

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

F.A.O. No.4963 of 2012 (O&M)

Date of decision: 9.5.2016

Union of India and another

... Appellants

Versus

M/s H.S.Sandhu Builders Pvt. Ltd. and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Ashwinie Kumar Bansal, Advocate,
for the appellants.

Mr.J.S.Brar, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

AMIT RAWAL, J. (Oral)

The appellant-Union of India is aggrieved of the dismissal of the objection on the ground that it was not filed by the Secretary of Defence and the Chief Engineer did not have the authority to file the same in essence there was no compliance of the provisions of Order 29 Rule 1 of the Code of Civil Procedure and thus, urges this Court for remanding the matter back as the Chief Engineer who was an officer had entered into an agreement filed documents in support of his submissions along with the judgment of the Hon'ble Supreme Court in **United Bank of India v. Naresh Kumar and others**; 1997 AIR (SC) 3.

Mr.Brar learned counsel appearing on behalf of respondent

No.1 submits that the Chief Engineer had no authority to file the objection

and this fact has been admitted in the cross-examination.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no substance and force in the submission of the learned counsel for respondent No.1.

It is strange that the objecting Court are calling upon the party on receipt of the objection to lead evidence whereas the parameters for inviting evidence has been laid down by the Hon'ble Supreme Court in the aforesaid judgment and the Division Bench of this Court in **M/s Punjab State Industrial Development Corporation Limited v. Sunil K. Kansal** 2013 (7) RCR (Civil) 2606. Thus, the procedure of leading evidence can not be upheld. The objections are required to be decided in a summary manner by calling upon affidavits in case the other party is aggrieved, the person who has given the affidavit can be cross-examined in a particular aspect but not as a regular suit as the appeal filed having limited scope to interference as to whether the objections were within the parameters of Section 34 of the Act or not?

The Hon'ble Supreme Court had already an occasion to ponder upon the factum of recovery and authority of a person having filed an appeal or a suit. For the sake of brevity, para. 9 and 10 of the aforesaid judgment in *Union Bank of India v. Naresh Kumar and others (supra)* reads as thus : -

“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 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.

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 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.”

In my view, the objecting court have committed illegality and

competence in declining the objection on the ground of the objections having

not been filed by the competent person. Accordingly, the impugned order is set aside and the matter is remanded back to the objecting court to decide the objections in accordance with law keeping in view the ratio of the Division Bench of this Court in *M/s Punjab State Industrial Dev. Corporation Limited's case (supra)* by treating the objections having been filed by a competent person, within a period of four months from the date of receipt of a certified copy of this order.

Parties through their counsel are directed to appear before the objecting court on 4.7.2016.

The appeal stands disposed of.

(AMIT RAWAL)
JUDGE

May 9, 2016
Paritosh Kumar