

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

+ **RFA No.657/2003**

% **17th January, 2012**

M/S. SANGAT PRINTERS PVT. LTD. Appellant

Through: Mr. A.B.Pandey with
Mr. Dinesh Monga, Advs.

versus

M/S. WIMPY INTERNATIONAL LTD. Respondent

Through: Mr Girdhar Govind with
Ms. Asiya, Advs.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 26.3.2003 dismissing the suit for recovery of Rs.3,49,492/- filed by the appellant/plaintiff. The amount prayed to be decreed was with respect to goods being printed boxes supplied having the logo of the respondent/defendant.

2. Before proceeding further, I may note that the Trial Court had framed a total of six issues and of which issue nos. 2 and 3 pertained to the entitlement of the appellant/plaintiff to the suit amount and as to whether there was a full and final settlement by the respondent/defendant paying Rs.94,410/-. While deciding both these issue nos. 2 and 3, the Trial Court held that in fact goods were supplied, balance amount was due and payable and there was no full and final settlement as alleged by the respondent/defendant. The Trial Court while giving the necessary findings and conclusions with respect to issue nos. 2 and 3 has held that amounts which are due to the appellant/plaintiff are proved by virtue of the fact that the respondent/defendant in its written statement admitted to have received goods of the amount of Rs.13,58,893/- and also payment thereof of Rs.9,81,579/- leaving thus the balance amount due and payable. The Trial Court has also referred to the bills of supply which have been exhibited as Ex.PW1/D-1 to D-48 as also the fact that the respondent/defendant sent no reply to the legal notice in which the amount was claimed entitling drawing of an adverse inference. The Trial Court has also held that there was no full and final settlement allegedly by making payment of Rs.94,410/- by the respondent/defendant inasmuch as except a bald statement, no evidence/proof was filed on behalf of the respondent/defendant.

The suit however has only been dismissed because authority to file the suit was held to be not proved while dealing with issue no.1.

3. The finding with respect to issue no. 1 is contained in paras 17 to 19 of the impugned judgment and which reads as under:-

“17. Issue No.1:-

Onus is on the plaintiff to prove that the plaint has been signed, verified and the suit has been instituted by a duly authorised person. P.W. Shri Parvinder Singh has deposed that he is the authorised signatory of the plaintiff company and is duly authorised to institute the present suit and his authorisation is Ex.P.W.1/A. However, it is found that the witness did not produce the original minute book containing the resolution Ex.P.W.1/A passed by the board of directors on 29/7/1999. Ld. counsel for the defendant has argued that the resolution Ex.P.W.1/A has not been proved as per law and so it cannot be read in evidence; that the said resolution could be proved by P.W. Parvinder Singh only by production of the original Minute Book. In support of his contention, ld. counsel has relied upon a decision of our own Hon’ble High Court in Escorts Ltd. V/s. Sai Auto and others 42 (1990) Delhi Law Times 446. I have gone through the said judgment. Therein Their Lordships have held that the only way to prove that a particular resolution was passed at a meeting of the Board of Directors of a company is that the minutes book in which the said resolution was recorded as having been passed should be produced in court as that alone can form evidence of the fact that such a resolution was passed.

18. On the other hand, ld. counsel for the plaintiff referring to the provisions of Sec.54 and Sec.195 of the Companies Act has argued that the extract of the resolution Ex.P.W.1/A

is duly certified true copy by Shri Sarbjit Singh, Director of the plaintiff company, as required U/S-54 of the Companies Act and there is presumption U/S-195 of the Companies Act that there is presumption to be drawn U/S-195 of the Companies Act that such a resolution was passed by the board of directors.

19. As per the provisions of Sec.54 of the Companies Act, it is provided that a document or proceeding requiring authentication by a company may be signed by a director, the managing agent, the secretaries or other authorised officer of the company, and need not be under its common seal. It is not disputed that Ex.P.W.1/A has been validly authenticated by Shri Sarabjit Singh, the director of the plaintiff company. However, I am of the considered view that it has not been proved as per law. The plaintiff is not entitled to presumption available u/s-195 of the Companies Act. Bare perusal of Sec.195 of Companies Act shows that presumption which is rebuttable as envisaged in the said provision can be raised only when it is proved that the minutes of the proceedings of any general meeting of the company or of any meeting of its Board of Directors or of a committee of the Board have been kept in accordance with the provisions of Sec.193 of Companies Act. Sec.195 of the Companies Act shows that the minutes of meeting kept in accordance with the provisions of Sec. 193 of the Act shall be evidence of the proceedings recorded therein. However, the said presumption cannot be drawn as the original minute book containing the resolution extract of which is Ex.P.W.1/A has not been produced in the court. What is proved is only an extract and not the minutes of the meeting. Only the original minute book would have shown whether the minutes of the meeting have been kept in accordance with the provisions of Sec.193 of Companies Act. Therefore, it is found that the resolution Ex.P.W.1/A has not been proved by the plaintiff in accordance with law and cannot be read in evidence.

The proposition of law laid down by our own Hon'ble High Court in Escorts Limited V/s. Sai Autos and others (SUPRA) is squarely applicable to the facts of this case. Accordingly it is held that the plaint has not been instituted by a duly authorised person. Findings on this issue are accordingly returned against the plaintiff."

4. In my opinion, the Trial Court has clearly erred in dismissing the suit on the ground that the suit has not been validly instituted. Firstly, the finding is wrong, because the Board of Directors' resolution was proved and exhibited as Ex.PW1/A. Before the commencement of cross-examination, the respondent/defendant did not object to the exhibition of this document, and therefore, in view of the decision of the Supreme Court in the case of ***R.V.E.Venkatachala Gounder vs. Arulmigu Viswesaraswami & V.P.Temple 2003 (8) SCC 752***, the respondent/defendant is estopped from objecting to the proof of the document. The Supreme Court in the case of ***R.V.E.Venkatachala Gounder(supra)*** has held that if objection is taken by the objecting party at the relevant point of time, then, the litigant which wrongly exhibits/proves the documents, can thereafter take corrective action to ensure proper mode and manner of proof. Therefore once objection is not taken at the appropriate point of time, subsequently, no benefit can be derived of the same by the party subsequently objecting. In the present case, evidence was filed by way of

affidavit and therefore since objection to the exhibiting/proof was not taken before commencement of the cross-examination, the objection is deemed to have been waived inasmuch as if cross-examination would not have begun and objection would have been taken to exhibiting/proof of document, then the appellant would have preferred to lead other evidences to ensure proof of the resolution, Ex.PW1/A. I therefore hold that the resolution Ex.PW1/A duly showed the entitlement of Sh. Parvinder Singh to file the suit. Secondly, the objection raised by the respondent/defendant is fully answered against the respondent/defendant as per the celebrated decision of the Supreme Court in the case of *United Bank of India vs. Naresh Kumar, 1996(6) SCC 660; AIR 1997 SC 3*, in which judgment the Supreme Court has said that the cases filed by the companies should not be dismissed on technical ground with respect to validity of institution, and in fact the Supreme Court went on further to hold that as long as the suit is contested to the hilt, it ought to be held that the suit was validly instituted and filed. I therefore hold that the Trial Court erred in dismissing the suit on the technical ground by returning the finding on issue no.1 that the suit was not validly instituted and filed.

5. Learned counsel for the respondent relied upon the judgment in the case of *State Bank of Travancore vs M/s. Kingston computers (I) Pvt. Ltd.*
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2011 (3) Scale 33 to argue that it should be held that the suit was not validly instituted. The Supreme Court in the case of ***State Bank of Travancore (supra)*** has held that once there is no resolution which has been filed, then, because no resolution is filed, a person who claims to have instituted the suit, cannot be said to have validly instituted the suit, more so, because the person who claimed to have instituted the suit as a Director, did not file any proof that he was the Director of the Company. This judgment therefore has no application to facts of the case where the resolution was filed on record and also exhibited/proved thereafter. I must also mention that this judgment of the Supreme Court does not make reference to the earlier binding judgment in the case of ***United Bank of India(supra)*** and which goes to the extent of saying that the suits should not be dismissed on the technical grounds once the legal entity which files the case, contests the case to the hilt, i.e. till the stage of the final arguments.

6. Though, learned counsel for the respondent/defendant has not argued one aspect with respect to the interest, I however feel in the facts and circumstances of the case, the appellant/plaintiff ought not to be granted interest at 24% per annum for the pre-suit period and at 18% per annum pendente lite and future as claimed by the appellant/plaintiff. I may note that

the Supreme Court in the recent catena of judgments reported as ***Rajendra Construction Co. v. Maharashtra Housing & Area Development Authority and others***, 2005 (6) SCC 678, ***McDermott International Inc. v. Burn Standard Co. Ltd. and others***, 2006 (11) SCC 181, ***Rajasthan State Road Transport Corporation v. Indag Rubber Ltd.***, (2006) 7 SCC 700, ***Krishna Bhagya Jala Nigam Ltd. v. G.Harischandra***, 2007 (2) SCC 720 & ***State of Rajasthan Vs. Ferro Concrete Construction Pvt. Ltd*** (2009) 3 Arb. LR 140 (SC) has held that the Courts should be alive to the change of interest regime, and Courts should reduce the unnecessary high rates of interest, especially considering the long pendency of litigation. A Division Bench judgment of this Court in the case of ***Pandit Munshi Ram Associates vs. DDA*** 2010 (9) AD (Delhi) 313, has also held that the rate of interest for the pre-suit period, if the same is unnecessarily excessive, is violative of public policy.

Accordingly, in view of the aforesaid judgments of Supreme Court and a Division Bench judgment of this Court I deem it fit that the pre-suit interest, pendente lite interest and future interest till payment should be at 12% per annum simple and which is granted accordingly.

8. In view of the above, the appeal is accepted. The suit of the appellant/plaintiff for a sum of ₹2,82,903/- is decreed with interest at 12% per

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annum simple from 1.9.1999 till payment, i.e. including of pendente lite and future interest till payment at 12% per annum simple.

9. Appellant will be entitled to costs of this appeal with respect to the Court fees paid for the appeal. Decree sheet be prepared. Trial Court record be sent back.

VALMIKI J. MEHTA,J

JANUARY 17, 2012
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