

IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 75 OF 2015

M/s. Sai Service Station Ltd.,
having office at 36/1, Alto Porvorim,
Bardez, Goa, represented herein by
their Chief Executive Officer and
Attorney Shri Sanjay Wale.
Major,

..... Appellants

V e r s u s

Shri Ratnakar M. Chopdekar,
Ganesh Krupa, Opp. S.B.I. Colony
Alto Torda, Porvorim, Bardez, Goa.

..... Respondents

Mr. Ajit R. Kantak and Ms. R. Kantak, Advocate for the Appellant.

Coram :- **F. M. REIS, J**

Date : **22nd July, 2016.**

ORAL JUDGMENT

Heard Shri A. R. Kantak, learned Counsel appearing for the Appellant.
None for the Respondent though served. The notice issued by this Court on
17.11.2015 indicated that the matter may be disposed of finally at the stage of
admission.

2. Upon hearing the learned Counsel, the following substantial question
of law which arise in the present Appeal is :

- (i) Whether the Lower Appellate Court was justified
to dismiss the suit filed by the Appellant only on the
ground that the person who had filed the suit on
behalf of the Company was not duly authorised to file

such suit.

3. Mr. Kantak, learned Counsel appearing for the Appellant, has submitted that after the matter was argued and heard before the learned Appellate Court, the matter was fixed for clarification and on the said date, the Appellants had prepared an application under Order 41 Rule 27 of the Civil Procedure Code to produce the Power of Attorney of the concerned Officer who had filed and verified the plaint. Learned Counsel has also produced the copy of the said application which indicates that on the said date, the application was also duly sworn. Learned Counsel however pointed out that on the said date, the learned Judge proceeded to pass the Judgment without giving an opportunity to the Appellants to rectify such alleged defect. Learned Counsel has submitted that the person who had filed and verified the plaint was holding a Power of Attorney authorising him to file the suit. Learned Counsel further pointed out that in any event, such defects are curable and consideration that the defence of the Respondents was rejected, there was no reason to dismiss the suit without giving an opportunity to the Appellants to rectify the defect. Learned Counsel in support of his submissions has relied upon the Judgment of the Apex Court reported in **(1996) 6 SCC 660** in the case of ***United Bank of India vs. Naresh Kumar & Ors.***

4. The Respondent though served, failed to remain present.

5. I have considered the submissions of the learned Counsel and I have also gone through the records. The records that the person who had filed and verified the plaint, is stated to have a Power of Attorney in his favour at the time of

the filing of the suit. The defects noted by the learned Appellate Court to dismiss the suit of the Appellants are curable defects. In such circumstances, I find that the Lower Appellate Court was not justified to dismiss the suit filed by the Appellant on such spacious ground. The Lower Appellate Court has also not examined the Appeal preferred by the Respondents on merits and, as such, I find that in the interest of justice, the matter deserves to be remanded to the Lower Appellate Court to decide the Appeal afresh in accordance with law. The Appellants have also filed an application under Order 41 Rule 27 of the Civil Procedure Code to produce the copy of the Power of Attorney. This application shall be examined by the Lower Appellate Court whilst deciding the Appeal preferred by the Respondents in accordance with law.

6. The Apex Court in the Judgment in the case of ***United Bank of India vs. Naresh Kumar & Ors.*** (supra) has observed at para 10 thus :

“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 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 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.”

7. Taking note of the observations of the Apex Court, I find that the learned Judge was not justified to dismiss the suit of the Appellants on the ground that no authority was produced on record to establish that he was authorised to file the suit. The substantial question of law is answered accordingly.

8. In view of the above, I pass the following :

ORDER

(i) The Appeal is partly allowed.

(ii) The impugned Judgment and Decree dated 14.03.2014 passed by the Lower Appellate Court is quashed and set aside.

(iii) Regular Civil Appeal no, 147/2011 is restored to the file of the learned Appellate Court.

(iv) The learned Appellate Court is directed to decide the Appeal afresh in the light of the observations made herein above and in accordance with law.

(v) Appeal stands disposed of accordingly with costs.

F .M. REIS, J.

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