

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CCCA.MP.No.658 OF 2015

AND

C.C.C.A.No.87 OF 2006

-

% 28.12.2015

CCCAMP.No.658 OF 2015

The New Osmangunj Extension

Co-operative Housing Society Ltd.,

...Petitioner

VERSUS

\$ M/s Navbharat Restaurant

Rep.by its Proprietrix Smt Jaswant Kaur

...Respondent

CCCA.No.87 OF 2006

M/s Navbharat Restaurant

Rep.by its Proprietrix Smt Jaswant Kaur

... Appellant

Vs.

\$ The New Osmangunj Extension

Co-operative Housing Society Ltd.,

.. Respondent

< **GIST:**

> **HEAD NOTE:**

!Counsel for Appellant: Sri D. Madhava Rao

^Counsel for Respondent: G.P. for Land Acquisition

? Cases referred

^[1] (1996) 6 SCC 660

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CCCA.MP.No.658 OF 2015

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JUDGMENT :

The appellant is the defendant/M/s Navbharat Restaurant, a proprietary concern and the respondent is the plaintiff in O.S.No.1936 of 1997 on the file of VIII Additional Senior Civil Judge, City Civil Court, Hyderabad. That is the entity, the Cooperative Housing Society in the plaint arrayed as represented by its Secretary by then by name Devata Narayana.

2. The appeal is filed aggrieved by the decree and judgment of the trial Court dated 25.01.2006 in decreeing the suit of the plaintiff for possession of the plaint schedule premises admeasuring 1400 sq. feet under MCH No.5-2-280 to 283 of New Osman Gunj, Muneer Bagh, Opp. to Gowliguda Telephone Exchange, Hyderabad by evicting the defendant and for arrears of rent of Rs.14,646/-, mesne profits from 01.05.1997 to 31.08.1997 amounting to Rs.24,000/- besides future mesne profits at Rs.6,000/- per month from September, 1997 till taking possession.

Three months time is granted by the trial Court to vacate the premises and to pay arrears with interest @ 6% per annum and future damages @ Rs.6,000/- per month from the date of suit till handing over the vacant possession of the premises.

3. The contentions in the grounds of appeal are that the decree and judgment of the trial Court is contrary to law, weight of evidence, probabilities of the case. Trial Court should have dismissed the plaintiff's suit, trial Court should have seen that the plaintiff's so called signatory is not duly authorized by any resolution muchless any authority to file the suit, that itself is sufficient to show no locus to claim suit amount and trial Court failed to frame proper issues particularly on this aspect and went wrong in decreeing the suit vis-à-vis and other incidental reliefs and the amount of Rs.6,000/- per month towards mesne profits is also on higher side and exorbitant without appreciation of the evidence and that the Secretary, who deposed in the suit is not competent (PW.1, Nandlal Vyas) to depose and if that evidence is ignored, there is no material to decree the suit. Apart from that, the society cannot maintain suit against the third party without specific and proper resolution and permission of the Government and on that count also the suit is liable to be dismissed and that the trial Court went wrong in answering the issues 1 to 3 improperly, thereby sought for setting aside the judgment and decree.

4. Learned counsel for the appellant reiterated the same, whereas, it is the contention of the learned counsel for the respondent/plaintiff that the trial Court's decree and judgment are just, supported by reasons in arriving just conclusions and for this Court while sitting in appeal, there is nothing to interfere to brush aside the findings arrived by the trial Court either on locustandi or on the amount arrived towards rent claimed or the mesne profits sought from the date of suit till delivery of possession and thereby sought for dismissal of the appeal.

5. Undisputably, there are no cross-objections so far as the rate of interest or to profits from 01.05.1997 to 31.08.1997 of Rs.24,000/-, four months claimed separately. Undisputedly, the plaint was presented on 16.09.1997.

6. During pendency of the appeal, the respondent filed CCCAMP.No.658 of 2015 to receive the documents as additional evidence invoking the Order 41 Rule 27 Read with Section 151 CPC i.e. copies of minutes of meetings dated 05.01.1995, 13.10.1998 and 17.01.2002, with affidavit averments that the appellant raised objection regarding locus of the person, who signed the plaint by name Nandlal Vyas. Undisputably, PW.1, the so called Secretary by then Nandlal Vyas was examined in chief based on affidavit in compliance of Order 18 Rule 4 CPC subsequent to 05.02.2004. These documents/resolutions are prior to Ex.A.6-Resolution, dated 08.04.2000. This is

only resolution filed and exhibited before the trial Court. The so called defect is beyond curable. The additional documents required to be filed showing that the name of the Secretary, Devata Narayana was authorized by the society by the resolutions which are sought to be filed and the earlier those could not be exhibited under the impression Order 29 CPC takes care of for the Secretary to sign the pleadings and in view of the objections in the grounds of appeal, these three resolutions are also necessary to show the implied authorization for not expressed therein.

7. The reply affidavit of the appellant/defendant in opposing the additional documents receive petition is with contentions that there are no grounds muchless from the affidavit explanation to condone the delay in filing the documents, that too in the appellate Court as it is outside the purview of the diligence required by Order 41 Rule 27 CPC and that defect is uncurable and Order 29 Rule 1 C.P.C not taking care of such a situation, but for a general provision and thereby sought for dismissal of the petition.

8. Learned counsel for the appellant placed reliance on the expression of the Apex Court in **United Bank of India v. Naresh Kumar and others**^[1] particularly paras 10 to 12, where it is with reference to Order 6 Rule 14, Order 29 Rule 1 and Order 41 Rule 17(1)(b) observed that as per Order 6 Rule 14 CPC the pleadings required to be signed by the party and its pleader and if it is a juristic

entity, some other person has to sign on its behalf and under Order 29 Rule 1 C.P.C a suit by or against the corporation, the Secretary or Director or other principal officer of it, who is able to depose the facts might sign and verify and a combined reading of these provisions would appear that even in the absence of formal letter of authority or power of attorney executed by virtue of the office, he can sign and verify the pleadings on behalf of the corporation.... 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 executed in favour of any individual and in the absence thereof and in cases where pleadings have been signed by or on behalf of its officers, the corporation can ratify the said actions 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, especially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleadings by its officer.

9. It is further observed that "... If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate Courts ought to have exercised their jurisdiction under Order 41 Rule 27(1)(b) of the Code of Civil Procedure and should have directed a proper power of attorney to be produced or they

could have ordered Sri L.K.Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K.Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.” In para 12, discussed the facts of money transactions of the borrower/1st respondent and that respondent No.2 and the husband of respondent No.3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non-suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.

10. Heard and perused the material available on record.

11. Now the points that arise for consideration are:

- 1) Whether the Secretary of the respondents herein, entity is automatically entitled by virtue of the bye-laws of the society covered by Ex.A.7 particularly with reference to Clauses 29(13) and 30, if not any special authorization is required for the Secretary and whether signing and verification of the pleadings by the Secretary is within the purview of Order 29 Rule 1 CPC and if not, whether there is any special authorization or not, if not, whether it is incurable, which goes to the root of the matter or curable defect?
- 2) Whether future profits from the date of suit awarded

at 6% per month by the trial Court are unsustainable and requires to be reduced or left open for determination by separate enquiry?

3) To what relief?

12. As **points 1 and 2** are inter-related, they are taken up together to avoid repetition of facts. The undisputed facts are that the respondent/plaintiff is the owner of the premises and appellant was the tenant under unregistered lease deed dated 11.10.1993 covered by Ex.A.1 for a period of 11 months. The lease for immovable property even below one year is made compulsory registered by A.P. Amendment to the Registration Act only with effect from 01.04.1999 by incorporation of a clause in Section 17. The validity of the lease agreement unregistered and its terms not in dispute to go further into it. It is after the 11 months time, the tenant continued whether he is continuing as a tenant holding over or not, is the different issue and at least from Ex.A.2-legal notice dated 10.03.1997 for the original lease period expired by 11 months. Any subsequent continuation as a tenant holding over more particularly from the wording of Section 111 of the Transfer of Property Act is a month to month wise 15 days quit notice and as per Section 106 of the Transfer of Property Act, so far as requirement of quit notice of 15 days is concerned, Ex.A.2 is the legal notice demanding to vacate and deliver the premises by 30.04.1997 **with 15 days time, the same**

is duly served even it is taken for argument sake, he was continued as tenant holding over, for the reason if a tenant by suffering after efflux of time, question of giving quit notice does not arise.

13. Coming to the future profits, rent claimed at Rs.6,000/- per month, there is no any documentary evidence adduced before the trial Court, but for the oral evidence of the then Secretary Nandlal Vyas examined as PW.1 on behalf of the plaintiff and the husband of the defendant was examined as DW.1. He admitted Ex.A.1 vis-à-vis receiving of Ex.A.2 legal notice covered by his signature in Ex.A.3-acknowledgment of the address covered by schedule premises vis-à-vis Ex.A.4-sketch. Even for the arguments sake, he did not admit for his saying it might be his signature, that in fact is suffice for not denied his signature. There is thus a due service of notice as rightly concluded by the trial Court and this Court while sitting in appeal, including from the address admitted in his cross examination and from the presumption under Section 27 of the General Clauses Act and Section 114 of the Indian Evidence Act, there is a due service and nothing to interfere with that finding of service, sufficiency and validity of the quit notice.

14. So far as the future profits concerned, Ex.A.1-rent deed of 11 months dated 11.10.1993 speaks the agreed rent of Rs.4,500/- per month that is also not in dispute in the pleadings. The suit filed as referred supra is dated

01.06.1997. In the evidence of PW.1 with reference to plaint particularly referred in para 4 of the trial Court's judgment from the original rent stipulated of Rs.4,500/- per month with 5% increase after every 22 months respectively, he claimed as on date of suit at Rs.5,471/- the defendant was paying as rent. Thus, even there from, Rs.6,000/- per month from the date of suit awarded by the trial Court as the original tenancy was terminated after 15 days of the receipt of Ex.A.2-legal notice which was acknowledged under Ex.A.3 on 11.03.1997, that is not with any proportionate increase as profits, but till delivery of vacant possession and presently at the fag end of 2015 in deciding the appeal there is nothing to interfere so far that finding of profits of Rs.6,000/- per month is concerned to reduce, but for if at all to enhance for want of cross objections, this Court cannot muchless the respondent/plaintiff can seek for.

15. Now coming to the crucial findings on locus of the respondent/plaintiff's society Secretary in signing and verification of the plaint concerned, Ex.A.7-bye-laws (Bye-law No.27) speaks of the Managing Committee shall elect from amongst its members as President, Vice-president, Secretary, Joint Secretary and Treasurer and as per bye-law 29, the powers of the Managing Committee particularly from Clause 13, the members of the Managing Committee shall have the following powers and duties. "(13) to institute, conduct, defend, compromise, prefer to

arbitration or withdraw legal proceeding, claims by or against the society or the Managing Committee, or the officers of the Society, concerning the affairs of the society through any of the members of the Managing Committee; or the Secretary or any other person especially authorized on this behalf. Bye-law 30 speaks powers and duties of the Secretary particularly clause 10 only speaks to generally look after the affairs of the society. The powers of the Secretary, under bye-law 30, no way specifically speaks the entitlement of the Secretary without any specific authorization to sign and verify pleadings and maintain the suit including by engaging the advocate etc. What bye-law 29(13) referred supra speaks of the powers of Managing Committee and not that of the Secretary specifically what constitute the Managing Committee is stated in bye-law 27 referred supra to say, it is not the Secretary alone. What bye-law 29 (13) last lines after the Managing Committee speaks at the cost of repetition “or the Secretary or any other person specifically authorized on this behalf.” Thus, it is crystal clear from the combined reading of bye-laws 27, 29 and 30 that Secretary is not competent on his own to maintain a suit, but for either Secretary or other person specifically authorized on this behalf by the Managing Committee as specified in bye-law 27.

16. The contention of the respondent to the appeal as plaintiff before the trial Court that the Secretary is

authorized by virtue of the bye-law either expressly or by necessary implication from reading of Bye-law 27(13) and 30(10), is untenable. The trial Court definitely did not advert to it. No doubt the expression of the Apex Court in **United Bank of India** supra is very clear that the defect in the verification of pleadings contemplated under Order VI Rule 14 CPC is curable.

17. No doubt, it refers the general provision covered by Order 29 Rule 1 CPC, which speaks of in suit by or against the corporations. The plaintiff is not a corporation. **United Bank of India** is a banking corporation, thereby Order 29 was applied and in the expression supra particularly at para 10, it is clearly observed that 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. From this observation by the expression in **United Bank of India supra** Order 29 besides confined to corporations is a general provision and it is not with any non-obstante clause, irrespective of any internal governance by bye-laws to prevail the provision, but a general provision to say, it no way overrides any internal mechanism of specific authorization as per bye-laws. At the cost of repetition, the bye-laws discussed supra are silent. As per the very expression in para 10 wording Order 29 besides confined to

corporations is a general provision and there may be an express authorization for maintaining a suit or verification of pleadings or engaging advocate by signing on vakalat. Here that express authorization is lacking, thereby the plaint signed and filed was defective, that was not considered by the trial Court. There is a sustainability in the grounds of appeal impugning the trial Court's judgment for the defective verification and presentation of the plaint.

18. From this, coming to the additional evidence concerned, it is the contention that the so called resolutions particularly of 05.01.1995 is with interpolation in the last words and a manipulation to the original cannot be received, equally for the resolution dated 13.10.1998 last words as clause 8. Though Order 41 Rule 27(1)(b) CPC enables the appellate Court to exercise its inherent power to receive as additional evidence for complete adjudication of the lis and to subserve the ends of justice, here, once the very resolutions are in dispute, but for from the expressions of the Apex Court in **United Bank of India** supra the defect is curable by remitting the matter and left open to file application to receive documents filed herein as additional evidence.

19. Though, it is the submission of the learned counsel for the respondent/plaintiff that Order 41 Rule 25 read with Section 107 CPC can be invoked to the limited extent of formulating the point to take additional evidence by the

trial Court to decide that aspect by this Court, this Court is not able to consider the same, as it required trial by taking of evidence and to give a fresh finding as to the locus.

POINT No.3:

20. Accordingly and in the result, (i) CCCAMP.No. 658 of 2015 is dismissed giving liberty to file fresh application before the trial Court from remanding the matter and (ii) The appeal is allowed setting aside the finding of the trial Court of Secretary's competency to sign the plaint as per bye-laws without specific resolutions authorizing him and the matter is remanded to the trial Court by limiting the scope of present remand to the trial Court of the suit is only to that aspect of curing the defective signing of the plaint by the Secretary either from the existing resolutions to be proved or by passing a fresh resolution as the case may be and to permit the plaintiff and defendant to adduce any additional evidence only within its scope and to give disposal afresh by giving priority over other pending matters, preferably within a period of three months from the date of receipt of a copy of this judgment. There is no order as to costs of the appeal.

As a sequel, miscellaneous petitions, if any, pending in the appeal shall stand closed.

Dr.B.SIVA SANKARA RAO,J

28.12.2015

Note: L.R. Copy to be marked.

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HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

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DATE: 28.12.2015

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