28.03.2023. It is only on account of inadvertent and bona fide mistake that the written statement was not supported by the statement of truth, as required by Order VI Rule 15A of CPC.

7. He submits that such an irregularity was not even pointed out by the Registry of this court and it is only on 13.07.2023, when the matter was listed before the learned Joint Registrar, that the learned counsel for the plaintiff for the first time raised an objection that the statement of truth has not been filed along with the written statement of the defendant no.2. Accordingly, a submission was made on behalf of the applicant/defendant no.2 that the statement of truth shall be filed along with an appropriate application.

8. He submits that the written statement was promptly filed by the defendant no.2 without any delay. He submits that the non-filing of a statement of truth is a procedural irregularity and a curable defect and the same will not render the filing of a written statement as non-est. In support of his submission, he has placed reliance on the decision of the Coordinate Bench of this court in Kailash Chand Gian Chand Jain vs. Union of India through Ministry of Railways (Northern), 2024 SCC Online Del 3598 and the decision of the High Court of Calcutta in Harzi Engineering Works vs Hindustan Steelworks Construction Ltd., 2021 SCC OnLine Cal 2457.

9. Per contra, Mr. Anand Mishra, the learned counsel appearing on behalf of the plaintiff/non-applicant submits that the defendant no.2 had filed a defective written statement and since the same was not accompanied by the statement of truth, as prescribed under Order VI Rule 15A of CPC, therefore, the alleged written statement would be nothing more than a 'bunch of papers' and the same will be a non-est filing.

10. He further submits that the Registry had returned the written statement with objection and the same was not cured by the defendant no.2/applicant within the outer limit of 120 days prescribed for filing the written statement, which expired on 27.06.2023 and the statement of truth has been filed with the present application only on 24.07.2023. He, therefore, submits that even assuming that the non-filing of a statement of truth is a curable defect, the same cannot be cured after the expiry of 120 days.

11. He further submits that there is a clear distinction between the procedures to be followed in non-commercial suits and the commercial suits. According to Mr. Mishra, the present being a commercial suit, the procedures prescribed will have to be strictly adhered to. In support of his contention, Mr. Mishra has relied upon the decision of the Co-ordinate Bench of this court in Oil and Natural Gas Corporation Ltd. v. Planetcast Technologies Ltd. 2023 SCC OnLine Del 8490.

12. In rejoinder, Mr. Rachit Mittal has argued that the written statement of defendant no.2 was never returned by the Registry with objection that the written statement has been filed without statement of truth.

13. Having heard the rival contentions of the parties, the question which arises for the consideration of this court is whether the written statement filed by the defendant no.2 without statement of truth is non-est filing or it is a curable defect. Another incidental question which confronts the Court is whether such a defect can be cured after the expiry of the outer limit of 120 days period prescribed for filing the written statement.

14. The requirement of pleadings to be verified by the statement of truth in a commercial dispute, is contemplated by Order VI Rule 15A of the CPC as made applicable to the Act, which reads as under:

"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.”

15. Insofar as the first question is concerned, the same need not detain this court any longer, because the controversy as to whether the non-filing of statement of truth along with written statement is a curable defect or not, is no more *res integra*.

16. The Co-ordinate Bench of this court in OMP(COMM) No.20/2024, titled as Bharat Broadband Network Ltd. v. Sterlite Technologies Ltd., had made a reference to the Larger Bench after noticing the conflicting views expressed by two Division Benches of this court on the aspect that whether the non-filing of statement of truth along with the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'A&C Act'), in terms of Order VI Rule 15A CPC, will make the filing of such petition non-est or not. To answer the said reference, a Full Bench was constituted which rendered its judgment on 07.02.2025¹ in the aforesaid OMP, as well as, connected FAO(OS)(COMM) No.70/2024, titled Pragati Construction Consultants v. Union of India &Anr.

17. The Full Bench referring to the decision of the Hon'ble Supreme Court in Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors., (2006) 2 SCC 777, observed that in the said judgment, the Hon'ble Apex Court laid down that while the provisions of CPC have been held to be introduced with an object of expediting the adjudication of proceedings, they being procedural in nature, are in fact directory and not mandatory, and non-compliance thereto would not make the filing non-est. The Full Bench thus, held that the non-filing of a statement of truth is a curable defect. Merely due to non-filing of statement of truth, the petition under Section 34 of A&C Act cannot be described as non-est. The relevant part of the decision reads thus:

“91. As far as A V Industries v. Neo Neon Electrical (P) Ltd., 2023 SCC OnLine Del 5397 is concerned, the Division Bench of this Court was considering an appeal against a final decree passed by the learned Trial Court, in favour of the plaintiff therein. This was the case wherein the Division Bench, after emphasizing on the fact that the Statement of Truth was neither filed with the plaint nor even any time later at all; held that the plaint itself was non-est and could not have been read in evidence. In our opinion, this judgment therefore cannot be read to mean that the non-filing of the Statement of Truth is a non-curable defect, and cannot be cured at any time later. Moreso, once it is held by us hereinabove that it is a curable defect. Merely due to non-filing of the Statement of Truth, the plaint and, in our case an application filed under Section 34 of the A&C Act, cannot be described as non-est.

92. We have considered the facts of each case cited before us in support of the

plea that the non-filing of the Statement of Truth would render the application filed under Section 34 of the A&C as non-est, only to highlight that except in two cases that is, in Bajaj Electricals Ltd. (supra), and in KNR Constructions (supra), (which are of the same learned Single Judge), the Courts in other cases were confronted with the facts where apart from the absence of the Statement of Truth, there were other defects as well. It is those cumulative defects which led to the Courts to form an opinion that the application filed by the petitioners therein was merely to stall the period of limitation from running and therefore, the application so filed was treated as non-est. In fact, as discussed by us hereinabove, since even a plaint filed without the Statement of Truth has been held to be a curable defect, it would not render such plaint to be non-est.

93. We, therefore, answer the Reference in OMP(COMM) 20/2024 before us by holding that while filing of the Statement of Truth is essential, at the same time, merely because of non-filing of the same, or a defect in the same, an application filed under Section 34 of the A&C Act cannot be treated as non-est. It is only where the non-filing of the Statement of Truth, or the defect in filing the same, is accompanied with other defects in the application so filed, makes the Court to form an opinion that the only intent of the petitioner filing the same was to stall the limitation, can an application filed under Section 34 of the A&C Act be described as non-est. The application filed with the Statement of Truth or with defects therein, if accompanied with other defects, which cumulatively leads the Court to form an opinion that the initial filing was not done with a bona fide intent but only to stop the period of limitation, or that the non-filing or defect in filing of the Statement of Truth was not a bona fide error, the Court will be free to declare such filing to be non-est.”

(emphasis supplied)

18. The Full Bench also specifically held that the view of this court in Planetcast Technologies Ltd. (supra) that mere non-filing of statement of truth would make the application filed under Section 34 of the A&C Act to be declared as non-est filing, is not correct. Incidentally, the plaintiff/non-applicant herein in support of its contention had relied upon the said decision. The relevant part of the Full Bench decision reads thus:

“80. The view of the Court in Planetcast Technologies Ltd. (supra), that mere non-filing of the Statement of Truth would make the application filed under Section 34 of the A&C Act to be declared as a non-est filing, therefore, is not correct.”

19. However, the Full Bench also observed that it is only where the non-filing of statement of truth, or the defects in filing the same, is accompanied with other defects, which cumulatively leads the Court to form an opinion that the initial filing was not done with a bona fide intent but only to stop the period of limitation, or that the non-filing or defect in filing of the Statement of Truth was not a bona fide error, the Court will be free to declare such filing to be non-est.

20. As contemplated by Order VI Rule 15A of the CPC, the requirement of

statement of truth is to verify the "pleading" 'Order VI Rule 1 Pleading. - "Pleading" shall mean plaint or written statement', which includes "Plaint" as well as "written statement", therefore, the reasoning that the filing of a plaint without statement of truth is a curable defect and the same would not render the plaint to be non-est, will apply with equal force to the written statement that has been filed without statement of truth. Thus, there is no manner of doubt that the written statement filed without a statement of truth is a curable defect and would not render the filing of such written statement as non-est.

21. As regards the question as to whether the defect can be cured after the period of 120 days for filing the written statement has expired, to be noted, that the Full Bench has not laid down that after the period of limitation prescribed for the filing of suit or written statement, is expired, the defect of non-filing of statement of truth or defective statement of truth, cannot be cured. Once it has been held to be a curable defect, an opportunity ought to be granted to the plaintiff or the defendant, as the case may be, to cure the defect provided the plaint or the written statement is otherwise complete in all respects and was filed within the period of limitation. Needless to say, that defect when cured, will regularise the filing of pleading, be it a plaint or a written statement, from the date of its original filing.

22. In the present case, the defendant no.2/applicant had filed the written statement with promptitude i.e. even before the expiry of 30 days' time. The written statement was also accompanied with the supporting affidavit, as well as, affidavit of admission/denial of documents. Therefore, it cannot be said that the written statement was filed only to stop the period of limitation prescribed for the same. In fact, the written statement was filed on the 29th day, when condonable period of 90 days was still available. Intriguingly, at the stage of scrutiny by the Registry, no objection was pointed out that the written statement is not accompanied with a statement of truth. Even the plaintiff took this objection for the first time on 13.07.2023 i.e. after 120 days had expired on 27.06.2023. Immediately thereafter, on 24.07.2023 the defendant no.2/applicant filed the statement of truth alongwith the present application. It thus, appears that the mistake was bona fide and inadvertent.

23. For the reasons discussed hereinabove, this court finds that there is no substance in the objection raised by the learned counsel for the plaintiff.

24. Accordingly, the application is allowed and the statement of truth filed by the defendant no.2/applicant verifying the written statement is taken on record.

25. The application stands disposed of in the aforesaid terms.