

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)Nos.390 and 628 of 2017
& C.M.P.Nos.1752 and 1753 of 2017

Sanghvi Movers Limited
Registered office at Survey No.92
Tathawade, Taluka Mulshi
Pune-411 033
Represented by its Regional Manager
Mr.Uma Mahesh

.. Petitioner in
both CRPs

Vs.

M/S.Unicorn Engineers
Represented by its Managing Partner
Shri.P.Ponram
No.513-A/6 Bharathi road
Chinnavedampatty post
Coimbatore-641 049.

.. Respondent
in both CRPs

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.12.2016 made in I.A.Nos.566 and 565 of 2016 in O.S.No.484 of 2014 on the file of the learned I Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.M.Sivavarthanan
For Respondent : Ms.P.T.Asha for
M/S.Sarvabhauman Associates

COMMON ORDER

The Civil Revision Petitions have been filed against the fair and decreetal order dated 05.12.2016 made in I.A.Nos.566 and 565 of 2016 in O.S.No.484 of 2014 on the file of the learned I Additional Subordinate Judge, Coimbatore.

2. The issues involved in both the civil revision petitions are one and the same and hence, they are disposed of by this common order.

3. The petitioner is the defendant and respondent is the plaintiff in O.S.No.484 of 2014. The respondent filed the suit for a direction to the petitioner to pay a sum of Rs.7,51,193/- to the respondent with subsequent interest of Rs.90,143/- for the sum excess collected from 27.07.2013 to 29.04.2014. The petitioner did not file any written statement and he was set exparte. The petitioner filed I.A.No.565 of 2016 under Order IX Rule 7 of C.P.C.

to set aside the exparte order dated 30.03.2016 along with the written statement and also filed I.A.No.566 of 2016 for leave to file and conduct the suit.

4. As far as I.A.No.566 of 2016 is concerned, according to the petitioner, Presannan Pulikkal is the authorised person as per the Board of Resolution dated 25.05.2016 and authority letter dated 01.07.2016. As per these two documents, Presannan Pulikkal sought permission to conduct the case.

5. The respondent filed counter affidavit stating that Presannan Pulikkal is not an authorised person to represent the petitioner's company. Only the Chief Executive Officer or authorised persons authorised by the Board of Directors alone can represent the company.

6. As far as I.A.No.565 of 2016 is concerned, the petitioner has stated that due to pressure of work for the year ending and non availability of certain documents, the petitioner could not give instruction to their advocate to prepare and file their written statement.

7. Respondent filed counter affidavit stating that as per the amended C.P.C., the petitioner has to file written statement within 90 days. If he failed to file written statement within 90 days, an application has to be filed to condone the delay by giving reasons for the delay. The petitioner cannot straight away file written statement.

8. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application in I.A.No.566 of 2016 holding that Presannan Pulikkal is not authorised by the Board of Directors to conduct the case and only the Executive Director was authorised to conduct the case and the delegated power cannot be delegated again. In view of the fact that Presannan Pulikkal was not permitted to defend the suit, the learned Judge dismissed I.A.No.565 of 2016, which was filed to set aside the exparte order dated 30.03.2016.

9. Against the order of dismissal in both the applications dated 05.12.2016 made in I.A.Nos.565 and 566 of 2016, the present two civil revision petitions are filed by the

petitioner/defendant.

10. Learned counsel for the petitioner referring to Board of Resolution dated 25.05.2016 and authority letter dated 01.07.2016 filed in the typed set of papers, submitted that the said documents are filed along with the affidavit in I.A.No.566 of 2016 also.

11. A perusal of Board of Resolution dated 25.05.2016 reveals that it is not only authorised to conduct the case, but also authorised to delegate the authority to any official. The relevant portions are extracted hereunder:

<i>Type of authority</i>	<i>Particulars</i>	<i>Name and Designation of the official</i>
Delegation of Authority	To delegate the authority to collect all types of statutory forms, papers, cheques, drafts or any other instrument from any person, bank or State/Central Government or any other statutory/ non statutory authority. To delegate the authority to any Official of the company, to sign the settlement agreement and all necessary incidental documents for protecting the interest of the company on such terms and conditions as may be finalized by the Managing Director/Executive Director & CFO. Subject to the written approval by the	Mr.C.P.Sanghvi, Chairman & Managing Director or, Mr.Sham D.Kajale, Executive Director & CFO.

<i>Type of authority</i>	<i>Particulars</i>	<i>Name and Designation of the official</i>
	Managing Director/Executive Director & CFO, the officials of the Company or authorised representative of the company, are authorised to complete the withdrawal process on behalf of the company.	
	To delegate the authority to any official of the company, to execute, sign, file or present any application, affidavit, vakalatnama, written statements, appeals, various documents etc., in the Courts of law, i.e. Civil, Criminal Court or revenue and/or before any police Station or tribunal on behalf of the company any of the tasks ancillary and incidental thereto Subject to the written approval by the Managing Director/Executive Director & CFO. To delegate, in part or in full, any of the power mentioned here in above to any official of the company for initiating/defending any legal actions and/or any of the tasks ancillary and incidental thereto.	

12. In view of the power granted to the Executive Directors by the Board of Directors, Presannan Pulikkal is the authorised person to conduct the case. The learned Judge has not properly considered the Board of Resolution, whereby the Executive Director was empowered to delegate to any official of the company to conduct the case. In the present case, the Executive Director by authority letter dated 01.07.2016 specifically authorised Presannan

Pulikkal to conduct the case by mentioning the suit in O.S.No.484 of 2014 filed by the respondent. In view of the same, the learned Judge has committed an error and irregularity in dismissing I.A.No.566 of 2016 on the ground that the Executive Director has no power to further delegate the power given to him by the Board of Directors. Accordingly, C.R.P.(PD)No.390 of 2017 is allowed by setting aside the fair and decreetal order made in I.A.No.566 of 2016.

13. As far as I.A.No.565 of 2016 is concerned, it is filed to set aside the exparte order dated 30.03.2016 passed against the petitioner's company. The said application was dismissed on the ground that permission was not granted to Prasannan Pulikkal to conduct the case.

14. In view of the order allowing C.R.P.(PD)No.390 of 2017, C.R.P.(PD)No.628 of 2017 is allowed by setting aside the order passed in I.A.No.565 of 2016.

15. In the result, both the Civil Revision Petitions are allowed. I.A.No.566 of 2016 is remanded to the learned I Additional

Subordinate Judge, Coimbatore, for fresh consideration on merits and to pass orders in accordance with law. The suit is of the year 2014, the learned I Additional Subordinate Judge, Coimbatore, is directed to dispose the suit in O.S.No.484 of 2014 as expeditiously as possible, in any event, not later than six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

02.06.2017

Index : Yes/No

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To

I Additional Subordinate Judge
Coimbatore.

V.M.VELUMANI, J.

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& C.M.P.Nos.1752 and 1753 of 2017

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