

Mr N Babu Reddy Vs. M/s Eit Services India Private Limited

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Court : Karnataka

Decided On : Jul-22-2024

Judge : M.I.Arun

Appeal No. : WP 18331/2024

Appellant : Mr N Babu Reddy

Respondent : M/s Eit Services India Private Limited

Judgement :

- 1 - NC:

2024. KHC:28750 WP No.18331 of 2024 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE22D DAY OF JULY, 2024 R BEFORE THE HON'BLE MR JUSTICE M.I.ARUN WRIT PETITION NO.18331 OF2024(GM-CPC) BETWEEN:

1. MR. N. BABU REDDY S/O LATE MR. NARAYAN REDDY AGED ABOUT54YEARS, NO.188/6, PANCHAMUKI NILAYA, DR. MRUTHUNJAYA LAYOUT SARJAPUR ROAD, ATTIBELE BENGALURU-560 107. PETITIONER [BY SRI HARISH KUMAR M.S., ADVOCATE (Through VC)]. AND:

1. M/S. EIT SERVICES INDIA PRIVATE LIMITED HAVING ITS REGISTERED OFFICE3940 ELECTRONIC CITY, PHASE II, HOSUR MAIN ROAD, BENGALURU-560 010, REPRESENTED BY ITS MANAGING DIRECTOR.

RESPONDENT (BY SMT. GEETHA M.S., ADVOCATE FOR SRI GOUTAMADITYA, ADVOCATE) THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER

DATED 13.06.2024 PASSED BY THE XI ADDITIONAL DISTRICT - 2 - NC:

2024. KHC:28750 WP No.18331 of 2024 AND SESSIONS JUDGE, (DEDICATED COMMERCIAL COURT), BENGALURU RURAL DISTRICT, BENGALURU IN COMMERCIAL O.S.NO.104/2022 ON IA NO.X TO XII VIDE ANNEXURE-J IN THE INTEREST OF JUSTICE AND EQUITY, ETC. THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THROUGH PHYSICAL HEARING/VIDEO CONFERENCING THIS DAY,

ORDER

WAS MADE THEREIN AS UNDER: CORAM: THE HON'BLE MR JUSTICE M.I.ARUN ORAL

ORDER

(PER: THE HON'BLE MR JUSTICE M.I.ARUN) 1. Aggrieved by the order dated 13.06.2024 passed by XI Additional District Judge, Bengaluru Rural District, Bengaluru, on I.A.Nos.10 to 12 in Com.O.S.No.104/2022, the defendant therein has preferred this writ petition.

2. The defendant has filed his written statement within the time stipulated, but it does not comply with the provisions of Order VI Rule 15-A of CPC as amended by the Commercial Courts Act, 2015. The written statement was not verified in the manner provided and as per Order VI Rule 15A(4) of CPC, the defendant cannot rely upon such pleadings for leading evidence. It is submitted that the petitioner realized the mistake after the evidence of - 3 - NC:

2024. KHC:28750 WP No.18331 of 2024 the plaintiff was closed and the trial court ordered that the petitioner/defendant cannot lead his evidence. Immediately, he filed I.A.No.10 under Section 151 of CPC to recall the said order of the trial court, I.A.No.11 under Section 151 of CPC with a prayer to permit the defendant to file

the statement of truth in support of his written statement and I.A.No.12 under Section 5 of the Limitation Act read with Section 151 of CPC praying to condone the delay in filing I.A.No.11. The trial court has dismissed the said applications. Aggrieved by the same, the present writ petition is filed.

3. The case of the petitioner is that he has filed his written statement within time and that he has co-operated with the trial court at every stage without trying to drag the proceedings and it was by mistake the statement of truth was not filed along with the written statement and that it is a curable error and the trial court erred in by holding it otherwise and the petitioner will be put to irreparable loss and injury as the order of the trial court - 4 - NC:

2024. KHC:28750 WP No.18331 of 2024 has the effect of striking off the defence of the petitioner/defendant.

4. Per contra, the learned counsel for the respondent justifies the order passed by the trial court and prays for dismissal of the writ petition. It is further contended that the provisions of Order VI Rule 15A of CPC are mandatory and having not complied with the same, then the petitioner is bound to suffer the consequences.

5. The question that arises for consideration in the instant writ petition is whether non filing of statement of truth or not complying with the mandatory provisions of Order VI Rule 15A of CPC as amended by the Commercial Courts Act, 2015, at the time of filing the written statement is a curable defect or not?.

6. Order VI Rule 15A of CPC as amended by the Commercial Courts Act, 2015 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 - 5 - NC:

2024. KHC:28750 WP No.18331 of 2024 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.

7. A reading of the said provision makes it clear that the intention of the legislature is that when a pleading is not verified by a statement of truth as specified, the party cannot be permitted to rely on such pleading. Hence, filing of statement of truth along with the pleadings is mandatory. However, the aspect that requires to be considered is, if the same is inadvertently left out, then in - 6 - NC:

2024. KHC:28750 WP No.18331 of 2024 that event, can a party be permitted to file the same subsequently by taking the permission of the Court.

8. The Commercial Courts Act, 2015 is enacted for providing speedy disposal of high value commercial disputes. Early resolution of commercial disputes will create a positive image about India to the Investor abroad. Thus, while interpreting the provisions of the Commercial Courts Act, 2015, the Courts have to keep in mind, as to whether the decision is likely to prolong the litigation and does it have the effect of causing injustice to either of the parties. The prayer of the petitioner has to be tested in the light of the said observations.

9. In the instant case, the petitioner has filed his written statement before the Commercial Court within the time stipulated. After the closure of the evidence of the plaintiff/respondent herein, he realized that he has not filed the statement of truth duly verified as mandated in Order VI Rule 15A of CPC. Immediately, he has made the necessary application to the trial court. Allowing the same - 7 - NC:

2024. KHC:28750 WP No.18331 of 2024 would not have the effect of delaying the proceedings before the Commercial Court. However, not allowing the same, has the effect of striking off the pleadings of the defendant, meaning he is unable to

defend his case, which in my opinion, under the given facts and circumstances of the case, would cause injustice to the petitioner.

10. Under the given facts and circumstances of the case, I am of the opinion that the trial court (Commercial Court) should have considered non filing of statement of truth as a curable defect and should have allowed the same in the interest of justice.

11. Hence, the following:

ORDER

(i) The writ petition is allowed; (ii) The impugned order dated 13.06.2024 passed by XI Additional District Judge, Bengaluru Rural District, Bengaluru, (Commercial Court) on I.A.Nos.10 to 12 in Com.O.S.No.104/2022 is hereby set aside; - 8 - NC:

2024. KHC:28750 WP No.18331 of 2024 (iii) I.A.Nos.10 to 12 filed in Com.O.S.No.104/2022 is hereby allowed; (iv) The petitioner shall be permitted by the trial court to file the necessary statement of truth as contemplated in law by next date of hearing and proceed with the case in accordance with law; (v) The petitioner shall co-operate with the trial court for speedy disposal of Com.O.S.No.104/2022; (vi) The petitioner shall pay a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to the respondent on or before the next date of hearing before the trial court. SD/- (M.I.ARUN) JUDGE hkh.

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