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

Date of decision: 16.03.2018

+ **FAO(OS)(C) 41/2018 & CM APPL. 9545-9547/2018**

CMYK PRINTECH LTD. Appellant
Through Mr. Ratnakar Dass, Sr. Adv. with
Mr. Rakesh Kumar and Mr. Anil
Kumar Sahu, Advs.
versus

UNITED INDIA PERIODICALS PVT. LTD. Respondent
Through Ms. Shyel Trehan and
Ms.Sugandha Batra, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

J U D G M E N T

A.K. CHAWLA, J.

1. This appeal is the outcome of the order dated 05.02.2018 passed by the Id. Single Judge dismissing the applications filed by the appellant-the defendant in the original case seeking setting aside of the order disposing of the suit on the compromise/settlement arrived at during mediation and the consequential reliefs.
2. Concisely, the facts are that the appellant was let out 7513 sq. ft. on the second floor of 3, Link House, Bahadurshah Zafar Marg,

New Delhi (hereafter 'the subject property') by the respondent and for a period of 3 (three) years commencing from 01.04.2011 to 31.03.2014 a registered lease deed was executed amongst the parties. On the expiry of the term of the said lease, the parties agreed to extend the lease and signed an unregistered lease deed dated 18.04.2015. Sometime in November, 2015, the respondent filed a suit for eviction/recovery of possession and mesne profits/damages against the appellant on the premise that the tenancy was month to month and the appellant had defaulted in payment of rent, CAM charges, service tax, water and electricity charges in respect of the use and occupation of the subject property. It proceeded on the allegations that the appellant had failed and neglected to pay the outstanding dues towards rent and other charges inspite of notices of demand and the exchange of communications through e-mails dated 29.06.2015, 01.07.2015, 02.07.2015, 04.07.2015, 07.07.2015, 20.07.2015 and 30.07.2015. Before the institution of the suit, the respondent also served a notice dated 10.08.2015 terminating the tenancy and demanding vacant and physical possession thereof, besides payment of the use and occupation charges etc. In the suit so instituted, written statement came to be filed on behalf of the respondent and that was signed and verified by one Sh. O.P. Gupta, Manager (HR) as the authorized representative of the appellant. During the course of the suit proceedings, a settlement came to be arrived at amongst the parties through mediation process provided by Delhi High Court Mediation and Conciliation Centre on 11.11.2016. As a result of the

settlement arrived at amongst the parties, the Single Judge disposed of the suit vide its order dated 21.11.2016 directing the parties to remain bound by the settlement. Appellant defaulted in compliance of the terms and conditions of the settlement and it resulted into filing of the execution petition. Thereafter, the appellant *inter alia* filed IA no. 3831/2017 under Order 23 Rules 3 and 3A of the Code of Civil Procedure (hereafter 'the subject application'). By the subject application, the appellant sought setting aside of the settlement dated 11.11.2016 and the consequent orders passed by the Single Judge on 23.11.2016. As in the subject application, the appellant did not dispute the factum of execution of the registered lease deed dated 31.03.2014 or the subsequent unregistered lease deed dated 18.04.2015. The relationship between the parties for the period prior to 01.04.2011 is not relevant to be adverted to in the appeal in hand. The subject application proceeded on the premise that Sh. O.P. Gupta, its Manager (HR) and in whose favour the Board's Resolution dated 29.09.2001 was passed, had fraudulently conducted himself as representing it and arriving at the settlement dated 11.11.2016, since by a subsequent Board Resolution dated 02.09.2008, all the authorities vesting in Sh. O.P. Gupta stood revoked. Thus, according to the appellant, the settlement dated 11.11.2016 was collusive and unlawful and thereby, void *ab initio*, being vitiated by fraud and collusion. Refuting the allegations, the respondent filed an application under Section 340 Cr.P.C. seeking initiation of the appropriate proceedings against Sh. O.P. Gupta and others, for the commission of the offences under Section 191 read

with Section 193 IPC read with Section 195(1)(b)(i) Cr.P.C. and other applicable provisions of law. Copy of the subject application as also the application filed by the respondent under Section 340 Cr.P.C. are part of the Memorandum of Appeal itself.

3. In the submissions of Mr. Dass, Id. Senior Counsel, Id. Single Judge fell into error in not appreciating the fact that the Board Resolution dated 29.09.2001 stood superseded by Board Resolution of 02.09.2008 and therefore, there was no valid authorization in favour of Sh. O.P. Gupta by the appellant to either represent it or arrive at the subject settlement dated 11.11.2016. Also in his submissions, the Resolution of 29.09.2001 was a general authorization to deal with the legal affairs of the appellant and it did not confer any authority upon Sh. O.P. Gupta to bind the appellant company with the settlement in question inasmuch as the terms of settlement were never put before the Board of Directors for approval. It was also contended that the issues agitated could not be disposed of without an opportunity to the parties to produce further documents and lead evidence, especially, when there were no specific denial of the fact that the appellant had passed Board Resolution dated 02.09.2008 and thereunder, the earlier Board Resolution dated 29.09.2001 in favour of Sh. O.P. Gupta stood revoked.

4. Ms. Trehan, Id. counsel for the respondent on her part however contended that the allegations made in the application were an afterthought on the respondent's part for its failure to fulfill the terms and conditions of the subject settlement dated 11.11.2016. In

her submissions the appellant contends that the Resolution of 29.09.2001 stood revoked by Resolution dated 02.09.2008 and therefore, there is nothing to show that the Resolution dated 02.09.2008 was ever communicated or brought to the notice of the respondent to be acted upon. To bring home her contention, Ms. Trehan pointed out that though the alleged Resolution dated 02.09.2008 purported to revoke the authority vesting in Sh. O.P. Gupta, by virtue of Resolution dated 29.09.2001, Sh. Gupta, even after 02.09.2008, has been representing the appellant as its authorized representative by virtue of Resolution dated 29.09.2001 in diverse proceedings. To support such submissions, advertence was made to the Arbitration Petition No.22/2013 and Ex. Pet. No. 154/2015 which had come to be summoned and examined by the Id. Single Judge.

5. Pertinently, the subject application was founded on the premise that the authority vesting in Sh. O.P. Gupta by virtue of the appellant's Board Resolution dated 29.09.2001 stood revoked by virtue of the subsequent Board Resolution dated 02.09.2008 and thereby, the act of Sh. O.P. Gupta to represent the appellant in the suit proceedings and arrive at the settlement dated 11.11.2016 was without any authority and it implied collusion amongst the respondent and Sh. O.P. Gupta and thereby, the settlement was unlawful and *void ab initio*. Does the existence of the Board Resolution dated 02.09.2008 *ipso facto* lead to the conclusion that Sh. O.P. Gupta represented and acted on behalf of the appellant without any authority is the moot question for consideration. Id.

Single Judge has exhaustively dealt with each and every aspect of the matter including the issue now again sought to be agitated by the appellant before this Court.

6. In the subject application, the appellant sought to feign ignorance of the suit proceedings itself while taking the plea of the revocation of the authority of Sh. O.P. Gupta to represent it and act on its behalf in view of the Board Resolution dated 02.09.2008. Id. Single Judge has elaborately dealt with this plea as well to reach the conclusion that the appellant was not only aware of the institution of the suit proceedings but even its C.O.O. Mr. Abhishek Saxena was throughout kept informed of the talks of settlement taking place through the chambers of the Advocates of the parties via diverse e-mails. To that effect, the observations made by the Id. Single Judge on page 21 of the impugned order, are, as follows :

(iii) Email dated 09th November, 2016 (enclosing settlement terms) from counsel for the defendant (Karanjawala & Co.) to plaintiff's counsel. The said email was copied to both Mr. O.P. Gupta and Mr. Abhishek Saxena (COO of the defendant-applicant). The same is reproduced hereunder:-

*From : Karanjawala[karanjawala@karanjawala.in]
Sent: 09 November 2016 20:48
'Shyel Trehan'
cc: 'Manjira;jagdeepbakshi@yahoo.co.in;
ab@blggroup.com;sandeep@blggroup.com
MeghnaMishra; Nakul Sachdeva; Nakul Sachdeva; om
prakash gupta; Abhishek Saxena; Anil Rajgarhia;ankit
rajgarhia@gmail.com
Subject: RE: UIPL v. CMYK
Attachments: Application under 23 rule 3 Revised on
09.11.2016.docx*

Dear Ms. Shyel,

As discussed, please find attached herewith revised Application under Order 23 Rule 3. The changes made in the said Application is marked in red.

Thanking you,

Regards,

*Meghna Mishra - Partner
Nakul/Ankit"*

Despite such specific factual aspects having been taken note of and pointed out by Id. Single Judge, the appellant has neither adverted to this factual aspect nor did the subject application specifically allege that no summons of the suit were ever sent to the correct address of the appellant. It is also interesting to note that in the application filed by the respondent under Section 340 Cr.P.C., a copy whereof is Annexure A-12 to this appeal, it is averred as follows :

"2(x) Between 26.12.2016 to 30.1.2017, the Plaintiff Company called upon the Defendant Company to make payments as per the Settlement Agreement. Hereto annexed and attached as Annexure 9 (colly) are copies of emails dated 26.12.2016, 27.12.2016, 11.1.2017, 13.1.2017, 31.1.2017 sent by the Plaintiff Company to the Defendant Company. It is pertinent to note that email dated 27.12.2016, 13.1.2017 and 30.1.2017 were sent to Sh. Chandan Mitra, Chairman and Managing Director of the Defendant Company and email dated 26.12.2016 & 11.1.2017 were sent to the official email address of the Defendant Company, as is evident from the Form DIR-12 submitted by the Defendant Company. The said document has been filed by the Defendant Company along with I.A. No. 383/2017."

In the corresponding para of the reply filed by the appellant, a copy whereof is Annexure A-13 to the Appeal, the appellant has averred as follows :

"That the contents of Para 2(X) are misleading hence denied. It is pertinent here to mention that the Defendant Company made a payment of Rs.8,88,232/- through Cheque no. 232634 dated 30-12-2016 and the same was debited from the Bank Account of the Defendant Company on 02-01-2017. Photo copy of the cheque and Bank statement is annexed herewith as Annexure A-4. This payment was made by the Defendant Company as per the agreement dated 9th June 2011 for 15 years occupancy (till year 2026) and the same was toward yearly misc. expenses. The Applicant/Plaintiff Company has received the payment but concealed the same from this Hon'ble Court in the Application under reply and the Execution petition. This shows that the Applicant is habitual of concealing the material facts before the Court for its wrongful gain".

A bare perusal of the foregoing pleadings shows that there is no specific denial of the fact by the appellant that a settlement was arrived at amongst the parties. It is not the case of the appellant that but for the settlement agreement dated 11.11.2016, any other settlement agreement was ever arrived at amongst the parties. That being so, the issuance of the e-mails as referred to in para 'X' of the application filed by the respondent under Section 340 Cr.P.C. necessarily leads to the conclusion that e-mails exchanged amongst the parties were equally in relation to the settlement dated 11.11.2016 only and it was to the very knowledge of Sh. Chandan Mitra, Chairman and Managing Director of the appellant, as well.

The subject application and now the appeal primarily and predominantly proceed on the premise that Sh.O.P. Gupta was not authorized to either contest the suit or arrive at the settlement. It is equally worth noting that the memorandum and the grounds of appeal are equally silent and do not even impliedly dispute the correctness of the observations made by the Id. Single Judge that Sh. O.P. Gupta has been representing the appellant in Arb. Pet. No. 22/2013 and Ex. Pet. No. 154/2015 on the strength of the Board Resolution dated 29.09.2001 only. In the given factual conspectus, in the event the Board Resolution dated 29.09.2001 stood revoked by the Resolution dated 02.09.2008, there is no explanation as to how said Sh. O.P. Gupta continued to represent and act on behalf of the appellant in the said proceedings even after the revocation of his authority in September, 2008. It necessarily implies that the purported Board Resolution dated 02.09.2008 even though passed by the Board of Directors, was never sought to be given effect to either by the Board or any of its Directors. More so, when Sh. O.P. Gupta, Manager(HR) has continued to represent and act on behalf of the appellant in all the proceedings including in the subject case to the knowledge of all concerned officers of the appellant even after the passing of the purported Resolution dated 02.09.2008, it shows thereby that the appellant had also ratified all the acts of Sh. O.P. Gupta by necessary implication. The principle that a juristic entity can ratify the acts done on its behalf expressly or impliedly, is well recognized through the decision of the Hon'ble Supreme Court in *United Bank of India vs. Naresh Kumar & Ors.*, (1996) 6 SCC

660. The contention of Mr. Dass, ld. Senior Counsel that the subject application came to be disposed of without affording an opportunity to the applicant to file document(s) and lead evidence to prove its case, is wholly meritless in the present case. The subject application has come to be disposed of on the facts which are not disputed or did not require any formal proof thereof. We therefore, do not see any merit in the contention of Mr. Dass.

7. For the foregoing reasons, in our considered view, there is no merit in the appeal and the same is dismissed.

Dasti under the signatures of the Court Master.

A. K. CHAWLA, J

S. RAVINDRA BHAT, J

MARCH 16, 2018

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