

**RSA No.2940 of 1988 (O&M) and
CR Nos.3877 & 3253 of 1999 (O&M)**

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

Date of decision : 10.08.2018

1.

RSA No.2940 of 1988 (O&M)

M/s Rattan Trading Company and another

... Appellants

Versus

The Batala Cooperative Marketing-cum-Processing Society Ltd.

... Respondent

2.

CR No.3877 of 1999 (O&M)

The Batala Cooperative Marketing-cum-Processing Society Ltd.

... Petitioner

Versus

M/s Rattan Trading Company and others

... Respondents

3.

CR No.3253 of 1999 (O&M)

The Batala Cooperative Marketing-cum-Processing Society Ltd.

... Petitioner

Versus

M/s Rattan Trading Company and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Garg, Senior Advocate with
Ms. Nimrata Shergill, Advocate
for the appellant(s) in RSA No.2940 of 1988 and
for respondent(s) in CR Nos.3877 & 3253 of 1999.

Mr. A.K. Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate
for the respondent in RSA No.2940 of 1988 and
for the petitioner in CR Nos.3877 & 3253 of 1999.

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AMIT RAWAL, J.

This order of mine shall dispose of one appeal bearing **RSA No.2940 of 1998** titled as **“M/s Rattan Trading Company and another V/s The Batala Cooperative Marketing-cum-Processing Society Ltd.** and two revision petitions bearing **CR No.3877 of 1999** titled as **“The Batala Cooperative Marketing-cum-Processing Society Ltd. V/s M/s Rattan Trading Company and others”** and **CR No.3253 of 1999** titled as **“The Batala Cooperative Marketing-cum-Processing Society Ltd. V/s M/s Rattan Trading Company and others”**.

The point involved in the present regular second appeal and two revisions petition is whether suit filed for recovery by the respondent-plaintiff through Manager being Principal Officer was maintainable or not and the subsequent suits filed by the same very person could be stayed under Section 10 of the Code of Civil Procedure and against the order of stay, two revisions petitions bearing No.3877 and 3253 of 1999 at the behest of the plaintiff have been filed.

Filing of the suit for recovery of ₹31,500/- by the respondent-plaintiff against the appellants-defendants through Harbhajan Singh, Manager and other two suits for recovery of balance period as well as for possession on account of fact that the respondent-plaintiff had leased out the rice seller to the appellant-defendants for a particular period and the defendants had not paid use and occupation charges or handed over the possession, are not in dispute. The only objection taken before the Courts below and this Court is whether the suit filed by the Branch Manager, who had the authority to institute the suit on behalf of the cooperative society in

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the absence of any resolution or notification, would be maintainable as per Order 29 Rule 1 of the Code of Civil Procedure.

Mr. Rajesh Garg, learned Senior Counsel, assisted by Ms. Nimrata Shergill, learned counsel appearing on behalf of the appellants in RSA No.2940 of 1988 and for the respondents in CR Nos.3877 and 3253 of 1999, in support of the memorandum of appeal, relied upon the judgment rendered by this Court in **"Food Corporation of India V/s Dhani Ram" (2004) 3 RCR (Civil) 635**, where District Manager had filed the suit on behalf of the Food Corporation of India on the authorization of Senior Regional Manager and on going through the evidence brought on record, it was found that Senior Regional Manager did not have any power to further delegate and appoint District Manager to file the suit, much less, depose and the suit was liable to be dismissed and on similar lines referred to in para No.11 of **"Garib Chand V/s Municipal Committee, Budhlada" (1979) 2 ILR Punjab and Haryana 478** as well as **"Punjab Agricultural University and others V/s M/s Walia Bros." 1968 (2) ILR Punjab and Haryana 250.**

On the other hand, Mr. A.K. Chopra, learned Senior Counsel assisted by Mr. Ankit Midha, learned counsel appearing on behalf of the respondent in RSA No.2940 of 1988 and for the petitioners in CR Nos.3877 and 3253 of 1999, relied upon the judgment rendered by Hon'ble the Supreme Court of India in **"United Bank of India V/s Naresh Kumar and others" (1996) 6 Supreme Court Cases 660**, to contend that in suit filed by the Public Corporation like Bank including the societies, whether, on mere technicality, the public interest can be defeated or not, for, as per the provisions of Order 29 Rule 1 of the Code of Civil Procedure, it was held

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that the ratification can be expressed or implied, even if Principal Officer, who instituted the suit, did not have the power at the relevant point of time. On similar lines of Division Bench judgment of Delhi High Court rendered in "**Kingston Computers IP Ltd. V/s State Bank of Travancore**" 2008 (17) RCR (Civil) 239, wherein, while referring to para Nos.21 to 26, it was urged that Secretary, Director or a Principal Officer of a Company to institute suit on that behalf would be treated as duly authorized person. He further relied upon the ratio decidendi culled out by Hon'ble the Supreme Court in "**Daman Singh and others V/s State of Punjab**" 1985 (2) SCC 670, to contend that the cooperative societies from inception are governed by the statute i.e. Punjab Cooperative Societies Act and no objection can be raised to statutory interference with composition of cooperative society.

It was next contended that two suits one for recovery of use and occupation charges for remaining period and for possession of the rice seller were also filed by the society through Branch Manager being Principal Officer of the Cooperative Societies. An application under Section 10 of the Code of Civil Procedure was submitted by the defendants/respondents in revision petition and the suit was stayed, necessitating the petitioner to file the aforementioned revisions petitions, which have been ordered to be heard along with RSA No.2940 of 1988, thus, urges this Court for allowing of the aforementioned revision petitions and for dismissal of the aforesaid regular second appeal.

I have heard learned counsel for the parties, appraised the paper book as well as the records of the Courts below and of the view that there is no force in the submissions of Mr. Garg, learned Senior Counsel

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representing the appellants in RSA No.2940 of 1988 and find some force in the submissions of Mr. A.K. Chopra, learned Senior Counsel representing the petitioners in CR Nos.3877 and 3853 of 1999.

It would be apt to reproduce the provisions of Order 29 Rule 1 of the Code of Civil Procedure, para No.1 of the plaint as well as of the written statement, which read as under:-

"Order 29 Rule 1 Suits by or against Corporations

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.

Para No.1 of the plaint

1. That, the plaintiff is a corporate body and is a juristic person having separate legal entity and can sue and be sued in its own name. The suit is being filed through its Manager Sh. Harbhajan Singh, the principal officer of the plaintiff.

Para No.1 of the written statement

1. Para No.1 is wrong and is denied. It is denied if the plaintiff is a Corporate body or if Sh. Harbhajan Singh is its Manager or Principal Officer. Shri Harbhajan Singh has got no right or locus standi and is not competent to file the present suit."

On perusal of the aforementioned provisions and the pleadings, it is evident that the suit according to the averments in the plaint was instituted by District Manager being Principal Officer. Similar proposition came to be debated by Hon'ble Supreme Court in *United Bank of India's case* (supra), wherein in para Nos.9, 10, 14 and 15, it was held that mere technicality viz-a-viz public interest cannot come into way. The ratification,

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authorizing the officer can be, expressed and implied. For the sake of brevity, para Nos.9, 10, 14 and 15 of the same read 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.

14. *The suit of the appellant had been dismissed because issue no.1 had been decided against it. Counsel for the parties have not challenged the decision of the lower appellate court on the other issues, which decision was affirmed by the High Court when it dismissed the second appeal in limine. For the reasons stated hereinabove we hold that issue no.1 was wrongly decided and this being so the appellant was entitled to a decree in view of the decision of the lower appellate court on the other issues.*

15. *The appeal of the appellant is, accordingly, allowed in the aforesaid terms. The effect of this would be that the suit of the appellant would be decreed in accordance with the decision of the lower appellate court on the other issues which that court had decided in favour of the appellant. The appellant will also be entitled to costs.*

In *Food Corporation of India's case* (supra) relied upon by Mr. Garg, this Court, in para Nos.5 and 6, held that the provisions nowhere empowered the officer to conduct the case on behalf of the Corporation, thus, the Principal Officer had no power to further delegate and appoint

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District Manager to institute the suit. For the sake of brevity, the para Nos.5 and 6 read as under:-

"5. I find that this aspect has been duly considered in the appellate order. In paragraph 5 of the afore-cited judgment, it is observed as under:-

"As regards the question as to whether the District Manager of the Food Corporation was competent to conduct the case on behalf of the Corporation the learned counsel for the petitioner has referred to the provisions of Order XXIX, Rule 1 Code of Civil Procedure which prescribe that 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. This provision no-where empowers such an officer to conduct the case on behalf of the Corporation. In fact, only the limited power to sign and verily the pleadings has been conferred upon the officer."

6. A bare reading of Rule 1 of Order XXIX of the Civil Procedure Code would reveal that the question of delegation in such cases would not arise and the principal officer of the Corporation can himself file an appeal. Admittedly the Regional Manager was himself the principal officer and he could have filed the appeal and in the light of the judgment afore-quoted, the District Manager, though authorised by the Regional Manager, could not have filed the appeal so as to make it maintainable.

The proposition being raised before this Court viz-a-viz maintainability of the suit pales insignificant, for, the factum of outstanding due to the respondent-plaintiff on behalf of the appellants-defendants had

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not been denied except whether the District Manager would be termed as Principal Officer or had power to institute the suit, as no ratification or resolution authorizing him has been placed on record. This cannot be come into way of the society to recover the amount as technical objections in view of the judgment rendered in *United Bank of India's case* (supra) can be raised by the defendants. There is no dispute with regard to the other arguments.

As an upshot of my observations, the judgment and decree of the lower Appellate Court being the last court of fact and law reversing the judgment and decree of the trial Court viz-a-viz maintainable of the suit is hereby upheld. The appeal bearing **RSA No.2940 of 1988** is dismissed.

Revision Petitions bearing **CR Nos.3877 & 3253 of 1999** preferred by the petitioner-plaintiff staying the suit of the plaintiff are allowed. The trial Court is directed to decide the suit as expeditiously as possible.

10.08.2018
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**