

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 03.08.2010
Judgment delivered on: 25.08.2010

RFA No. 616/2003

Lucas Indian Services Ltd. Appellant

Through: Ms.Priyanka Priyadarshni, Advocate.

Vs.

Sanjay Kumar Agarwal Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. Whether the Reporters of local papers may | Yes |
| be allowed to see the judgment? | |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported | Yes |
| in the Digest? | |

KAILASH GAMBHIR, J.

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1. By this appeal filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure, 1908 the appellant seeks to challenge the judgment and decree dated 24.02.2003 passed by the Ld. Additional District Judge whereby the suit for recovery of permanent and mandatory injunction filed by the appellant against the respondent was dismissed.

2. Brief facts of the case relevant for deciding the present case are that the respondent was an employee in the appellant company and submitted his resignation letter on 3.10.99 and requested to be released from the employment w.e.f 1.1.2000. The appellant company in a letter dated 4.12.1999 informed the respondent that his services would be relieved subject to certain conditions specified therein among which one was the re-payment of loan advanced by the appellant company to the respondent. Consequently, the respondent issued a post dated cheque dated 31.12.1999 for Rs. 1,36,000/- which got dishonoured and hence the

appellant company filed a suit for recovery of the said amount which vide judgment and decree dated 24.2.2003 was dismissed. The learned trial court besides dismissing the suit of the appellant on merits also held that Sh. K.K Sen , who had filed the said suit was not authorized to do so. Feeling aggrieved by the same, the appellant has preferred the present appeal.

3. Counsel for the appellant submitted that the Ld. Trial Court erred in holding that the appellant failed to prove the authority of Mr. K.K. Sen to sign, file and verify the plaint on behalf of the appellant company. Counsel further submitted that the certified copy of the Board Resolution in favour of Mr. S. Ramanathan was duly proved on record, the same being a part and parcel of the document proved on record as Ex. PW 2/1. Counsel for the appellant also submitted that the authority of Mr. K.K. Sen was never challenged in his cross-examination nor even any suggestion was given by the respondent to challenge the authority of

Mr. S. Ramanathan, therefore the findings given by the Ld. Trial Court on the issue Nos. 2 are ex-facie illegal and perverse. Counsel for the appellant also submitted that the suit of the appellant was dismissed on a technical ground and therefore the Id. Trial Court has not done substantive justice to the claim set up by the appellant against the respondent.

4. In support of her arguments, counsel for the appellant placed reliance on the judgment of the Supreme Court in ***United Bank of India Vs. Naresh Kumar & Ors (1996) 6 SCC 660.***

5. On merits of the case, the counsel for the appellant, contended that the appellant has fully proved its case by proving on record the dishonoured cheque Ex. PW 1/C-1 for Rs.1,36,000/- issued by the defendant himself towards the outstanding dues of the appellant and the resignation letter dated 3.10.1999 proved on record as Ex. PW 1/1, but ignoring the said documentary evidence the Id.

Trial Court has given more weightage to the uncorroborated evidence of the respondent.

6. I have heard counsel for the appellant at considerable length and gone through the records. From the respondent side none appeared.

7. Before advertizing to deal with the merits of the case, let me first examine the findings of the Id. Trial Court on issue No.2. Besides other issues on merits of the case, the following issue on the competence and authority of Mr. K.K. Sen was framed by the Id. Trial Court. Issue No. 2:-

“Whether the plaintiff has authorized Sh. K.K. Sen to file the present suit, if so, whether the suit has been properly signed & verified? OPP.

8. The onus of proving the said issue was on the appellant and to prove the same Sh. K.K. Sen in his evidence proved a letter dated 26.05.2000 whereby Mr. S. Ramanathan, General Manager (Finance) had appointed Mr. K.K. Sen to represent the appellant company in legal proceedings to be instituted against the respondent and to

sign and verify the pleadings on behalf of the company. The Id. Trial Court has decided the said issue against the appellant after finding that the appellant has failed to prove the resolution dated 29.11.1994 which authorizes Mr. S. Ramanathan to further authorize and nominate and appoint any other officer of the company to do all acts and deeds on behalf of the company. Not only the fact of not proving the said resolution but even Mr. S. Ramanathan was not produced in evidence to prove the said authority letter in favour of Mr. K.K. Sen and in this background the Id. Trial Court found that the appellant failed to prove the competence and authority of Mr. K.K. Sen to sign, file and verify the suit on behalf of the appellant company.

9. The Apex Court in ***Naresh Kumar (Supra)*** has taken a view that in cases where the suits are instituted or defended on behalf of the petitioner corporation, the public interest should not be permitted to be defeated on a mere technicality. The court further held that there is sufficient

power vested in the courts under the Code of Civil Procedure to ensure that injustice is not done to any party who has a just cause. The said observations of the Apex Court came in the background of the facts of that case as there the trial court on the merits of the case found that the money was payable by the respondents therein but the suit of the bank was dismissed on the said technical ground of the plaint not being duly signed and verified by the competent person. It would be useful to refer the relevant paras of the said judgment as under:-

"8. In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the CPC, to ensure that injustice is not done to any party who has a just case as far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the CPC a pleading is required

to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the CPC, therefore, provides that in a suit by or against a corporation the secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto an de hors Order 29 Rule 1 of the CPC, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the CPC. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the CPC and should have directed a proper

power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim."

10. It will also be useful to reproduce Order 6 Rule 14 and Order 29 Rule 1 of the Code of Civil Procedure here:-

ORDER VI. ORDER VI - PLEADINGS GENERALLY (THE FIRST SCHEDULE)

14. Pleading to be signed

Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

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ORDER XXIX. ORDER XXIX - SUITS BY OR AGAINST CORPORATIONS (THE FIRST SCHEDULE)

1. Subscription and verification of pleading

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

11. Order 6 Rule 14 mandates that every pleading shall be signed by the party and its pleader. So far the signing of a plaint on behalf of a company is concerned, a company being a corporate body or a juristic person has to act through somebody and that person has to be specifically authorized either under its Articles of Association or through a Board Resolution to sign, file and verify the suit. So far Order 29 Rule 1 of CPC is concerned, it authorizes the Secretary, Director or other Principal Officer of the Corporation to sign and verify the pleading on behalf of the corporation. In the case of ***Nibro Ltd. Vs. National Insurance Co. Ltd. AIR 1991 Delhi 25*** this court held that Order 29 Rule 1 CPC does not authorize persons mentioned therein to institute the suits on behalf of the corporation. Relevant para of the said judgment is referred as under:-

“27. On the analysis of the judgments, it is clear that Order 29, rule 1 of the Code of Civil Procedure does not authorise persons mentioned therein to institute suits on behalf of the corporation. It only authorises them to sign and verify the pleadings on behalf of the corporation.”

12. Coming back to the facts of the present case, the appellant has placed on record certified true copy of the Board Resolution wherein authority was given to Mr. S. Ramanathan, Financial Controller, to institute legal proceedings on behalf of the company with further authority to authorize and nominate and appoint any other Officer of the company to do all such acts and deeds on behalf of the Company. Based on the said resolution Mr. S. Ramanathan, had given the authority to Mr. K.K. Sen vide authority letter dated 26.5.2000. It is an admitted fact between the parties that the said Board Resolution was not proved on record and even Mr. S. Ramanathan also did not enter the witness box to prove the said authority letter dated 26.5.2000 proved on record as Ex. PW- 2/1. It is also an admitted fact that Mr. K.K.

Sen has signed, filed and verified the plaint on behalf of the appellant company. The appellant herein is a private company and is not a public body or corporation as it was in the case of ***Naresh Kumar (Supra)***. It is also not the case of the appellant that Mr. K.K. Sen was one of the principal officers of the appellant company in terms of Order 29 Rule 1 CPC. Admittedly Mr. S. Ramanathan derived his authority to nominate an officer of the company under the Board Resolution dated 29.11.1994. The question therefore arises is that once the appellant failed to prove the said Board Resolution in favour of Mr. S. Ramanathan then how the authority of Mr. S. Ramanathan to appoint further officer could be established. No explanation has come forth from the appellant as to why Mr. S. Ramanathan himself was not produced in the evidence as he being the principal officer of the company could validly prove not only his own authority but the said authority conferred by him in favour of Mr. K.K. Sen. At no stage of the trial, the appellant company also

took any steps to rectify the said defect and even at the appellate stage as well no such request has been made in this regard.

13. K.K. Sen PW 1 in his deposition deposed that the Board of Directors of the appellant company vide the resolution passed in November, 1994 had authorized Mr. S. Ramanathan, General Manager (Finance) to file any legal case on behalf of the company and the said resolution also empowered him to delegate his power to any other officer. PW- 1 further deposed that vide letter dated 26.05.2000 Mr. S. Ramanathan authorized him to file the said case against the respondent. It is thus quite manifest that once the appellant failed to prove the said resolution of the Board of Directors in favour of Mr. S. Ramanathan, the said authority letter dated 26.05.2000 executed by Mr. S. Ramanathan deriving his authority under the of Resolution of the Board is of no consequence. The said authority letter could be held valid and legal only when the Board Resolution was proved

on record. PW- 1 K.K. Sen further does not claim that he was the principal officer of the company and therefore in that capacity he was competent to sign and file the plaint and therefore the provision of Order 29 Rule 1 CPC does not come to his rescue. Even the said authority letter alleged to be executed by Mr. S. Ramanathan does not give any power to Mr. K.K. Sen to institute the said suit on behalf of the company.

14 . The facts of the present case are more near to the facts of the case of ***Nibro Ltd. (Supra)***. Here it would be useful to refer to paras 30 & 31 of the said judgment as under:-

"30. The plaintiff has not placed on record nay resolution passed by the company authorising Shri G. Jhajharia to institute the suit. Shri G. Jhajharia did not come forward to make a statement that he was in a position to depose to the facts of the case. In the plaint signed by him, he claims to be a principal officer and director, but there is no evidence on record to indicate that he had the authority to institute the suit. The memorandum and articles of association of the plaintiff company are also not placed on record. Even after the suit was instituted by Shri G. Jhajharia, no resolution was passed by the company ratifying this action. No such decision of the board of directors is placed on record in the present case. The plaintiff has examined Shri Ashok Kumar

Jhajharia. He has placed on record, exhibit PW-2/1, which is the resolution of the board of directors reappointing Shri G. Jhajharia as the director but this resolution does not empower Shri G. Jhajharia as a director to institute the present suit. Shri Ashok Kumar Jhajharia has stated that he was handling the day-to-day management of the plaintiff company including the insurance part of it. He, however, does not state that Mr. G. Jhajharia was handling the day-to-day management or was in charge of the insurance claim.

31. Thus, there is no evidence to prove that Shri G. Jhajharia had the authority to institute the present suit."

In the facts of the present case, the Resolution of the Board empowering Mr. S. Ramanathan (Financial Controller) was not proved on record. Mr. S. Ramanathan himself did not enter the witness box to prove the said authority letter issued by him in favour of Mr. K.K. Sen. Mr. K.K. Sen admittedly was not the principal officer of the appellant company. Further as per the certificate issued by Mr. S. Ramanathan in his favour no authority was given to him to institute the said suit. Taking into consideration all these facts this court is of the considered view that Ld. Trial Court

has rightly and correctly decided the issue No.2 in favour of the respondent and against the appellant.

15 . So far the merits of the case are concerned, the appellant has failed to prove on record as to how much amount the appellant company was to recover from the defendant. The respondent, on the other hand, had given sufficient explanation for his issuing the cheque for a sum of Rs. 1,36,000/- in favour of the appellant company. The Trial Court has also referred to the cross-examination of PW- 1 who in his cross-examination has not specifically denied that the cheque of Rs.1,36,000/- was taken from the defendant forcibly by Mr. S. Ramanathan. Therefore, no infirmity, illegality or perversity can be found in the reasoning given by the Id. Trial Court disbelieving the claim of the appellant. Hence, the appellant has failed to establish his case on merits as well.

16 . In the light of the above discussion, there is no merit in the present appeal, the same is hereby dismissed.

August 25,2010
pkv

KAILASH GAMBHIR, J