

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4594 OF 2014

The Raghuvanshi Mills Limited ..Applicants/Petitioners
vs.
Satish Dhirajlal Vithalani and ors. .. Respondents

Mr. M.M. Vashi, Sr. Advocate a/w. Ms Aparna Devkar i/b M.P. Vashi & Associates for the Applicants/Petitioners.
Ms Ranjana Parikh a/w. Ms Prabha Rathod and Mr. Suraj Shah for Respondent Nos. 1 to 4.

CORAM : M. S. SONAK, J.
DATE : 31 JULY 2015.

P.C. :-

1] This petition challenge the orders dated 28 November 2013 and 5 February 2014 made by the Trial Court and the Revisional Court respectively, declining to take on record the petitioners' written statement in T.E. & R. Suit No. 5/6 of 2008.

2] In the aforesaid suit, an order to proceed *ex-parte* against the petitioners was made on 16 October 2012. On 22 November 2012, the petitioners, applied for setting aside the order dated 16 October 2012. The same was set aside by the Trial Court on 7 August 2013 subject to certain conditions in the context of competence of the person/authority to file a written statement on behalf of the petitioner-defendant No.1. On 19 September 2013, the petitioners filed an application at Exhibit-507 urging that the written statement

be taken on record. By order dated 28 November 2013, the Trial Court dismissed the application at Exhibit-507 by observing that the competent person had not filed the application or signed and verified the written statement. The Revisional Court by an order dated 5 February 2014, has upheld the Trial Court's order dated 28 November 2013.

3] In the present case, the written statement on behalf of defendant No.1 company is purported to be filed on basis of affirmation by one Mr. Devansh Sheth. This is on the basis of Power of Attorney issued by one of the Directors of defendant No.1 company. The two Courts have rightly held that on basis of Power of Attorney from one of the Directors of defendant No.1 company, there was no question of affirming or filing a written statement on behalf of defendant No.1 company. There is no jurisdictional error or illegality in the making of such orders.

4] Mr. M.M. Vashi, learned senior counsel for the petitioners-defendant No.1 company, however, submitted that the defects in the matter of affirmation or verification are always curable. In deference to such submission, this matter was adjourned from time to time in

order to afford an opportunity to the petitioners to place on record necessary Resolution of the Board of Directors of the petitioners company, which could afford proper authorization. Despite such adjournment, no such Resolution is forthcoming.

5] In the aforesaid circumstances, there is no case made out to interfere with the impugned orders. Despite opportunities, the petitioners have not been able to demonstrate that any written statement which is affirmed by Mr. Devansh Sheth can at all be regarded as written statement on behalf of the petitioners company.

6] This petition is accordingly, dismissed. There shall, however, be no order as to costs.

7] There is already an order of expedition in T.E.& R. Suit No. 5/6 of 2008. Considering that the plaintiff in such a suit is a charitable institution, the Trial Court is requested to comply with the order of expedition and in pursuance thereof, dispose of main suit within an outer limit of one year from today.

(M. S. SONAK, J.)