

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.1516 of 2013

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.11.02.2013 in IA.No.1946 of 2012 in OS.No.1581 of 2006 of the I Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioners herein are the defendants in the above suit. During course of cross-examination of PW2 by the counsel for the petitioners, it was suggested that the Managing Director of the respondent-society did not have authority to sign the plaint and to sub-delegate the power to PW1 for filing the suit and he was also questioned on the existence of bye-laws of the respondent-society.

3. When the matter was posted for arguments, I.A.No.1946 of 2011 was filed by the respondent under Order VII Rule 14(3) CPC to grant leave to the respondent to file bye-laws of the respondent-society.

4. In the affidavit filed in support of this application it was contended that this document is very crucial, that they have not filed it earlier since it was mixed up with other old record and that although there is a delay in filing the document, not filing it earlier was neither wanton nor willful.

5. Counter affidavit was filed by the petitioners to this application opposing receipt of this document. It was contended that the application was filed at a belated stage; the pleadings therein are very casual. It was also pointed out that a specific defence with regard to bye-laws was taken in the written statement filed by them long back and in spite of the same, the respondent was not diligent in filing the bye-laws. It was contended that only with intent to delay the disposal of the suit, this application is filed.

6. By order dt.11.02.2013, the Court below allowed the said application. It observed that non-filing of the bye-laws along with the suit is only a procedural irregularity and it is a curable irregularity. It also observed that the suggestion given to PW2 about the lack of competency of the signatory of the plaint to file the suit was the cause for filing the application.

7. Challenging the same, this Revision is filed.

8. Heard Sri D.Madhava Rao, Counsel for the petitioners and Ms.Manjiri S.Ganu, Counsel for the respondent.

9. Counsel for the petitioners reiterated that no valid reason has been shown for grant of leave to receive the bye-laws of the respondent-society and so the application for receiving the bye-laws of the respondent-society cannot be allowed.

10. Counsel for the respondent refuted the above contentions and supported the order passed by the Court below.

11. The Supreme Court of India had an occasion to consider a similar issue in ***United Bank of India v. Naresh Kumar and others***. In that case money was borrowed from United Bank of India and a suit for recovery of the said money was filed by the Bank without filing the authority of the signatory of the Bank to sign and file the plaint on its behalf. The trial Court accepted the objection of the defendants that the plaint was not duly signed and verified by the competent person and dismissed the suit. The first Appellate Court also confirmed the said finding on the ground that it was not proved by the Bank that the signatory of the plaint had valid authority to file suit on its behalf. The said decision was also confirmed by the Punjab and Haryana High Court. But, the Supreme Court set aside the judgment of all the three Courts and observed that procedural defects, which do not go to the root of the matter, should not be permitted to defeat a just cause and that a substantive right should not be allowed to be defeated on account of procedural irregularity, which is curable. It held that even if there is no express authorization to file the suit

on behalf of a Corporation, the Corporation can ratify the said action of its officer in signing the pleadings and such ratification can be express or implied. It held that the manner in which the trial is conducted on behalf of the Corporation can also be a ground to come to the conclusion that the Corporation had ratified the act of signing the pleading by its officer. It held that it was even open to the Court to hold that the manner in which the suit was conducted showed such a ratification of the action of the signatory of the plaint by the Bank.

12. Coming to the present case, no doubt, the respondent/ plaintiff did not file the bye-laws along with the plaint to show that the Managing Director is authorized to initiate proceedings against the petitioners. An objection in this regard was no doubt taken by the petitioners in their written statement. It may be that during the cross-examination of the witnesses on behalf of the respondent, this authorization contained in the bye-laws of the respondent-Society could have been produced and may be there is some delay in filing it. But having regard to the observations of the Supreme Court in ***United Bank of India's*** case(1 supra) that the defect, if any, is only a curable defect and substantive rights should not be allowed to be defeated on account of such procedural irregularity, the Court below cannot be said to have committed any illegality or irregularity in allowing I.A.No.1946 of 2012.

13. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

14. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th September, 2015.

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