

IN THE HIGH COURT OF JHARKHAND AT RANCHI

C.M.P. No.436 of 2024

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1. M/s City Alloys Private Limited through its Managing Director namely Vikash Kumar Gaddhyan, aged about 50 years, having its registered office at Hanuman Charai, PO Barakar, District West Burdwan, West Bengal.
2. Vikash Kumar Gaddhyan, aged about 50 years, son of Basudeo Gaddhyan Managing Director of M/s City Alloys Private Limited, resident of Nirsa cum Chirkunda, Chirkunda PO & PS Chirkunda, District Dhanbad.
3. Narendra Gopal Singhal, aged about 56 years, son of Bajrang Lal Singhal Director of M/s City Alloys Private Limited, resident of Hanuman Charai, Barakar, Roshna, PO Barakar, PS Barakar, District Bardman.

.... ... Petitioners

Versus

M/s Hari Om & Co. through its Proprietor Shri Ajay Kumar, son of late Ramjee Saw having its factory at B-2, Industrial Area, Adityapur, PO & PS Adityapur, Jamshedpur, District Saraikela-Kharsawan. Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioners : Mr. Jitendra Kumar Pasari, Advocate
Mr. Avinash Kumar Pasari, Advocate

05/06.12.2024 On behalf of petitioners the learned counsel Mr. Jitendra Kumar Pasari is present.

2. In view of the service report, it is found that the notice of sole opposite party was received by his brother. As such, the service of notice to opposite party is deemed sufficient.

3. No one appears on behalf of opposite party despite deemed service of notice to him.

4. This CMP has been filed against the order dated 18.03.2024 passed in Commercial Suit No. 30 of 2022 by the learned court of Civil Judge (Sr. Division)-I, Jamshedpur wherein the learned court below has allowed the petition of plaintiff/respondent filed under Order VI Rule 17 of CPC and further rejected the application under Order-XIII-A filed on behalf

of petitioners/defendants.

5. Learned counsel for the petitioner has submitted that Commercial Suit No. 30 of 2022 is pending in the court of Civil Judge (Sr. Division)-I cum Special Judge, Commercial Court at Jamshedpur (M/s Hari Om and Company vs. M/s City Alloys Pvt. Ltd. & Ors.). The copy of this very plaint is annexed with this petition which is annexure no.1 and the written statement is also filed on behalf of the petitioner which is annexure no.2. In that very suit, the application under Order-VI, Rule-17 of CPC was given on behalf of the plaintiff seeking relief to incorporate the statement of truth under Order-VI, Rule-15A of the Commercial Court Act.

6. This very application was opposed by the defendant. The copy of the objection/reply is annexure no.4 of this CMP and the learned court below has allowed the very amendment application which was not legally permissible.

7. Learned counsel for the petitioner has also submitted that in view of Commercial Courts Act, 2015 the Rule-15A provides that notwithstanding anything contained in the Rule-15 every pleading in commercial dispute shall be verified by an affidavit in a manner and form prescribed in appendix to the schedule.

8. Since with the plaint of Commercial Suit No. 30 of 2022, there was no verification of the pleading in view of Rule-15A of Commercial Court Act, 2015. The very amendment was filed on behalf of the plaintiff under Order-VI Rule-17 of CPC.

9. It is the settled law that **the amendment can be made in pleadings which includes plaint and written statement and in view of settled propositions of law the applications in any proceeding as well.**

10. It was incumbent upon the learned court below that to provide opportunity to file the statement of truth i.e. affidavit in a prescribed form of the Rule-15A schedule in addition or in place of the general affidavit which was annexed with the plaint; but no amendment could have been allowed for the same in the affidavit.

11. But in the case in hand **the very amendment was sought on behalf of plaintiff to amend the statement of truth in the plaint. The**

same is not permissible since the affidavit does not come within the purview of pleading, if any, affidavit has not been properly filed in view of the Schedule as prescribed under Rule-15A of Commercial Court Act the only course which was available to the plaintiff was to file the statement of truth the format of the same is given in the schedule of the Act itself and which is nothing but affidavit.

12. Therefore, the very amendment application which has been allowed by the learned court below is based on perverse finding and needs interference. Accordingly, this CMP is allowed at the very admission stage and the impugned order is set aside and the matter is remanded to learned court concerned. The learned trial court is directed to provide the opportunity to the plaintiff of the commercial suit to file the statement of truth as provided in a prescribed formate of the schedule as provided under Rule-15A of the Commercial Court Act.

13. Accordingly, this petition stands disposed of. The amendment which has already been incorporated same be struck off.

(Subhash Chand, J.)

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