



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:16.11.2017

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.(MD).No.1558 of 2017 (PD) &
C.M.P.(MD).No.8671 of 2007

Kumar ... Petitioner/Petitioner/1st Defendant

Vs.

Syndicate Bank
Ponmeni Branch,
No.30/C, Rakesh Towers,
Byepass Road,
Ponmeni Village,
Madurai,
Rep. through its Branch Manager
P.S.Krishnamorrthy
S/o.Suriyachetty,
Syndicate Bank,
Ponmeni Branch,
Madurai.

... Respondents /Respondents/Plaintiff

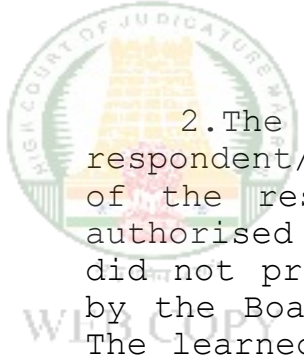
Prayer: Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal Order, passed in I.A.No.571 of 2016 in O.S.No.685 of 2014 on the file of II Additional Sub Court, Madurai, dated 07.07.2017.

For Petitioner : Mr.M.Mohamed Rafi

For Respondents : Mr.A.M.Pugazhenth

ORDER

The petitioner is the defendant and the respondent bank is the plaintiff. The respondent/plaintiff filed a suit in O.S.No.685 of 2014 before the II Additional Sub Court, Madurai, against the petitioner/defendant directing him to pay a sum of Rs.3,29,554.53 with interest. Pending suit, the defendant filed an interlocutory application in I.A.No.571 of 2016 under Order 7 Rule 11 of C.P.C. For rejection of plaint by stating that the Manager of the Bank as Plaintiff has filed the suit in the state of personal capacity and that he does not have any authorization from the bank to file a case against the petitioner. The Trial Judge after hearing both sides dismissed the said application. Aggrieved against the same, the petitioner/defendant is before this Court.



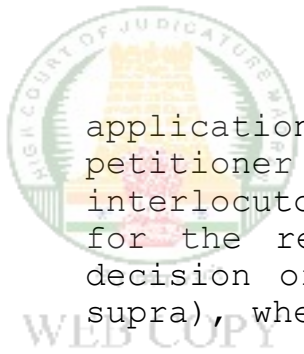
2.The learned counsel for the petitioner would submit that the respondent/plaintiff does not have right to appear or act on behalf of the respondent's bank because he is not a recognized agent authorised by the respondent bank. Further, the respondent bank did not produce any power of attorney or resolution letter passed by the Board of Directors to file a case against the petitioner. The learned counsel would further submit that according to Order 7 Rule 14, C.P.C. the respondent bank has shown list of documents in that list the respondent bank did not produce any document regarding authorization letter or power of attorney. Thus, the respondent bank does not have a right to file a case against the petitioner. Therefore, the suit may be rejected. In support of his submissions, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in 2012 (4) CTC 308 {The Church of Christ Charitable Trust & Educational Charitable Society v. Ponnaiamman Educational Trust (SC)}.

3.The learned counsel for the respondent filed a detailed counter and submitted that the respondent/plaintiff bank has filed interlocutory applications in I.A.Nos.364 and 365 of 2016 on 22.07.2016 for re-opening the plaintiff side evidence and for marking of the said Power of Attorney deed and the said applications were allowed after contest. Accordingly, the then Senior Manager namely P.S.Krishnamoorthy was examined in chief as PW2 and the power of attorney was marked as Ex.A9. The learned counsel for the respondent would further submit that the issue is no longer *res integra* as the High Courts and Hon'ble Apex Court in various cases held that the Branch Manager is the competent person to verify and sign the plaint on behalf of the bank by virtue of Order XXIX Rule 1 CPC and that the authorization to sign may be expressed or implied and even in the case where the authorization/power of attorney is not produced at the time of filing of the suit may be subsequently retified and the same cannot be fatal to the suit, since it is curable. In support of his submissions, the learned counsel for the respondent relied on the following decisions:-

- i) 1993 ISJ (Banking) 438 (Allahabad Bank v. Desh Singh Bhakhna and other)
- ii) 2017 (1) CTC 799 (Image Venture Pvt Ltd. v. Vasan Publication Pvt. Ltd.)
- iii) (1996) 6 SCC 660 (United Bank of India v. Naresh Kumar and Others)

4.Heard the learned counsel for the petitioner and the learned counsel for the respondent bank and also perused the materials available on record.

5.Admittedly in this case, the respondent bank filed <https://hcservices.ecourts.gov.in/hcservices/> interlocutory applications for reopening the plaintiff side evidence and for marking of the power of attorney deed and the said



applications were allowed by the Trial Court after contest. The petitioner has not even whispered anything about the said interlocutory applications in the present civil revision petition for the reason best known to him. It is useful to refer the decision of the Hon'ble Supreme Court in (1996) 6 SCC 660 (cited supra), wherein it is held as follows:-

"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."

It is also useful to refer the decision reported in 2017 (1) CTC 799 (cited supra), wherein it is held as follows:-

"On the issue of competence of the person who verified the plaint on behalf of the plaintiff company, learned Single Judge relied on the ratio of the Supreme Court in Gammon (India) Limited case [1971 (1) SCC 286] and also the ratio of a Division Bench of this Court in Allanberg Cotton Company Limited case {1993 (1) L.W.148} and held that there can be no dispute that the term 'corporation' as occurring in Order XXIX of CPC means and includes a 'legal person' as well as a 'company'.

6. In view of the above decisions and the reasons stated supra, there is no merit in the civil revision petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To
The II Additional Subordinate Judge,
Madurai.
+One cc to Mr.B.Rooban, Advocate, SR.No.88149
jikr
RL/3C/3P/MR/KKR/SAR2/14/12/2017

Order made in
C.R.P. (MD) .No.1558 of 2017 (PD) &
C.M.P. (MD) .No.8671 of 2007
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