

In the High Court for the States of Punjab and Haryana
at Chandigarh

RSA No.291 of 2011 (O&M)

Reserved on 18.5.2018

Date of Decision:- 1.6.2018

M/s P.K.F. Finance Ltd. Jalandhar

.....Appellant

Versus

Kashmir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. R.K.Dogra, Advocate, for the appellant.

Mr. Vijay Rana, Advocate, for the respondent.

GURVINDER SINGH GILL, J.

1. The appellant-plaintiff challenges judgment and decree dated 11.6.2009 passed by learned District Judge, Jalandhar whereby dismissal of his suit for recovery by Civil Judge (Junior Division), Jalandhar, has been upheld.
2. A few facts necessary to notice for disposal of this appeal are that the appellant-plaintiff claiming itself to be a registered company registered with Registrar of Companies, Punjab filed a suit for recovery of an amount of ₹ 2,70,000/- against respondent-defendant Kashmir Singh. The suit was filed through Nirmal Singh, Senior Section Officer. The appellant-plaintiff asserted therein that it was running business of hire-purchase of all types of vehicles and that an amount of ₹ 2,70,000/- had been paid by way of draft to the respondent-defendant for purchase of vehicle 'Balwan-500', but despite having received the said amount, the respondent-defendant failed to deliver

the vehicle in question and despite having been asked to repay, he did not even repay the amount.

3. The respondent-defendant resisted the suit and filed written statement wherein all the material averments of the plaint including the averment made in para 1 of the plaint regarding authorization of Nirmal Singh were denied.

4. The parties were put to proof on the following issues :-

- “1. Whether plaintiff has paid Rs. 2,70,000/- to the defendant for the purchase of vehicle and the defendant has failed to deliver the vehicle? OPP
2. Whether plaintiff is entitled to recover Rs. 2,70,000/- from the defendant along with interest. If so at what rate? OPP
3. Whether the suit is bad for non joinder of necessary parties? OPD
4. Whether the suit is bad for non-joinder of necessary parties? OPD
5. Whether this Court has got no territorial jurisdiction to try this suit? OPD
6. Whether plaintiff is estopped by his act and conduct from filing this suit? OPD
7. Relief.”

5. The plaintiff examined PW-1 Vijay Verma, Special Assistant, OBC, PW-2 Dalip Kumar, Senior Section Officer of plaintiff company and PW-3 Rohit Satyal, Assistant Manager, IDBI Bank whereas the defendant himself stepped into the witness box as DW-1 and examined DW-2 Harjit Singh.

6. The learned lower Court returned its findings on issues no. 1 and 2 against the appellant-plaintiff holding that the appellant-plaintiff has been unable to

prove that an amount of ₹ 2,70,000/- was paid by the plaintiff-appellant to the respondent-defendant or that the defendant is proprietor of M/s Zimidar Tractors and had received the said amount for supplying the vehicle 'Balwan-500'. Issues No.3, 4, 5 and 6 were decided against the respondent-defendant. Consequently, the suit was dismissed.

7. The plaintiff-appellant preferred an appeal which was dismissed by the learned District Judge solely on the ground that the suit in question had not been filed by a duly authorized person without discussing the propriety of findings in respect of other issues. By way of the said impugned judgment and decree, the learned lower Appellate Court, while dismissing the appeal, dismissed the plaint as 'rejected' in terms of provisions of Order 7 Rule 11 CPC.
8. The learned counsel for the appellant, while assailing the impugned judgment, has submitted that the learned lower Court fell in error in rejecting his plaint at the appellate stage when neither any such application for rejection of plaint had ever been filed nor any issue as regards the suit not having been filed by an authorized person had been framed. The learned counsel has further submitted that the learned lower Appellate Court by not returning any finding as regards the merits of the case and having summarily dismissed his appeal has committed an illegality whereas the evidence brought on record clearly established that the defendant had received an amount of ₹ 2,70,000/- for selling the vehicle 'Balwan-500' but had neither delivered the vehicle nor repaid the amount and had thus usurped the amount of ₹ 2,70,000/-.
9. On the other hand, the learned counsel for the respondent-defendant has submitted that the suit in question not having been filed through an authorized

person and the resolution purporting authorization in favour of Nirmal Singh never having been proved on record, the plaint deserved to be rejected. The learned counsel has cited judgment of Hon'ble Supreme Court reported as 2011(2) RCR (Civil) 869 State Bank of Travancore vs. M/s Kingston Computers (I) P. Ltd. (SC) whereby it has been held that in the absence of any evidence regarding authorization by a company, the suit filed on behalf of such company is liable to be dismissed.

10. I have considered the rival submissions addressed before this Court and have also perused record of the case.
11. A perusal of the plaint shows that the suit has been filed by the plaintiff-firm through Nirmal Singh. The particulars of the plaintiff, as mentioned in the array of parties in the plaint, read as follows :-

“M/s PKF Finance Ltd., Balbir Tower, PKF Namdev Chowk, G.T. Road, Jalandhar, through Sh. Nirmal Singh, Sr. Section Officer of Legal Department.”

12. A perusal of the aforesaid particulars shows that Nirmal Singh, Senior Section Officer of the Legal Department of the plaintiff i.e. M/s PKF Finance Limited is the person through whom the suit has been filed. Para 1 of the plaint and of the written statement are reproduced below :-

Para 1 of the plaint

1. That the plaintiff is a Limited Company registered with the Registrar of Companies. Punjab and Sh. Nirmal Singh, Sr. Section Officer of the Legal Department of the company is duly authorised representative of the company, who has been authorised to file and pursue the present case on behalf of the company vide its resolution duly passed by the Board of

Directors dated 29-11-2001. A certificate of approval by the Managing Director of the Company is attached herewith. Copy of the certificate of incorporation of the company is also attached, as such Mr. Nirmal, Senior Section Officer is competent to file the present suit as he is well conversant with the facts of the case and depose the same on behalf of the company.

Para 1 of the written statement

1. That para no.1 of the plaint is denied for want of knowledge. The Plaintiff be put to the strict proof of the same.

13. A perusal of the aforesaid pleadings shows that there is a categoric averment in the plaint that the company had authorized Shri Nirmal Singh to file and pursue the proceedings of the suit vide resolution dated 29.11.2001 duly passed by the Board of Directors. However, the said resolution was not proved on record. In fact, Nirmal Singh, the said authorized person through whom the plaint was filed was not examined by the plaintiff-appellant. Another official of the firm namely PW-1 Dalip Kumar was, however, examined, who proved certificate Ex.P-5, which is in the nature of an approval granted to Nirmal Singh for filing the suit on behalf of the company. However, the document dated 29.11.2001 vide which Nirmal Singh was authorised was not established on record.
14. It may here be mentioned that during the course of proceedings of the appeal before the learned Appealte Court, an application under Order 41 Rule 27 was filed on behalf of the appellant-plaintiff seeking permission to place on record resolution dated 30.9.2004 vide which the firm had authorized Dalip Kumar to pursue the case. However, the said application was dismissed holding therein that the appellant-plaintiff could not satisfy as to why despite

exercise of due diligence, the said document could not be brought on record earlier.

15. The learned counsel for the appellant-plaintiff has also assailed the said order dismissing his application of additional evidence on the ground that there was no valid ground for dismissing the said application as once the witness Dalip Kumar had already been examined, he could have been permitted to produce on record one document in the shape of an authorization letter, which was a formal document only.
16. I have considered the aforesaid submission. The material consideration for admitting or disallowing additional evidence is not the number of documents sought to be produced on record but the genuineness of the reason as to why the same could not be produced earlier. The fact remains that no explanation is forthcoming in the present case as to why the said document could not be brought on record earlier. In any case, the document sought to be brought on record is an authorization by the company in favour of Dalip Kumar whereas the plaint in the present suit had been filed through Nirmal Singh, Senior Section Officer is stated to have been authorized vide resolution dated 29.11.2001. As such, the subsequent authorization in favour of Dalip Singh, in any case, would not have filled up the lacuna in the case of plaintiff as regards lack of authorization. Hon'ble the Supreme Court in 2011(2) RCR Civil 869 (supra) under somewhat identical circumstances of lack of authorisation held as follows :-

“In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K.Shukla was appointed as a Director of the company

and a resolution was passed by the Board of Directors of the company to file suit against the appellant and authorised Shri Ashok K.Shukla to do so. The letter of authority issued by Shri Raj K.Shukla, who described himself as the Chief Executive Officer of the company, was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to Shri Raj K.Shukla to authorise another person to file suit on behalf of the company.”

17. Though, ideally speaking, the matter as regards rejection of plaint in terms of Order 7 Rule 11 ought to be considered at the earliest point of time. Delay in adjudicating upon such issue not only keeps the appellant-plaintiff in suspense but would unnecessarily force the defendant to indulge in the exercise of building up his defence and pursuing his case which may ultimately end in rejection of plaint. However, in the present case, I find that apart from the issue of authorization, the suit of the appellant deserves to be dismissed on merits as well inasmuch as there is no evidence worth credence to establish that the defendant was indeed proprietor of any firm by the name M/s Zimadar Tractors or that he had received an amount of ₹ 2,70,000/- from the plaintiff-appellant for the purpose of sale of a vehicle i.e. 'Balwan-500'. It will not be out of place to mention that the respondent-defendant, apart from himself stepping into the witness box, had also examined DW-2 Harjit Singh and had taken a specific plea that he has no concern with the firm M/s Zamidar Tractors. However, despite an opportunity have been afforded to plaintiff, the said witnesses were not cross-examined by the plaintiff-appellant and as such their testimonies have remained un rebutted. Thus, the stand of

the respondent-defendant is that he has no concern with M/s Zamidar Tractors has to be accepted, especially when the plaintiff has not led any convincing evidence regarding receipt of amount of ₹ 2,70,000/- by the defendant. As such, the findings of the learned lower Court on issues no. 1 and 2, in any case, do not warrant any intterference.

18. The appeal being devoid of merits is dismissed.

1.6.2018

kamal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No