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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 02.08.2016*

+ CM(M) 940/2015 and CM No. 22485/2015 (stay)

M/S VENUS HOME APPLIANCE (P) LTD Petitioner
Through Mr. R.K.Aggarwal and Ms.Parul
Singa, Advocates.

versus

M/S SUJIT KANORIA & ANR Respondents
Through Mr.Anand Mishra and Mr.Amrendra
K. Singh, Advocates for R-1.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. By the present petition, the petitioner seeks to impugn the order dated 03.09.2015 passed by the trial court. By the said order, the trial court dismissed the application filed by the petitioner/plaintiff under Section 151 CPC for placing on record Power of Attorney in favour of Sh.S.Uday against the Resolution dated 03.12.2007 which is already on record.
2. The trial court noted that the suit had been filed in 2007 and now the GPA which is sought to be filed is dated 24.04.2015 and hence, was not in existence in the year 2007. Relying upon Order 7 Rule 14(3) CPC, the trial court noted that the new document can be produced by the plaintiff at the final hearing of the suit but the same has to be done with the leave of the court. The trial court also noted that the only reason given for filing these

documents at this belated stage is “on account of inadvertence and oversight that the said documents could not be filed earlier and to rectify technical error raised by the counsel for the defendant”. The trial court further concludes that it is apparent that all these documents were throughout in power and possession of the plaintiff and hence, the application was dismissed.

3. Learned counsel appearing for the petitioner points out that the Resolution dated 03.12.2007 passed by the petitioner company authorises its Branch Manager-Sh. S.Uday to take steps regarding the suit in question. He further submits that as per the last para of the resolution, the Director of the Company was authorised to sign and execute necessary power of attorney in favour of Sh.S.Uday to give effect to such Resolution. He submits that it was a mere technical argument raised by the defendant and to overcome this technical argument, the petitioner wishes to place on record the Power of Attorney dated 24.04.2015 executed in pursuance to the Resolution dated 03.12.2007. He relies upon several judgments including the judgment of the Supreme Court in the case of ***United Bank of India vs. Naresh Kumar and Ors., 1996(6) SCC 660*** to contend that such document at this stage should have been allowed to be taken on record.

4. Learned counsel appearing for the respondents has vehemently opposed the petition contending that a specific issue had been framed regarding the power of Sh.S.Uday to institute and sign the pleadings. He submits that despite this specific issue, the petitioner has chosen to be careless and negligent and not bothered to take steps to complete their evidence. He submits that it is only in the course of final argument when the counsel appearing for the respondent had pointed out this defect in the case

of the petitioner, the petitioner has belatedly woken up. He submits that there are no grounds or basis to interfere with the impugned order.

5. A perusal of the Resolution dated 03.12.2007 shows that it authorises Sh.S.Uday to sign and execute the petitions, vakalatnama, to engage lawyers, etc. in respect of all suits and proceedings. The last para of the Resolution states that the Director of the Company may sign and execute necessary power of attorney in favour of Sh.S.Uday to give effect to the said Resolution. The power of attorney which is now executed on 24.04.2015 seeks to reproduce the contents of the said Resolution.

6. The supreme court in the case of ***United Bank of India vs. Naresh Kumar and Ors.(supra)*** in para 10 held as follow:-

“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 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 and 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.”

7. Hence, the legal position that would follow from above is where the pleadings are signed by one of the officers of the Corporation, the Corporation can rectify the said action of its officers and that such rectification can be expressed and implied. It is clear that the courts have taken a liberal view in regard to the issue of authority of the person signing the pleadings and instituting the suit.

8. I may also note that admittedly, the Power of Attorney in this case is of 24.04.2015 yet the impugned order has come to a conclusion that these documents were throughout in power and possession of the plaintiff. The only document which is sought to be placed on record is the Power of Attorney dated 24.04.2015. It cannot be said to be in power and possession of the petitioner prior to the said date i.e. 24.04.2015. Hence, it would be appropriate that the petitioner is allowed to place the Power of Attorney on record.

9. In the light of the above, the impugned order dated 03.09.2015 is set aside. The petitioner is permitted to file the original Power of Attorney dated 24.04.2015. Needless to add, observations made herein will not in any manner prejudice the parties at the time of final disposal of the suit by the trial court. Any observation made herein will not amount to adjudication of

any dispute pending between the parties.

10. With the above observations, the present petition is disposed of.

AUGUST 02, 2016/rb

JAYANT NATH, J