

* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of Decision: 06.05.2014
+ **RC.REV. 437/2012, CM Nos.15036/2012 & 12425/2013**

SAPNA TRADING CORPORATION Petitioner
Through: Mr. Vijay Kishan, Mr. Vikram Jetley &
Mr. Sanjeev Sharma, Advs.

versus

DADAJEE DHAKJEE & CO PVT LTD Respondent
Through: Mr. Rajat Aneja with
Ms. Swati Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

% **MR. JUSTICE NAJMI WAZIRI (Open Court)**

1. The learned counsel for the petitioner states that the proceedings before the Trial Court were an illegality because the petition was filed in the name of the company which did not exist by that name, since by the year 2001 the name of the company had changed from Dadajee Dhakjee & Co. Pvt. Ltd. to Dadajee Dhakjee Pvt. Ltd. Therefore the entire proceedings suffered from an incurable locus standi, as the petition was filed in the former name of the company.

2. The learned counsel for the respondent states that there is no dispute with respect to the identity of the landlord nor has there been any dispute apropos the landlord-tenant relationship. It is just that since the sale deed by which the landlord has attained ownership of the property, is in the name of the Dadajee Dhakjee & Co. Pvt. Ltd. He submits that this would have no bearing upon the identity of the landlord Dadajee Dhakjee Pvt. Ltd.

3. Learned counsel for the petitioner submits that as per Section 23(3) of the Companies Act, any proceedings initiated in a wrong name would be non-est. He relies upon the Division Bench Judgment of the Calcutta High Court in *M/s. Malhati Tea Syndicate Limited vs. Revenue Officer, Jalpaiguri & Ors.*, AIR 1973 Calcutta 78 to support his contention which records as under:-

“20. There can be no doubt that on the day on which the appeal was filed, there was no company in existence by the name of Malhati Tea Syndicate Ltd., and the appeal purported to have been filed by a company which was not on the Register of Joint Stock Companies, and had therefore no existence in accordance with the provisions of the Companies Act, 1956, cannot but be held to be incompetent. Learned Advocate for the applicant contended that the appeal was competent by reason of the provisions in subsection (3) of Section 23 of the Companies Act, 1956. That sub-section runs as follows:--

“The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.”

21. We are unable to accept this contention on behalf of the applicant. The first part of the sub-section protects the rights and obligations of the company, already acquired before the change of its name and also protects legal proceedings by or against it. The second part of the sub-section authorises the continuation of a pending legal proceeding which was commenced by the company in its former name. The

second part provides that legal proceedings commenced by the company in its former name may be continued by the company after the change of its name. Nothing in this subsection authorised the company to commence a legal proceeding in its former name at a time, when it had acquired its new name which has been put on the Register of the Joint Stock Companies. In this case, the Memorandum of Appeal had been filed by the company in its former name, namely, Malhati Tea Syndicate Ltd., which was no longer on the Register of the Joint Stock Companies. We are, therefore, of the view that the appeal itself is incompetent, as it has been purported to be filed in a name which is no longer there on the Register of the Joint Stock Companies.

*22. In support of his contention learned Advocate for the applicant relied upon a decision of the Madras **High Court** reported in ILR (1954) Mad 533. In that case the question was whether execution proceedings could be conducted by a company in its new name in a case, where the decree was obtained by the company in its former name. This decision is of no assistance to the appellant in this case, inasmuch as, the commencement of the proceeding in this case has been made in a name which was not on the Register of the Joint Stock Companies.*

23. In our view, the company could not commence the appeal in its former name, at a time when such name has ceased to be on the Register of the Joint Stock Companies, and a new name had been put on the Register. We do not see any reason or justification for not filing the Memorandum of Appeal in the name which was put on the Register of the Joint Stock Companies long before the appeal was filed. This appeal by the company in a name which has been removed from the Register of the Joint Stock

Companies at the time when the appeal was filed is, in our view, incompetent.”

4. The learned counsel further states that Section 25-B of the DRC Act and provisions of CPC would not be available to any party but for the permission of the Court consequent to a leave being granted. In support of the contention he relies upon *M/s. Shivam Enterprises v. M/s. Creation Point*, 2013 VI AD (Delhi) 405 in support of the contention which holds as under:

“4. Before proceeding to see the further averments of the defendant, it may be noted that there is a distinction between the suits filed in the ordinary manner and those filed under Order 37 CPC. Rule 7 of Order 37 specifically provides that except as provided thereunder the procedures in suits under Order 37 shall be the same as the procedure in suits instituted in the ordinary manner. Order 37 being a Code in itself and provides the procedures till the time leave to defend is granted to the defendant. It is only after the leave to defend is granted that the procedure applicable to the suits instituted in an ordinary manner will apply. Rule 4 of Order 37 specifically provides for setting aside the decree, and therefore, the provisions of Order 9 Rule 13 CPC will not apply to a suit filed under Order 37 CPC. In an application under Order 9 Rule 13 CPC, if the defendant is set ex parte and that order is set aside, he would be entitled to participate in the proceedings from the stage he was set ex parte. But, in a suit under Order 37 CPC, the procedure for appearance of the defendant is covered by the provisions of Rule 3 thereof, and he is not entitled to defend the suit unless he enters appearance within ten days of service of summons. A reading of Rule 4 of Order 37 CPC shows that it

empowers, under IAs. 3421, 3407 & 3408 of 2013 in CS(OS) 2693/2012 Page 4 of 8 special circumstances, the court which passed ex parte decree under Order 37 to set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit.”

5. He further relies upon *Jagdish Pershad vs. Hardayal Singh*, AIR 1982 Delhi 298 to contend that statutory leave when granted, provisions of CPC shall not be applicable. This judgment holds as under:-

“According to this sub-section an eviction application even under Section 14(1)(e) of the Act is to be tried by the Controller according to the procedure prescribed for trial of other eviction applications except to the extent that the Controller shall also follow the procedure mentioned in Section 25B of the Act. In other words, it would mean that if leave to defend is not granted to the tenant there would be an order of eviction against him under subsection (4) of Section 25B of the Act, and if leave to defend is granted to a tenant, the eviction application whether- under Section 14A or under Section 14(1)(e) of the Act would be tried as any other eviction application. It is well known that the Controller has power to grant leave to the parties to amend their pleadings. After the grant of leave to defend the eviction application would be tried as any other eviction application and therefore the application for leave to amend would be maintainable and would require the adjudication by the Controller whether the amendment should be allowed in the facts and circumstances of the case. In view of sub section (10) of Section 25B of the Act, I am of the view that once leave to defend is granted to a tenant the parties are entitled to seek leave to amend their readings. In other words, in the present case the petitioner-landlord is entitled to seek leave to amend the eviction application. The Controller was,

therefore wrong in observing that in proceedings under Section 25B of the Act additional ground of eviction cannot be added by amendment. He was wrong in holding that the application for leave to amend was not maintainable. I, therefore, hold that after the grant of leave to defend, a landlord is entitled to amend the application for eviction.”

6. Learned counsel reiterates that the eviction petition itself mentions the former name of the company i.e., Dadajee Dhakjee & Co. Pvt. Ltd. and therefore, the petition would not lie since the company by that name does not exist. Learned counsel submits that actually the name as of date was Dadajee Dhakjee Pvt. Ltd. and not Dadajee Dhakjee & Co. Pvt. Ltd. However, upon a perusal of the application for leave to defend, this Court does not find any such grounds having been taken nor even in the grounds of challenge in the present petition. The learned counsel for the petitioner further submits that the petition was neither filed nor pursued by a person authorized by the company; and that the registered address of the company is in Bombay whereas the correspondence address was in Delhi apropos the tenanted premises.

7. The learned counsel submits that the eviction petition was incomplete, inasmuch as columns 7 to 19 of the prescribed format for an eviction petition were not duly filled. Therefore, it could not have been entertained by the learned ARC. He submits that the Trial Court has found that the petition was not filed by a person authorized by the company. However, the Court rejected the arguments as untenable on the ground that since in the leave to defend application the tenant had not disputed the status of landlord of the company therefore the issue would not arise. Learned counsel relies

upon the judgment of this Court which holds that a petition to be preferred by a corporate entity has to be filed by a person authorised to do so. In support of his contention, he relies upon the following paras of *M/s. Niabro Ltd. v. National Insurance Co. Ltd.*, AIR 1991 Delhi 25:-

“23. 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.

24. In my view, the provisions of Companies Act 1956 and particularly Ss. 14, 26, 28, Schedule I Table A and Section 291 are very clear.

25. It is well-settled that under Section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting in all other cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard.

26. Chapter IV of the Delhi High Court (Original Side) Rules deal with the question of presentation of suits. Under this Rule, suit can be presented by a duly authorised agent or by an advocate duly appointed by him for the purpose. This authorization, in my view, in the case of a company can be given only after a decision to institute a suit is taken by the Board of Directors of the company. The Board of Directors may in turn authorise a particular director, principal officer or the secretary to institute a suit.

27. The plaintiff has not placed on record any 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 on record in the present case. The plaintiff has examined Shri Ashok Kumar Jhajharia. He has placed on record Ext. Pill 2/1 which is the resolution of the Board of directors re-appointing 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 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 day to day management or was in charge of the insurance claim.

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

8. Learned counsel submits that every eviction petition has to be filed in accordance with the statute and what the statute has prescribed; this is a case seeking additional accommodation and in a situation where additional accommodation is sought, grant of leave to defend is ordinarily the rule. Lastly he submits that the landlord is playing a fraud upon this Court.

9. The learned counsel for the respondent submits that the suit premises comprised of ground floor as well as first floor of property No. 2035, Katra Tobacco, Khari Bawli, Delhi-6. The premises were let out to the tenant on 21.1.1974 under a rent deed. The premises comprised a hall on the ground floor as well as four rooms on the first floor. He states that the landlord/eviction-petitioner occupied one room on the first floor but company required the remaining rooms for its business. The learned counsel submits that the arguments advanced by learned counsel for the petitioner are neither the grounds taken in the present petition nor were they mentioned in the application seeking leave to defend. Therefore, the same are not liable to be considered.

10. The learned counsel further submits that there has been no rebuttal to the bonafide need as made out in his application in paras 2 to 7 of the eviction petition. The said paragraphs read as under:-

“2. That the petitioner is in possession of only one small room on the first floor of the said property as shown in yellow colour in the plan annexed and the

petitioner has been running the business of fruit colour under the name and style of Dadajee Dhakjee & C. Pvt. Ltd.

3. That as the petitioner is in possession of only one room on the first floor and there is no place available in the said room to enable the petitioner's employees to conduct the business, as a result whereof, the employees have to sit outside the room and the goods have been kept in the room.

4. That the petitioner on account of the shortage of the accommodation is facing great hardship and inconvenience because whenever the officers of the company visit Delhi, in connection with the management of the said business, they could not stay in the said premises because no accommodation is available in the said premises.

5. That as the petitioner is in possession of only one room on the first floor of the said property and the petitioner could not conduct the business from the said room, as a result whereof, the petitioner is facing great hardship and inconvenience in running the business and so the petitioner wants to set up his business on the ground floor of the said property and the first floor of the said property shall be used for the purposes of storage as well as for the purposes of providing the accommodation to the employees who visit quite often to look after the business in Delhi.

6. That as the petitioner has no other suitable commercial premises for running the business except one room and the petitioner has to expand the business and so the petitioner has decided to set up the business on the ground floor of the said property which is in possession of the respondent and after the possession of the same is given by the respondent, the

petitioner would set up its business and run the business from the ground floor of the said property and would keep two rooms for the purposes of providing accommodation to the employees and two rooms shall be used for the purposes of storing of the material etc.

7. That on account of shortage of accommodation, some times the material are to be kept outside the room and some times the material is being destroyed and damaged due to the fact that the material is lying outside the room and the petitioner's employees are also facing great hardship and inconvenience due to non availability of the accommodation in conducting he business and the customers are also facing hardship in dealing with the petitioner because the customers reluctant to go to the first floor in connection with the business and even on the first floor, there is no such accommodation available where the petitioner should conduct the business and as such, the petitioner has approached the respondent that they require the ground floor for running their own business as well as the first floor for the purposes of storage and providing the accommodation to the employees, but the respondent refused to accede the legitimate request of the petitioner."

11. The learned counsel for the respondent further relies upon the following paragraph of the impugned judgment:

"9. Another issue raised by the respondent is with regard to defective site plan. It is pertinent to mention here that nowhere in the entire pleadings and during arguments, respondent has raised question with regard to the identification of the property. It is pertinent to mention here that filing of site plan becomes mandatory in those circumstances where there is dispute with regard to identification of

property in question. Such a defect can be cured even otherwise by giving an opportunity to the other party as principle and nature of justice provides for giving an opportunity to the other party in this regard. In these circumstances, therefore, I am of the considered opinion that such a plea raised by the respondent is not such for which matter can be referred for trial. Petitioner may be given an opportunity to file correct site plan, if any, on record as per the law.”

12. This Court is of the view that the argument of the tenant that the landlord is not the legal owner of the tenanted premises, thereby having no locus to file the eviction petition is untenable and has been rightly rejected. Paragraph 10 of the impugned order notes that the tenant has not questioned the authenticity of the Sale Deed produced by the respondent herein but has averred that the respondent is not the owner of the tenanted property. That being the contention, the Trial Court noted and rightly so that the tenant is barred from raising such a contention when the tenant has already admitted the landlord-tenant relationship between the parties. This Court finds no infirmity in the reasoning of the Trial Court. Only a bald averment that the respondent herein was not the owner of the tenanted premises was made by the tenant after its admission of the landlord-tenant relationship. Furthermore, the tenanted premises cannot be said to be without a successor. The earlier avatar/embodiment of the owner is now succeeded by the present petitioner. The latter has been accepted as a landlord who can accept the rent in its own name and exclusively for itself, therefore, the eviction-petitioner would be competent to file the eviction petition for its *bona fide* need.

13. Insofar as the question concerning the authorized legal person filing

the eviction petition is concerned, the Trial Court has rightly held that a technical flaw cannot overshadow the entire purpose of the eviction petition. The impugned order clearly notes that the eviction petition is supported by an affidavit of Mr. Alok Kumar Jha that he is the authorized person to file the eviction petition. While there is no copy of resolution to show that he was authorized to sign the eviction petition, rejecting the eviction petition on such a technical ground will only amount to wrongfully denying the landlord from enjoying his property. The Trial Court has rightly concluded that while the tenant may have successfully shown that there was a lacuna on part of the landlord in filing documents to show that Mr. Alok Kumar Jha was indeed authorized to sign the eviction petition, but the greater issue to be addressed was one of the bona fide need of the landlord. What would draw the attention of a Court seized of an eviction petition is the existence of the landlord's genuine pressing need for the tenanted premises. If the Courts were to deny granting an eviction order owing to technical irregularity, the very purpose of Section 14(1)(e) would be defeated thereby further resulting in denial of justice to the landlord. This Court construes the reasoning of the Trial Court as correct and sees no reason to interfere with the same.

14. The argument of the counsel for the tenant that the petition was filed in the name of the company which did not exist by that name, as mentioned before, does not persuade this Court. This Court is of the view that the tenant is precluded from raising such an argument which was neither mentioned in the leave to defend application nor in the present petition. As this contention fails to be mentioned anywhere, this Court is not vested with the power to entertain the said contention.

15. The reasoning for and the conclusion arrived at in the impugned order

are based on the record and the view taken is plausible in law. It does not suffer from material irregularity warranting interference by this court. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

MAY 06, 2014/ak