THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3330 of 2015

ORDER:

This revision petition under Article 227 of the Constitution of India is filed by the unsuccessful defendant/petitioner assailing the orders dated 08.07.2015 of the learned Additional Senior Civil Judge, Chittoor passed in I.A.no.753 of 2015 in O.S.no.226 of 2011 filed under Order III Rule 2 read with Order XXIX Rule 1 and Order VI Rule 14 of the Code of Civil Procedure and Rule 32 of Civil Rules of Practice.

2. I have heard the submissions of the learned counsel for the revision petitioner/defendant and the learned counsel for the respondent/plaintiff bank. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude, in brief, are as follows:

3.1 The plaintiff-bank brought the suit for recovery of Rs.6,69,211/- with interest and costs. The defendant is resisting the suit. The plaintiff bank is being represented in the suit by its authorised agent/authorised legal manager. The plaint was signed and verified by the authorized signatory of the bank. Along with the plaint, the loan agreement and demand promissory note executed in favour of the plaintiff bank, a statement of account and also the GPA in favour of the authorised Assistant Legal Manager are filed.

3.2 The defendant had filed a written statement. In the written statement, a specific defence is taken as follows: 'The defendant submits that as seen from the power of Attorney filed by the plaintiff-bank one Adithya Puri is said to have been appointed as the Director of the plaintiff-company and was given certain powers under a power of Attorney to act on behalf of the company. But, the said Managing Director delegated his powers to others and the resolution of the Board of Directors appointing him as per the provisions of the Company Law has not been filed by the plaintiff-Bank into Court. The person who has signed the plaint has no authority to appear on behalf of the plaintiff-bank. Since the resolution of the plaintiff company is not filed along with the original suit, it is not known whether the provisions of company law were followed in the very appointment of the said Adithya Puri as the Managing Director of the plaintiff-bank. The power of attorney, which contains a series of delegations is unheard of either under the Powers of Attorney Act or the Company Law. The so called Power of Attorney filed in the suit is manipulated, fraudulent and illegal. The provisions of Order 3 and the related provisions of Civil Rules of Practice have not been followed. Hence, the plaint may be rejected.'

3.3 During the pendency of the suit, the defendant had filed the aforementioned interlocutory application requesting to dismiss the suit as the suit is filed without any written permission, valid authority and permission of the court and as the suit is illegally and fraudulently instituted one.

4. Apart from the defence pleaded in the written statement, which is extracted supra, the case of the defendant as stated in the affidavit filed in support of the Interlocutory application is as follows:

The suit was filed on 22.02.2011. It is not known as to who has verified the plaint. The plaint is not signed and verified by a legally constituted attorney. The GPA filed along with the plaint shows that the GPA was said to have been given to the authorised legal manager; but, the details/particulars of the said General Power of Attorney are not forthcoming in the plaint. It is not indicated in the plaint as to who is the duly constituted attorney of the plaintiff bank. No power of attorney said to have been given to the Legal Manager has been filed. The so called constituted attorney has not filed, as required under Rule 32 of the Civil Rules of Practice, an affidavit stating that the power of attorney was subsisting as on the date of the suit. No permission was sought by the agent from the Court to plead, appear and act on behalf of the plaintiff bank. The requirements of Rule 32 of Civil Rules of Practice are not complied with. No written permission to plead, act and to appear on behalf of the plaintiff bank, if any, granted to the power of attorney holder is filed. Since the person who had filed the plaint had neither filed the GPA nor did he seek the permission of the Court to plead, act and appear on behalf of the plaintiff bank and as the Court did not give any such written permission to the signatory of the plaint, the Court ought to have rejected the plaint. Nobody is representing the plaintiff bank as on the date of the institution of the suit. The power of attorney in original or authenticated copy thereof is filed. The so called authorized signatory of the plaint did not file his affidavit claiming that he was a duly authorised agent. As per Rule 32 of Civil Rules of Practice, when a party is being represented by any agent, other than an Advocate, the agent shall file in Court the power of attorney or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority is still subsisting. The said requirement shall be compiled with before making any appearance or filing an application into Court or doing any act; On such compliance, the Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance or application or act of the agent shall be recognized by the Court. Hence, the originally filed suit has no legal status and any attempt to revive the dead suit by any one claiming to be agent or representative of the plaintiff bank is of no avail. The suit as filed is illegal, unlawful, arbitrary and fraudulent. Hence, the suit may be dismissed.

5. Along with the material papers, the copy of the counter filed by the bank in the aforementioned interlocutory application is not filed. However, in the order impugned, the defence of the plaintiff bank as stated in the counter is adverted to. The said defence, in brief, is as follows:

As per Order XXIX Rule 1 of the Code, in every suit 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 officer of the corporation who is able to depose the facts of the case. In the present case, the legal manager who is the principal officer and who is well aware of the facts of the case was authorised to file the suit on behalf of the bank. The legal manager is authorised to file suits against defaulters. The legal manager is authorised to sign the plaint on behalf of the plaintiff bank as its principal officer and the same is valid according to the provisions of Order

XXIX Rule 1 of the Code. The said manager is not an agent and he is an officer of the plaintiff bank. So the plaint was filed on behalf of the Bank by its legal manager, in his official capacity. The said fact is mentioned in the plaint. On a reading of Order VI Rule 14 together with Order XXIX Rule 1 of the Code, 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 XXIX can, by virtue of the office he holds, sign and verify the pleadings on behalf of the Corporation. In the present case, the then Legal Manager was authorised to sign the pleadings of the suit filed against the defendant, who is a defaulter. Further, the GPA given to the power of attorney Aditya Puri has been extended from time to time by the Directors of the Bank. Now the GPA showing the extension of power of attorney of Aditya Puri is filed into Court. It is in force upto March, 2015. Various allegations raised in the affidavit filed in support of the petition are false.

6. At the time of hearing before the trial court, no oral and documentary evidence was adduced. On merits, the trial Court had dismissed the petition of the defendant. Therefore, the aggrieved defendant is before this Court.

7. The learned counsel for the defendant while reiterating the case of the defendant, which is extracted supra, would contend as follows: "The person, who had signed the plaint on behalf of the plaintiff bank is not a duly constituted agent. He is not empowered to sign the vakalat and the pleadings and verify the pleadings. The trial Court had failed to take note of the important provision of Rule 32 of Civil Rules of Practice and also the provisions of Order III Rule 2, Order XXIX Rule 1 and Order VI Rule 14 of the Code. The trial Court ought to have seen that the procedure as contemplated under law was not followed when the suit was instituted by the alleged agent of the plaintiff bank. The trial Court ought to have seen that neither the written power of attorney nor the written authority authorising the Legal Manager of the plaintiff bank to file the suit was filed along with the plaint. Therefore, the trial Court ought to have seen that the person who had signed the vakalat and the pleadings and who had verified the pleadings of the plaintiff bank has no authority much less a validly constituted authority to represent the plaintiff bank. The suit as instituted is not a validly instituted suit. Any subsequent attempt to revive the dead suit by anyone claiming to be an agent or representative of the plaintiff bank is of no avail. Therefore, the trial Court ought to have accepted the contentions of the defendant and ought to have rejected the plaint or dismissed the suit as prayed for.

8. The learned counsel for the plaintiff while supporting the orders of the Court below had placed reliance on a decision of the Supreme Court in **United Bank of India v. Naresh Kumar and others**[1]**.** On the other hand, the learned counsel for the defendant had placed reliance on the following decisions: (i) **Durga Matha House Building Constructions Co-operative Housing Society Ltd. V. Sada Yellaiah**[2], **The Urban Co-operative Bank Ltd. V. Ramchander and others**[3]**, P.M.Desappa Nayanim Varu v. Ramabhaktula Ramaiah and others**[4]**.** He had also filed a copy of the docket/proceedings sheet of the court below to show that at the inception, the trial Court had taken an objection requiring the plaintiff bank to show as to how the Legal Manager is entitled to sue and that at that time, the office of the Court had also insisted upon the filing of proof in that regard and that the said office objection raised by the Court was not properly complied with and that the suit which is instituted by a person who is not duly constituted agent of the plaintiff bank was erroneously numbered.

9. In the light of the contentions, it is necessary to refer to the following provisions of law.

Order III Rule 2:
2. Recognised agents.- The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a) persons holding powers of attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident ‘ within the local limits of the jurisdiction of the court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Order XXIX Rule 1 CPC:
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.

Order VI Rule 14 CPC:

14. Pleading to be signed.- Every pleading shall be signed by the party and his pleader (if any):

> **Rule 32 of Civil Rules of Practice reads as under:**
> **"32. (16) Party appearing by Agent:-**
> **When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the court, file in court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy there of together with an affidavit that the said authority still subsisting, or, in the case of agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorised to make or do such appearance, application, or act.**
> **2. The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognized by the Court."**

10. I have gone through the pleadings. I have noted the submissions. I have carefully gone through the precedents cited. In the **Durga Matha House Building Constructions** case (2 supra), the validity of assignment deeds and the want of title in the assignors was the issue. Having regard to the facts and circumstances of the cited case and the legal position, this Court had held that the assignment deeds are not admissible in evidence. This decision is not applicable to the facts of the present case.

11. The facts of the case in **The Urban Co-operative Bank Ltd.** case **(**3rd supra) disclose that a suit was defended by the Secretary of the defendant Bank without any objection in the trial Court; and; the memo of appeal was also filed by him through a duly appointed pleader. The question that arose for consideration was whether the respondent in the appeal can be allowed to raise an objection that the secretary of the bank had no power to defend the suit. The High Court of Ajmer having regard to the facts of the case had held that the respondent should have raised an objection in the trial Court, but not in the appeal. **Desappa's** case (4th supra) is a case where a special power of attorney holder had filed the suit for possession of the lands and other properties. The power of attorney in that case authorised one person as an agent to conduct the said suit in one Court; but, under the power of attorney the principal did not expressly engage the attorney for the purpose of conducting the litigation generally in respect of the plaint schedule properties. However, the District Munsif had returned the plaint on the ground that it was beyond the pecuniary jurisdiction of the Court; in the said circumstances it was found that the agent had no power to institute and conduct the suit in the other Court. Placing reliance on this decision, the learned counsel for the defendant would contend that the powers of attorney should be strictly construed as giving only such authority as they confer expressly or by necessary implication and that the operative part of such deeds is controlled by the recitals and that where the authority is given to do particular acts, followed by general words, the general words are restricted to what is necessary for the proper performance of the particular acts and that the general words do not confer general powers. In **United Bank's case** (1st supra), the facts show that a suit was instituted by a bank for recovery of money; and, the main question which arose for consideration was – 'whether the suit for recovery of money filed by the appellant bank was properly instituted?'. In the written statement, a plea was taken by the 1st defendant challenging the authority of the person, who had signed the plaint and filed the suit on behalf of the plaintiff bank. The 2nd defendant has also taken a similar plea. The trial Court on the said pleadings, framed the following issues:

1) Whether the plaint is duly signed and verified by a competent person?
2) Whether the defendant no.1 raised a loan of Rs.50,000/- from the plaintiff bank on 12-4-84 and executed a demand promissory note, hypothecation of goods agreement, letter of loan and other documents in favour of the plaintiff bank?
3) Whether the defendants nos.2 and 3 stood as guarantors for the repayment of the loan and if so, what is the extent of their liability?
4) What is the balance amount?

5) Whether the plaintiff varied the terms of loan and if so, its effect qua the liabilities of defendant Nos.2 and 3, onus on parties
6) Whether the statement of account produced by the plaintiff is admissible in evidence?
7) Whether the defendants agreed to pay interest, if so, at what rate and to what amount?
8) Whether the plaintiff has no cause of action?
9) Relief?

The issue no.1 was answered against the Bank and the suit was dismissed. In the appeal, the only question, therefore, was – 'whether the plaint was duly signed and verified by a competent person? In this background, the Supreme Court had held as follows:

> **9. 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 CPC, to ensure that injustice is not done to any party who has a just case as for as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.**
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> **10. In cannot be disputed that a company like the appellant can sue and be sued in its in its own name. Under Order 6 Rule 14 of the CPC 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 CPC, 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 CPC 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 an de hors Order 29 Rule 1 of the CPC, 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 CPC. 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.**

Before reverting to the facts of the case, it can safely be noted that the settled legal position, which is stated in the decision of the Supreme Court in the aforementioned case, concisely elucidates the legal position relevant to the matter.

12. Reverting to the facts of the instant case, it is to be noted that one Sharma, who is the Manager [Legal] of the Bank as on the date of institution of the suit, had signed and verified the pleadings being the Manager and authorised signatory. According to the contentions of the bank, the said Manager [Legal] was acting on behalf of the Bank and that the said Manager is competent to sign and verify the pleadings in the instant suit. Further, it is not in dispute that the first witness of the Bank while filing his affidavit in lieu of examination in chief has also filed GPA. The case of the plaintiff bank is that there is no defect and that the defect, if any, is a curable defect and that the plaintiff bank can always ratify the action of its officer in signing the plaint. The trial Court having referred to the provisions of law and the ratio in the decision of the Supreme Court had held that technicalities should not come in the way of rendering justice to the parties and that even assuming that the person who had signed on the plaint has no authorization, the suit cannot be dismissed. As rightly held by the court below, when the pleadings of the plaintiff bank are signed by one of its officers, it being a Corporation, it can ratify the action of the officer in signing the pleadings. Further, having regard to the facts, the circumstances, the conduct of trial and the evidence brought on record, the trial Court, at an appropriate stage of the matter, can always examine the question as to whether the Corporation had ratified the act of signing the pleadings by its officer, if the facts of the case warrant any such examination.

13. Viewed thus, this Court finds that there is no error much less a jurisdictional error calling for interference.

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

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

06th April, 2016
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[1] AIR 1997 SUPREME COURT 3

[2] 2011 (2) ALT 268 (D.B)

[3] AIR (38) 1951 AJMER 101 (1) (C.N.97)

[4] AIR (39) 1952 MADRAS 559 (C.N.531)(1)