

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1202 OF 2014
IN
CHAMBER ORDER (L) NO. 299 OF 2014
IN
SUIT NO. 951 OF 2014**

M/s. Meera Housing Private Limited ... Applicant

IN THE MATTER BETWEEN :

M/s. Khatau Makanji Company Pvt. Ltd. ... Plaintiff

Versus

M/s. Meera Housing Private Limited ... Defendant

Mr. D.D. Madon, Sr. Adv. a/w. Mr. Rajesh Kachare, Mr. Amit Palkar for the Plaintiff.

Mr. S.R. Sharma i/b. S.R.S. Legal for the Applicant / Defendant.

CORAM : S.J. KATHAWALLA, J.
DATED : 4TH DECEMBER, 2015

P.C.

1. The above Suit is filed by M/s. Khatau Makanji Company Private Limited (the Plaintiff Company) on 22nd December, 2010. The Complaint is verified / declared by Mr. Yeshwant Chunilal Mody as the Constituted Attorney of the Plaintiff Company. It appears that at the time of verification of the Complaint Mr. Mody had lost the original Power of Attorney executed in his favour by the Plaintiff Company and an objection was raised by the office as regards the non production of the original Power of Attorney. In view thereof, the Suit was not numbered.
2. The Plaintiff Company therefore filed before the Court Officer a Deed titled 'Reiteration / Confirmation of powers', dated 3rd April, 2014, setting out the above facts and confirming as follows :

“that the said Power of Attorney (i.e. the Power of Attorney dated 28th February 1992 annexed herewith) and the appointment of Mr. Yeshwant Chunilal Mody, Director of the Holder, as the Constituted Attorney of the Company with respect to the said properties is valid, subsisting and binding. The Company confirms and reiterates all the powers granted to the said Constituted Attorney in the said Power of Attorney, as if the same were incorporated herein. The Company ratifies all the legal and valid acts and deeds done by the said Constituted Attorney and confirm the same. We specifically repeat and reiterate the powers under clause 27 of the said Power of Attorney, to protect and safeguard the said properties as also implement the purpose of the said Power of Attorney”.

3. Thereafter, the Prothonotary and Senior Master of this Court by his order dated 23th September, 2014 passed in Chamber Order (L) No. 299 of 2014 and ordered that the Suit be numbered. The Defendant has taken out the above Chamber Summons impugning the order of the Prothonotary and Senior Master.

4. In the meantime, at the meeting of the Board of the Directors of the Plaintiff Company held on 26th November, 2015, all acts of Mr. Mody done in pursuance of the Power of Attorney dated 28th February, 1992 on behalf of the Plaintiff Company including the filing of the above Suit were ratified.

5. On behalf of the Plaintiff Company, reliance is placed on the decision of the Hon'ble Supreme Court in United Bank of India Vs. Naresh Kumar & Others reported in (1996) 6 Supreme Court Cases 660. Paragraphs 9 and 10 of the same are reproduced hereunder :

“9. In cases like the present where suits are instituted or defended

on behalf of a public corporation, public interest should not permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, 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 Code of Civil Procedure 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 Code of Civil Procedure, 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 Code of Civil Procedure 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 and de hors Order 29 Rule 1 of the Code of Civil Procedure, 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 Code of Civil Procedure. A person may be expressly authorized 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”.

6. In the present case, though it is true that on the date of verification of the Plaint by Mr. Mody, the original Power of Attorney was lost, however, the Plaintiff Company has by a Deed of Reiteration and Confirmation of Powers confirmed the powers on Mr. Mody as set out hereinabove. Thereafter, the Plaintiff Company has also by a Board Resolution dated 26th November, 2015 ratified all acts done by Mr. Mody. Though, there is some delay on the part of the Plaintiff in filing the Deed of Confirmation and the Board resolution, in my view, if the Plaintiff Company is not allowed to proceed with the Suit, grave and irreparable harm, injury and prejudice may be caused to the Plaintiff Company, whereas no such harm, loss and prejudice will be caused to the Defendant, if it is allowed to be proceeded with and decided on merits. In view thereof, the Chamber Summons stands rejected. However, there shall be no order as to costs.

7. The learned Advocate appearing for the Defendant states that the Defendant be allowed to file his Written Statement within a period of two weeks from today. His request is granted and he is allowed to file the Written Statement within a period of two weeks from today.

8. Place the Suit for directions on 21st December, 2015.
9. The Chamber Summons is accordingly disposed of.

(S.J.KATHAWALLA, J.)