

\$~ 5

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 17th April, 2018

+ CM (M) 269/2017 and CM APPL.9040-9041/2017

M/S. MAJA PERSONAL CARE Petitioner

Through: Mr. Neeraj Grover, Advocate
with Ms. Kanika Bajaj,
Advocate

versus

PRISHA TUBES PVT. LTD. Respondent

Through: Mr. Rajat Aneja, Advocate with
Ms. Vandna Aneja, Advocate &
Ms. Nisha Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner is the defendant in the civil suit (CS No.55897/2016) which was instituted by the respondent (plaintiff) on 28.02.2012 seeking recovery of Rs.4,87,731/-. It (defendant) is aggrieved by the order dated 17.10.2016 of the trial court whereby the application of the plaintiff under Order XVIII Rule 17-A read with Section 151 of the Code of Civil Procedure, 1908 (CPC) was allowed and consequently Dheeraj Arora (PW-1) stands recalled for further examination primarily to bring on record a board resolution authorizing the said person to institute the suit for and on behalf of the plaintiff company.

2. It is not disputed that the suit was presented by Dheeraj Arora, describing himself as the director of the plaintiff company, being well conversant with the facts and competent to depose on its own behalf, such averments having been made in the affidavit filed with the plaint, there being no averments whatsoever in the plaint with regard to the status of the plaintiff.

3. Be that as it may, the suit having been instituted invoking the summary procedure under Order XXXVII CPC, the defendant after putting in appearance moved an application for leave to contest. A specific ground was taken that the plaint was not maintainable as it has not been signed by a person duly authorized to sign or verify the plaint, no document to prove the authority of Mr. Dheeraj Arora having been submitted. The leave to contest was granted and in the written statement the said objections were reiterated.

4. The case entered trial, the issues having been framed, the first issue being an issue of law to address the question as to whether the suit has been duly instituted by an unauthorized representative. The plaintiff, in order to discharge its burden of proof, examined Dheeraj Arora (PW-1), on the strength of his affidavit (Ex.PW-1/A). Noticeably, in the said affidavit PW-1 would describe himself as plaintiff of the case who was well conversant with the facts and circumstances and also the director of the plaintiff company, competent to file the present suit. He did not make any declaration in the said affidavit about his authority to institute the suit for and on behalf of the plaintiff company nor filed any resolution of the board of

directors of the company to such effect. He was cross-examined by the defendant (petitioner) on 20.04.2015 when he first claimed that documents to prove his status as director in the plaintiff company had been filed on record but then it being conceded that no such documents were on record as on that date, he was unable to point out any such document. He conceded on oath that there is no specific authority in his favour to file the present suit. He asserted that as director of the plaintiff company he had the deemed authority, the decision to file the suit having been taken personally by him. Pointedly, he also conceded that the decision to file the suit was not documented in the records of the company, he going to the extent of stating that the plaintiff company does not conduct any board meetings nor maintains any minutes book.

5. On 01.08.2015, more than three months after the above mentioned deposition, application under Order XVIII Rule 17-A read with Section 151 CPC was submitted to bring on record a document described as the board resolution dated 08.09.2011. The document purports to have been signed for and on behalf of the plaintiff company both by PW-1 and by another director named Narender Kumar Arora. It purports to be the resolution to authorize Dheeraj Arora, director of the company to institute the case against the defendant. The explanation in the application is that inadvertently the said document could not be filed, reference also being made to “*lost of memory*”, the plaintiff having forgotten about this resolution. It is further stated in the application that the “*cleaning clerk*” while going

through the office had found this board resolution in “*one file*” which had led to the plaintiff “*to regain his memory*”.

6. The additional district Judge (ADJ) has allowed the prayer in the application by the impugned order accepting above mentioned explanation holding, *inter alia*, that the plaintiff cannot be denied the valuable right to file documents which were not produced earlier despite “*due diligence*”, the case being still at the stage where defendant was yet to lead evidence.

7. Having heard both sides and having gone through the record, this Court finds that the learned trial Judge has fallen into grave error by blindly accepting the explanation tendered in the application without applying its mind to the statement made to the contrary earlier by the same very person on oath. Noticeably, in his deposition on oath, as PW-1 he is on record to state that the company does not hold any board meetings nor maintains any minutes book. A document purporting to be the board resolution recorded on a scrap of paper cannot be accepted as the authenticated proof of a board resolution without the minutes book being accounted for. Board resolutions are not recorded in the manner stated to have been done. In the application under Order XVIII Rule 17-A CPC, there is not even a whisper of averment about availability or otherwise of any corresponding minutes book. The theory of “*loss of memory*” cannot be accepted on its face value. The statement made on oath, as noted above, binds the plaintiff and its witness (PW-1). The effort, apparently is to wriggle out of the

position in which the plaintiff was placed after the statement of PW-1 had been recorded.

8. It is not a case where the document was not earlier available despite due diligence. On the contrary, the defendant's pleadings had been reminding the plaintiff since beginning of the need to bring on record proper documentation regarding authorization of the person through whom the suit had been filed. So much so, that even an issue of law had been framed. In these circumstances, the theory of the plaintiff having forgotten cannot be accepted.

9. The impugned order is, thus, set aside. The application under Order XVIII Rule 17-A CPC is dismissed.

10. The petition and the applications filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 17, 2018

vk