

THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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CITY CIVIL COURT APPEAL No.189 of 2008
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JUDGEMNT: *(Per M. Seetharama Murti, J.)*

This appeal, by the unsuccessful defendant, is directed against the decree and the judgment dated 04.04.2008 in Original Suit No.486 of 1998 on the file of the learned Additional Family Judge-cum-XXIII Additional Chief Judge, City Civil Court of Hyderabad.

2. We have heard the submissions of the learned counsel for the appellant/defendant and the learned counsel for the respondent/plaintiff, and we have perused the material on record.

3. In this appeal, the parties shall hereinafter be referred to, as the plaintiff and the defendant as arrayed in the suit.

4. This Court of first Appeal being the last Court of fact, it is necessary to first refer to, in brief, the pleadings of the parties.

5. The plaintiff's case, in brief, is as follows:

The plaintiff is a private limited company registered under the provisions of the Companies Act, 1956. The main object of the plaintiff company is to carry on business of constructing buildings, houses, flats, shops and residential complexes, etcetera at a low cost for the benefit of the middle class people belonging to the community of the promoters of the company. With that object in view, it had entered into an agreement to purchase with the owners of the land in an extent of Ac.6.00 in Survey Number 151 Gandhi Nagar of

Qutbullapur Village, Hyderabad. However, as the Directors of the Company were busy in their personal businesses and affairs, the defendant had acted as the Managing Director of the plaintiff company and had supervised the construction activities of the buildings mentioned supra, of the company. To achieve the object of the plaintiff company, it was decided to construct 'A' type, 'B' type and 'C' type flats; and, vide advertisement in newspapers inviting proposals for sale of the flats was given. There was no proper response from the public as the said sales are restricted only to community members of the Directors and the shareholders of the company. So, the sales were made open to the general public. In response thereto, 290 persons had come forward to purchase the flats. The defendant, who was the Managing Director of the plaintiff company at the relevant time, had received advance amounts from the said 290 persons, who had booked flats, and had constructed 'C' type flats successfully and had completed the registration of the said flats in favour of the purchasers. However, insofar as the other two blocks, the construction was raised only up to the stage of pillars by the middle of 1996, and, later the said activity had come to a stand still as the defendant had misappropriated the money collected from the intended purchasers. A total amount of Rs.80,10,800/- was collected by the defendant from the said purchasers. However, as per the statement of account, only a sum of Rs.57,26,712/- was spent by him. A sum of Rs.8,84,500/- was appropriated towards the share capital of the company. The defendant had failed to account for the balance amount of Rs.33,00,000/- to the company and had misappropriated the said amount of the company. When the Directors of the company questioned the defendant, he had admitted the said fact, and at the instance of well wishers and all concerned, a Memorandum of Understanding (MOU) dated 19.10.1996 was entered into where under the defendant had agreed to pay the deficit amount in 3 instalments and had, accordingly, paid a sum of Rs.10,00,000/- towards part-payment but had failed to pay the balance. As such, he was removed from the Chairmanship and also his position as the Managing Director of the plaintiff company; and,

after deducting his share capital of Rs.1,50,000/- and another sum of Rs.58,000/-, which was due to him from the plaintiff company, it was noticed that a sum of Rs.20,09,903/- was due by the defendant to the plaintiff company. Since, he did not pay the said amount, the suit was laid.

6. The defendant, while resisting the suit had *inter alia* contended in his defence as under.

He was the Managing Director of the plaintiff company. The plaintiff allegations that as Director of the company, he had received advances and instalments amounts from 290 persons, who booked the flats, are denied. The advance and instalment amounts received from the purchasers were credited to the account of the company. The averments that the construction activity had come to a stand still and that he had misappropriated the amount of the company for his personal use by diverting the funds, and that a sum of Rs.80,10,800/- was received from the purchasers and an amount of Rs.57,26,712.10 paise was spent on construction etcetera and that an amount of Rs.33,00,000/- was due from the defendant to the company, are all denied. The signature of the defendant was obtained on the MOU dated 19.10.1996 by force and coercion with the help of 20 muscle men and he had not signed the MOU out of free will and consent. The said document is not a valid document and is not true and binding on him. The defendant, one Nageshwar Rao and T.Uma Maheshwar Rao visited the place of one Y.Subbarayudu. There, the defendant had found 20 unknown persons; and, they all, along with Subbarayudu, had forced him to sign on the said MOU, and he was directed to complete the construction work with his own money. The said fact was brought to the notice of the other Directors in the Board Meetings held on 26.10.1996 and 19.10.1996. As such, in the Board Meeting held on 26.10.1996, it was decided that the MOU dated 19.10.1996 is not valid. The members of the Board had also pointed out that it was an illegal document and that it was not signed by the defendant under the authority of the Board of Directors of the company and that the said document is not binding on the plaintiff

company. It was also decided in the said Board Meeting that the figure of Rs.33,00,000/- arrived as deficit amount is not correct and is baseless. There was a deficit of the said sum was also not approved. In the Board meeting held on 28.10.1996, the Board had described that the obtaining of signature on the MOU is a grave misconduct committed by Y.Subbarayudu. The members who attended the meeting on 26.10.1996 had also noted that the MOU was created and that the defendant had already invested his own funds amounting to Rs.38,00,000/- in addition to the share capital contribution and that the deficit amount is false. The averment that the defendant had paid a sum of Rs.10,00,000/- on 01st November 1996 to the landlord i.e., towards the part-payment of the deficit amount due from him under the MOU, is denied. The said payment made to the landlord is in no way connected to the alleged MOU and therefore, the averment to the contra in the plaint is false. The suit is filed in collusion after expelling the defendant from the Board. Therefore, the defendant had also filed an application before the Company Law Board under Section 11 of the Companies Act, 1956. The plaintiff had intentionally omitted to submit to the court the statement of financial position as on 25.09.1998, by which time there was substantial progress in the project work which was made by spending an amount of Rs.46,17,000/- of the defendant. The company has to pay to the defendant a sum of Rs.92,72,500/- as stated in paragraph (10) of the written statement. There is no cause of action. The documents relied upon are illegal and not binding. The plaint averments are fictitious and false. The plaintiff had neglected to settle the claim of the defendant. Hence, the suit is liable to be dismissed.

7. At this juncture, it is appropriate to mention that before this Court, the defendant had filed a miscellaneous petition requesting to receive the additional written statement. By a separate order, the said application was allowed. In the additional written statement, the defendant had *inter alia* contended as follows:

K.Uma Maheswara Rao has no authority to represent the company.

This defendant had repaid the amount to the customers who paid the amounts towards booking of the flats and the receipts are filed herewith as proof of the same and after adjudication, exhibits B8 to B11 are to be accepted. The suit is based on MOU, which is obtained under coercion and is not binding. The defendant had filed Photostat copies of the minutes as exhibits B8 to B11. The defendant had taken steps to call for the original minutes by giving a notice to the company represented by the Director-K.Uma Maheswara Rao. He had sent a reply through the lawyer stating that the minutes were with late Subbarayudu; after the death of Subbarayudu, his family members did not cooperate before the trial court. The documents are presumed to be with the family members of Subbarayudu. A company petition was filed under Sections 398 and 402 read with Section 111 of the Companies Act against the plaintiff company and nine others for misdeeds and mismanagement of the company by Subbarayudu and the said petition is pending. The company secretary found that there was no company at the site. A notice to produce documents issued by the Registrar of Companies was not complied with. This shows that Subbarayudu played mischief.

8. Having regard to the original pleadings, the trial Court had framed the following issues for trial.

- (1) Whether the defendant did not account for Rs.33 lakhs from the amount collected from the persons who booked the flats?**
- (2) Whether the MOU dated 19.10.96 is obtained by force and coercion and whether it is not valid or binding on the defendant?**
- (3) Whether payment of Rs.10 lakhs made by the defendant on 1.11.96 is towards partial discharge of the amount to be paid under MOU dated 19.10.96?**
- (4) Whether the suit is not maintainable under law?**
- (5) Whether there is no cause of action for the suit?**
- (6) Whether the plaintiff is entitled for recovery of sum of Rs.20,09,903/- against the defendant and for subsequent interest @ 18% per annum?**
- (7) To what relief?**

9. During the course of trial, PWs.1 and 2 were examined and Exs.A1

to A3 were marked on the side of the plaintiff. DW1 was examined and Exs.B1 to B22 were marked on the side of the defendant. Though DW2 was examined in-chief, he was not tendered for cross-examination and at the request of the counsel for the defendant his evidence was eschewed.

10. On merits, the trial Court had recorded findings on all the issues in favour of the plaintiff and decreed the suit against the defendant with costs, as prayed for.

11. The learned counsel for the appellant/defendant would contend as follows:

There is no cause of action for the plaintiff company to file the suit as the documents Exs.A1 and A2 are not true, binding and enforceable. Exhibit A1 was obtained under coercion with the help of 20 musclemen. DW1 had categorically deposed that Ex.A1-MOU was not signed under the authority of the Board of Directors of the plaintiff company and that the said document does not bind the plaintiff company. PW1 had also stated in his evidence that he had no knowledge of any official Board Meeting that had taken place on 19.10.1996. In the absence of any Board Meeting or Resolution, the company has no *locus standi* to file the suit for recovery of the amount on the basis of the MOU. Though PW2 had stated in his evidence that a Board Meeting had taken place on 19.10.1996, no such proof is filed before the Court. The defendant had filed Exs.B8 to B11 and out of the said documents, exhibits B9 and B10, in particular show the decisions taken in the Board Meetings held on 10.10.1996 and 25.10.1996. The contents of the said documents go against the contentions of the plaintiff and would show that the MOU dated 19.10.1996 is illegal and not binding. The trial Court ought to have placed reliance on Exs.B8 to B11 produced by the defendant. The suit for enforcing Ex.A1 could have been laid only by the individuals, but the individuals representing the company have chosen to file the suit without sanction of the company by way of Resolution, and hence, the plaintiff company has no *locus standi* to

file the suit. The trial Court ought to have seen that Ex.A1 was not executed with free will and consent and the same was obtained under force and coercion. There is arbitration agreement between the parties. Hence, the civil suit, which is filed ignoring the arbitration clause, is not maintainable. The registered office of the plaintiff company is situated at Quthbullapur, which is within the territorial jurisdiction of the Court at Ranga Reddy, and, therefore, the civil suit filed in the Civil Court, Hyderabad is not maintainable. The appeal be allowed and the suit be dismissed after setting aside the judgment of the trial court.

12. On the other hand, learned counsel for the respondent/plaintiff contended as follows: 'The recitals of Ex.A1-MOU would clearly lay bare that the defendant had admitted his liability and had voluntarily executed the said document. The defendant, having admitted the execution of the MOU had contended that it was obtained under force and coercion, but had failed to prove his defence, and, therefore, the trial Court had rightly held that Ex.A1 is proved and it is true, valid and binding on the defendant. Exs.B8 to B11 are only Photostat copies and when the said documents were sought to be marked at the fag end of the trial and during the evidence of DW1, a serious objection was raised about their admissibility and the very existence and genuineness of the documents was questioned. And, on application by the defendant, the trial Court had permitted to adduce secondary evidence leaving open the question of genuineness of the said documents to be decided during the course of trial. The trial Court, by assigning valid reasons had held that the said documents are not true and valid. The witness who was sought to be examined as DW2 did not come forward to support the case of the defendant. The contentions regarding *locus standi* of the plaintiff company, the authority of K.Uma Maheswara Rao to represent the plaintiff company, the lack of jurisdiction of the trial Court to entertain and try the suit, the further contentions based on some inapplicable provisions of the Companies Act ignoring the provisions of the Code of Civil Procedure and the other contentions, which are urged before

this court have no factual foundation in the original pleadings of the defendant. The contentions that a notice to produce the documents was given and that K.Uma Maheswara Rao had no authority to represent the plaintiff company are raised for the first time before this Court as an afterthought and without any basis. All the contentions now raised are also not urged in the grounds of appeal. The said questions being mixed questions of fact and law, cannot be permitted to be raised without a factual foundation in the pleadings and any basis in the evidence adduced before the trial court. The contents of the MOU and the facts of the case, when considered in juxtaposition with the provisions of Order XXIX of the Code, do show that the suit as laid is maintainable and that any alleged irregularities or defects pointed out for the first time before this court are factually and legally not correct and there are no defects or irregularities in the claim of the plaintiff. In any view of the matter, as per the provision of Section 99 of the Code, no decree shall be reversed or modified for error or irregularity not affecting merits or jurisdiction. The defendant could not show that there is a miscarriage of justice on any ground. The MOU is a document, where under, in the presence of Directors and at the instance of well wishers, the defendant had admitted his liability and it is a document showing the admission of the defendant and his liability. Further, nowhere in the defence filed by the defendant, the exhibit A2 statement of account was denied. A reading of exhibit A1 would show that at that time, the parties have reviewed the position and the status of the company in the presence of the well wishers; and that after reviewing the audited accounts, the terms and conditions agreed to were reduced into writing and only on that the MOU was signed by all the concerned. There is no merit in any one of the contentions of the appellant. The trial Court, having assigned valid reasons had recorded the sustainable findings on all the issues. The well reasoned findings in the well considered judgment of the trial Court do not call for interference by this Court. Therefore, the appeal, which is devoid of merit, is liable to be dismissed confirming the judgment and decree of the trial court.

13. In view of the contentions raised, the points that arise for determination in this appeal suit are as under.

- 1) Whether the civil court is not having jurisdiction for the reason that the subject dispute is arbitrable since covered by an arbitration agreement between the parties? Whether the City Civil Court at Hyderabad has no territorial jurisdiction?
- 2) Whether the MOU dated 19.10.1996 under exhibit A1 was obtained by force and coercion, as contended by the defendant? Whether the MOU is not true, valid and binding on the defendant?
- 3) Whether the payment of Rs.10,00,000/- made by the defendant on 01.11.1996 is towards partial discharge of the amount covered by exhibit A1-MOU?
- 4) Whether the plaintiff is entitled to the suit amount or any part thereof?
- 5) Whether the suit is not maintainable?
- 6) Whether the decree and judgment of the court below are unsustainable under facts and in law?
- 7) To what relief?

14. We have given earnest consideration to the facts, the evidence and the submissions made. We have carefully gone through the oral and documentary evidence brought on record.

15. POINT No.1:

Whether the civil court is not having jurisdiction for the reason that the subject dispute is arbitrable since covered by an arbitration agreement between the parties? Whether the City Civil Court at Hyderabad has no territorial jurisdiction?

15. (a) Coming to the first aspect and the contentions of the defendant that the subject dispute is an arbitrable one and that the civil suit filed by the plaintiff, without referring the parties to arbitration, is not maintainable, it is to be seen that no plea in that regard was raised in the written statement. Even after receiving the summonses in the suit, the defendant did not approach the trial Court stating that the dispute covered by the suit is the subject matter of an arbitration agreement and had failed to apply, before submitting his first statement on the substance of the dispute, to refer the parties to arbitration and had failed to take recourse to the provision of Section 8 of the Arbitration and Conciliation Act, 1996. The provision of Section 8 of the said Act reads as under:

Section 8: Power to refer parties to arbitration where there is an arbitration agreement:

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

In the case on hand, the defendant did not at all file an application, much less before filing the written statement, requesting the trial Court to refer the parties to arbitration. The Section of Law ordains that any application requesting to refer the parties to arbitration shall be filed not later than the party submitting the first statement on the substance of the dispute. Therefore, even assuming for a moment that the dispute is arbitrable one, since the defendant had failed to exercise the right available to him under Section 8 of the Act and had submitted to the jurisdiction of the Civil Court, it follows that the defendant had waived his right. Therefore, the contention that the civil suit is not maintainable as the dispute is arbitrable one, cannot be countenanced.

15. (b) The next contention of the defendant is in regard to the lack of territorial jurisdiction. The learned counsel for the defendant would contend that the trial court has no jurisdiction to entertain and try the suit and that the present suit ought to have been filed in a civil Court within the territorial jurisdiction of Ranga Reddy District, as the registered office of the plaintiff company is situated at Quthbullapur and that therefore, the civil suit instituted in the City Civil Court, at Hyderabad is not maintainable. It is to be noted that the said defence was not taken in the written statement and was also not raised before

the trial Court and also in the grounds of objection in the memorandum. As rightly pointed out, as per the provision under Section 21 of the Code, no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the court at the first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement. Further, the section of law lays down that such an objection as to the place of suing shall not be allowed unless there has been a consequent failure of justice. The law is well settled that objection as to territorial jurisdiction, if not taken at or before settlement of issues, it shall be deemed that such objection as to territorial jurisdiction has been waived. In this case, neither an objection as to the want of territorial jurisdiction of the trial court was raised nor consequent failure of justice was shown to have been caused. Therefore, the contention in regard to lack of territorial jurisdiction of the trial court is rejected being devoid of merit.

15. (c) Viewed thus, we find that the suit is maintainable and that the contentions of the defendant on these points are devoid of merit. The point is accordingly answered against the defendant and in favour of the plaintiff.

16. POINTS 2, 3 & 4:

Whether the MOU under Ex.A1 was obtained by force and coercion, as contended by the defendant, and whether the MOU is not true, valid and binding on the defendant?

Whether the payment of Rs.10,00,000/- made by the defendant on 01.11.1996 is towards partial discharge of the amount covered by MOU dated 19.10.1996?

Whether the plaintiff is entitled to the suit amount or any part thereof?

16. (a) The suit is filed for recovery of money based on Ex.A1-MoU and Ex.A2-statement of account. At the outset, it has to be restated and noted that though the defendant had contended in the written statement that the MOU was obtained under force and coercion, he did not make a whisper about Ex.A2-statement of account, which is

also referred in Ex.A1-MOU and had not denied the correctness of the said exhibit A2-statement of account. PW1, having deposed in line with the pleadings in the plaint had maintained his stand in the cross-examination and had denied the suggestions which were given in line with the defence. No important points were gained in cross-examination of PW1. PW2, who is a supporting witness, corroborated the evidence of PW1. PW2 was admittedly present when exhibit A1 has come to be executed. This witness affirmed on oath that on 19.10.1996, a meeting was held and that the defendant had signed exhibit A1-MOU in the presence of the Directors and that he had also signed the said MOU. The defendant though had denied at one breath the averment that he in his capacity as Managing Director had received advance and instalment amounts from 290 persons, who had booked the flats, had at another breath, pleaded that the advance and instalment amounts received from the purchasers were credited to the account of the company. This admission in the written statement would clearly show that he had received advance and instalment amounts; but the defendant's case is that he had credited the same to the account of the company. The fact that he was in-charge of the affairs of the company as Managing Director and was supervising the construction activity is not in dispute. Even in his cross-examination, he had admitted that he was controlling the affairs of the company and that as per the records of the company, 290 persons had booked flats and that the said allottees who had booked the flats had paid amounts to him and he had passed receipts acknowledging the same. It is also admitted that under his supervision, the construction of the flats was started. He had also admitted that he had spent money on the construction of flats. Therefore, he was dealing with the receipts of monies as well as expenditure on the construction activity, is borne out by the evidence brought on record; and, the evidence on record sufficiently established that the defendant was the Managing Director of the company since inception and was controlling the affairs of the company and that he had collected the amounts from 290 persons, who had booked the flats and had passed receipts acknowledging

the payments of money received from them. So, it is for the defendant to prove that he had credited to the account of the company, the entire amount received by him. The defendant is liable to account for the money collected, the same being the money of the company and he is also liable to account for the receipts and expenditure. The evidence brought on record would show that only one block was completed and the other two Blocks ('A' type and 'B' type) were not completed. When the intended purchasers made hue and cry and when there was no progress in the construction, the other Directors of the Board questioned the defendant. In fact, criminal cases were also registered against the defendant. The defendant had admitted in his evidence that Central Bureau of Investigation (CBI) had filed a charge sheet against him for the offences punishable under Sections 120 B and 420 of the Indian Penal Code, 1860 (IPC) and that C.C. No.2 of 2002 is taken on file by a competent court and is pending. The charge sheet in the said Calendar Case is exhibited as Ex.B19. In fact, after full fledged trial, he was sentenced to undergo rigorous imprisonment for a period of 5 years is also admitted. Ex.B20 is the record relating to another case registered against him by the CBI. When there were demands from the intended purchasers of the flats, the other Directors of the plaintiff company had questioned the defendant and on that there were discussions; and, at the intervention of well-wishers, the defendant had admitted that there was a deficit of money and also his liability. In the said circumstances, the MOU under Ex.A1 has come to be executed. A perusal of the same would show that on verification of the audit report, which was approved and accepted by the Managing Director, a sum of Rs.33,00,000/- was found to be the deficit. Under clause (2) of the said MOU, the defendant had agreed that there was deficit of Rs.33,00,000/- and the same was with him and had further agreed to repay the said amount to the plaintiff company in 3 instalments, viz., (i) Rs.10,00,000/- being the first instalment payable on or before 30.10.1996; (ii) Rs.10,00,000/- being the second instalment payable on or before 10.11.1996 and (iii) the balance being the last instalment payable on or before 20.11.1996. The recitals of the exhibit A1-MOU

coupled with the exhibit A2-statement of account and the evidence on record are sufficient to come to a safe conclusion that the plaintiff proved its case by adducing the required standard of evidence and discharged the onus of proof as well as the legal burden, which is upon the plaintiff.

16. (b) Be that as it may, in view of the admission of the signature on the MOU and in the light of the defence that the MOU was obtained by force and under coercion, it is for the defendant to establish his defence. The defendant did not adduce any credible evidence in support of the said defence. Except his interested testimony, there is no other evidence on record to establish the same. If really Ex.A1-MOU was obtained under force and coercion, the defendant ought to have taken legal action, at least by lodging a police report. But, he did not do so. The contention of the defendant that keeping in view the reputation of the company, he did not lodge a report cannot be countenanced, in the facts and circumstances of the case. According to him, he along with R.Nageshwar Rao and Uma Maheshwar Rao went to the place of Y. Subbarayudu, who is one of the Directors, and that at that place, 20 unknown persons were there, and that at that place he was forced by the said Subbarayudu and others to sign on the exhibit A1-MOU and that he was warned by the members of the Board to complete the construction work with his own money. But, the defendant had not examined either R.Nageshwar Rao or Uma Maheshwar Rao to substantiate his contention. Though, the said R.Nageshwar Rao was sought to be examined as DW2 and his affidavit in lieu of examination-in-chief was filed, the said witness was not tendered for cross-examination and his evidence, in part, was eschewed at the request of the counsel for the defendant. Therefore, what remained on record is the self-serving statement of the defendant. It is pertinent to note that the defendant had further relied on Exs.B8 to B11, which are said to be the photostat copies of the minutes of meeting of the Board of Directors. Among those documents, the defendant had placed particular reliance on Ex.B10 minutes, where under it appears to have been stated that the

defendant had complained to the other Directors regarding the fact that his signatures were obtained by force on Ex.A1-MOU on 19.10.1996 and that the Directors present at the meeting had accepted that the said document was obtained without any authority of the Board of Directors and that it is an illegal document and that the same is not binding on the company. The plaintiff had seriously disputed not only the genuineness but also the very existence of such minutes under Exs.B8 to B11. Exhibits B8 to B11 are not original minutes, but they are only photostat copies of the minutes of the meetings allegedly held on the respective dates. The said documents were not confronted to PWs.1 and 2 and the same were produced only at the fag end of trial and when the defendant was examined. Even when an objection was raised on behalf of the plaintiff for marking of the said documents, no efforts were made to secure the originals by following the procedure contemplated under law. Though it is contended in the additional written statement filed before this court that a notice to produce the documents was given, the said contention is only a belatedly introduced as an after thought and no such document evidencing the fact that a notice to produce the documents was given was exhibited. Be that as it may. The trial court while allowing the application of the defendant requesting for permission to adduce secondary evidence had left open the question of the genuineness of the documents and had only considered the request for permission to adduce secondary evidence. Therefore, though permission was accorded to exhibit photostat copies, i.e., exhibits B8 to B11, the defendant was required to prove the genuineness of the said documents. Even according to the defendant, the said documents were filed in the proceedings before the Company Law Board. So far as the other exhibits are concerned, the defendant had obtained the certified copies and exhibited the same. But, insofar as Exs.B8 to B11 are concerned, no such certified copies were obtained and filed. The said documents do not contain the signatures of the Board Members, who had attended the Board Meetings, which were allegedly held. According to the defendant, the said documents under exhibits B8 to B11 were served on the

defendant in the proceedings pending before the Company Law Board. The documents only show that they are endorsed as true copies by one R.Nageswara Rao. But, the said R. Nageswara Rao is not examined. Therefore, whether the said R. Nageswara Rao had signed and certified them as true copies is very much doubtful. No explanation is forthcoming from the defendant as to why the Directors, who were said to be present at the alleged meetings, had not signed the originals of Exs.B8 to B11, if really the minutes as contained in exhibits B8 to B11 were true and were recorded in such meetings. Virtually, there is no evidence to prove that the meetings as evidenced by Exs.B8 to B11 had taken place. Though it was sought to be contended that the Nageswara Rao was present at one of the Board Meetings, these documents were not confronted to the said Nageshwara Rao. Further, the incomplete evidence of DW2 was eschewed. Even these documents were not confronted to PW2, who was said to be allegedly present at the meetings. The author of the documents is not examined. The defendant had stated in his evidence that he does not know the author of the said documents. When the plaintiff company had seriously disputed the very existence and genuineness of the defendant's documents, the defendant ought to have examined a witness who according to him is associated with the alleged meetings and the minutes of the meetings under exhibits B8 to B11. Therefore, the non-examination of a witness, much less the material witnesses, coupled with the failure to confront the said documents to PWs1 and 2 would show that the defence based on the documents in exhibit 'B' series is not true and is invented. The defendant himself had created the copies of the minutes under exhibits B8 to B11 and had pressed them into service at the fag end of the trial and that the said documents, which are not proved to be genuine, are self serving documents is a contention which is more probable and merits consideration in the light of the discussion coupled with reasons. Therefore, in the absence of any proof of the existence of the originals of exhibits B8 to B11 and in the absence of any proof to accept that the said documents are true and genuine, no reliance can be placed on the documents relied upon by the

defendant. On an overall consideration of the evidence, the defence that the MOU under exhibit A1 was obtained under force and coercion cannot be countenanced. Therefore, on an analytical examination of the evidence, we are of the well considered view that exhibit A1-MOU was entered into and was signed by the defendant voluntarily and not under coercion and force and that therefore, the same is true, valid and binding on the defendant.

16. (c) There is one more aspect, namely, the part payment of Rs.10,00,000/- said to have been made by the defendant. The evidence on record also would lay bare that the first instalment of Rs.10,00,000/- is to be paid to the landlord i.e. to the person from whom Ac.6.00 of land was purchased by the plaintiff company. Under the MOU, the 1st instalment of Rs.10,00,000/- is payable on or before 30.10.1996. A payment of Rs.10,00,000/- was admittedly made by the defendant to the landlord. Therefore, the plaintiff contends that the MOU was acted upon by the defendant and the 1st instalment was duly paid and that the other two instalments are payable. Since this payment was admittedly made to the landlord on 01.11.1996, the defendant in his written statement had contended that the said payment was in no way concerned with the memorandum of understanding. Therefore, the defendant sought to contend that the said payment is not made in pursuance of the liability under Ex.A1-MOU, but the said payment was made for some other purpose unconcerned with the MOU. But, the defendant did not adduce any evidence and is not able to establish as to what was the other purpose for which the said payment was made. In the absence of any explanation much less a valid explanation and evidence on the side of the defendant in support of the contention that the said payment was made towards some other purpose unconcerned with the MOU, the case of the plaintiff that the defendant had made the part payment of Rs.10,00,000/- towards 1st instalment that was due under the MOU deserves to be accepted. Accordingly, we hold that

this part payment of Rs.10,00,000/-, which was admittedly made by the defendant to the landlord, was made only towards the first instalment payable under the MOU as contended and established by the plaintiff. This payment made by the defendant fortifies the contention of the plaintiff that the MOU is true and is acted upon. Only after deducting this payment, the suit claim was made.

16. (d) Once it is held that Ex.A1 is proved, it follows that the defendant is liable to pay Rs.33,00,000/- to the plaintiff company as per the terms of the said MOU-exhibit A1. In view of the payment of Rs.10,00,000/-, the balance still due and payable by the defendant is Rs.23,00,000/-. After giving credit also to the share capital of the defendant, which was appropriated at the time when the defendant was removed from the posts of Chairmanship and as Managing Director of the company, the suit is laid for recovery of the balance amount due i.e., Rs.20,09,903/- along with interest. In the light of the discussion coupled with reasons, it follows that the plaintiff company is entitled to a decree for the suit amount with interest. Points 2, 3 and 4 are accordingly answered in favour of the plaintiff and against the defendant.

17. POINT NO.5: The next contention of the defendant is that the suit is not maintainable. It is a general contention.

17. (a) The above said defence is based on a set of submissions, which are as under: 'Exhibit A1-MOU was not signed under the authority of the Board of Directors of the plaintiff company and that the said document does not bind the plaintiff company. Though PW2 had stated in his evidence that a Board Meeting had taken place on 19.10.1996, no such proof is filed before the Court. PW1 had also stated in his evidence that he had no knowledge of any official Board Meeting that had taken place on 19.10.1996. In the absence of any Board Meeting or Resolution, the company has no *locus standi* to file the suit for recovery of the amount on the basis of the MOU. The said MOU was not executed between the company on one hand and the defendant on the other. The MOU does not bear the official seal of

the company. The provisions of Sections 397, 398 and 399 of the Companies Act, 1956, would show that the suit filed by the company against the defendant is not maintainable. The authorised Director, Y. Subbarayudu, whose name was shown in the cause title, had died during the pendency of the suit. Therefore, the suit as laid by the company is not maintainable.'

17. (b) On the other hand, the learned counsel for the plaintiff would contend as under: 'That the MOU is not a contract and it is only a document, where under the defendant had admitted his liability in respect of the amount due and payable by him to the company. The admission of the defendant and other terms agreed to between the parties are reduced into writing in the form of MOU in the presence of all concerned and also the well wishers. Thus, the MOU was entered into after reviewing the audited accounts and after arriving at an understanding. The MOU was executed after the accounts, which were verified by the auditor were approved and accepted by the defendant in the presence of the Directors and the well wishers. Therefore, the document, viz., MOU evidencing the admitted liability of the defendant coupled with 'the statement of account-under exhibit A2', which was not denied are rightly accepted by the trial court as true, valid and binding. The trial court had rightly held that the suit is maintainable in all respects. The said document, in the circumstances stated, and being only an MOU, where under only an admission of liability was made by the defendant, does not require the affixation of the seal of the company. The company is a juristic person having its own entity and it can sue and be sued in its name and there is no legal requirement that any named person be shown in the cause titles as representing the company, and, the requirement of law as per the provisions of order XXIX of the Code would be satisfied if the pleadings are signed and verified on behalf of the company 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 and that therefore, the contentions of the defendant are devoid of merit. None of the Directors are opposing the suit, and, on the other hand,

all the Directors are interested in realising the money due to the plaintiff company. Further, as per the provision under Section 99 of the Code, no decree of a court is to be reversed or modified for error or irregularity not affecting the merits of the case or jurisdiction of the court. All the contentions in regard to maintainability of the suit have no factual foundation in the defence. The defendant could not show that on account of the alleged contentions now raised and the alleged defects pointed out, the merits of the case are affected and that any miscarriage of justice had occasioned. Therefore, the contentions that the suit as framed and laid is not maintainable are devoid of merit.'

17. (c) We have given earnest consideration to the facts, the submissions and the provisions of law referred to by the learned counsel. Under point Nos.2 to 4, we have already held that exhibit A1-MOU is true, valid and binding and that it was also acted upon. The defendant is admittedly a party to the MOU and he had also admitted his signature on the said document. He had also not denied exhibit A2, the statement of account. A plain reading of the document would show that the same is made amongst the Directors of the plaintiff company and the defendant after the parties have reviewed the position and status of the company in the presence of all concerned including the well-wishers. The said MOU on a plain perusal also would show that after reviewing the audited accounts and discussing the matters, the same was entered into. Further, the introductory portion of the MOU would show that the Memorandum of Understanding was made between the Directors of the company and that in the circumstances stated therein the defendant had accepted the deficit amount of Rs.33 lakhs was with him and had further agreed to repay the said deficit in three instalments as detailed in the MOU. Therefore, a harmonious reading of all the clauses of the MOU would lay bare that it was executed with the Board of Directors of the company as parties to it, in order to fix the liability of the defendant on his own admission in the presence of well wishers; and that the document is intended to record the admission in regard to the deficit

money, which is with the defendant, and which is due from the defendant to the company and not to any individual Director. The document is not a contract entered into by the company with a stranger or a third party. A plain reading of the Sections 397, 398 and 399 under Chapter IV of the Companies Act , which were relied upon by the learned counsel for the appellant-defendant would show that the said provisions deal with situations for relief in case of oppression and the rights of the members of the company and the application for relief in cases of mismanagement and the eligibility of the members of the company, who shall have a right to apply under Sections 397 and 398; and therefore, the said provisions which relate to rights of certain members to apply in case of oppression and mismanagement have no relevancy to the present suit filed by the company against a defendant, who was formerly the Chairman and the Director who had dealt with the activities of the company. The amended cause title of the memorandum of appeal would show that the company is now being represented by one of its Directors, K. Umamaheswar Rao. Order XXIX of the Code deals with suits by or against Corporation.

Rule 1 of the said Order reads as under:

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.

“Appendix A dealing with pleadings and title of the suit in a case filed by the plaintiff company reads as under:

The A.B Company, Limited having its registered office at”.

Section 99 of the Code reads as under:

“99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction: - No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action of any error, defect or irregularity in any proceedings in the suit, not affecting the merits

of the case or the jurisdiction of the Court.

Provided that nothing in this section shall apply to non-joinder of a necessary party.”

Further, in the decision in **United Bank of India v. Naresh Kumar**, the Hon’ble Supreme Court considered the question as to whether the suit for recovery of money filed by the appellant Bank was properly instituted. The Supreme Court had also considered the question whether the plaint was duly signed and verified by a competent person. Having regard to the legal position, the Supreme Court had held as follows:

“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 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.

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 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 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 it’s officers a Corporation can ratify the said action of it’s 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 it’s officer.”

Having regard to the provisions of law, the ratio in the decision of the Supreme Court and the facts of the case, we are of the considered view that the contention of the defendant that the suit is not validly instituted and that the suit is not maintainable is devoid of merit. Accordingly, the contentions of the defendant/appellant are rejected

and the point is accordingly answered against the defendant/appellant.

18. POINT No.6:

We have carefully gone through the judgment of the trial Court. The trial Court, having assigned sufficient and valid reasons in support of its findings had answered all the issues in favour of the plaintiff and against the defendant. For the said reasons and also for the reasons now assigned and the findings recorded by us on the aforesaid points 1 to 5, supra, we find that there is no infirmity in the decree and the judgment of the court below calling for interference. We therefore, hold that the decree and judgment of the trial Court are sustainable under facts and in law.

19. POINT NO.7:

In the result, and in view of the findings under points 1 to 6, the appeal suit is dismissed. No costs.

Miscellaneous Petitions pending, if any, in the appeal shall stand closed.

K.C.BHANU, J

M.SEETHARAMA MURTI, J

25.02.2015

DRK

THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

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CITY CIVIL COURT APPEAL No.189 of 2008

(Per MSRM, J.)

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25.02.2015

*** THE HON’BLE SRI JUSTICE K.C. BHANU**
AND
THE HON’BLE SRI JUSTICE M. SEETHARAMA MURTI

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+CITY CIVIL COURT APPEAL No.189 of 2008

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#N.V.S. Naidu
....Appellant

Vs.

\$ Sri Surya Teja Constructions Private Limited

....Respondent

!Counsel for the Appellant: Sri A.Navamohan Rao

^Counsel for the Respondent: Sambasiva Pratap

<Gist :

>Head Note:

? Cases referred: