

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 18.03.2019	Delivered on 26.03.2019
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CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Application Nos.1293 and 1295 of 2019
in CS Nos.227 and 232 of 2018

1. A.R.Ravichandran

2. Master R.Sriram minor

Rep. By his Father and Natural Guardian,

A.R.Ravichandran,

No.16, Bishop Wallace Avenue East,

C.I.T. Colony, Mylapore, Chennai 4. ... Applicants in both the Petitions

Vs

M/s. Magnitude Realtors & Probuild Pvt Ltd.,

Rep. By its Authorised Signatory,

Mr.V.Senthilkumar,

Having its registered office,

At No.629-631, Level-6,

Chennai Citi Centre,

No.10/11, Dr.Radhakrishnan Salai,

Chennai 600 004.

...Respondent in Appl. No.1293/19

M/s. Faithful Realtors & Probuild Pvt Ltd.,

Rep. By its Authorised Signatory,

Mr.V.Senthilkumar,

Having its registered office,

At No.629-631, Level-6,

Chennai Citi Centre,

No.10/11, Dr.Radhakrishnan Salai,

Chennai 600 004.

...Respondent in Appl. No.1295/19

Prayer: Applications are filed under Order XIV Rule 8 of the Original Side Rules and under Order VII Rule 11(a) and (d) of the Code of Civil Procedure, 1908, praying to

(i) reject the plaint in C.S.No.227 of 2018 under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

(ii) reject the plaint in C.S.No.232 of 2018 under Order 7 Rule 11(a) and (d) of the Code of Civil Procedure.

For Applicants : Mr.C.Jagadish
in both the Petitions

For Respondent : Mr. Abdul Hameed
in both the Petitions for M/s. AAV Partners

COMMON ORDER

Both the applications have been filed seeking rejection of the plaints in both the Suits under Order 7 Rule 11 (a) and (d) of the Code of Civil Procedure on the ground that the person who had signed and verified the plaint was not authorised by the plaintiffs by way of Board of Resolution as required under Section 291 of the Companies Act, 1956. It is the further contention of the applicants that the suit in CS No.227 of 2018 is barred by Limitation, inasmuch as the cheque based on dishonour of which the suit

came to be filed was issued on 01.02.2015 and was dishonoured even on 02.02.2015. Therefore, the cause of action for filing the suit had arisen even on 02.02.2015 and the suit should have been filed within 3 years from the said date. According to the defendants 1 & 2/applicants, the suit having been filed only on 01.03.2018 is clearly barred by limitation. As regards the other suit namely CS No.232 of 2018, it is the contention of the defendants 1 and 2/applicants that the suit filed on the basis of dishonour of the cheque on 15.02.2015 which was dishonoured on 19.02.2015 is barred by limitation.

2. These applications are resisted by the plaintiffs in both the suits contending that the suits in questions namely, CS Nos.227 and 232 of 2018 have been filed for recovery of money, not only based on the returned cheques. The suits are actually for refund of the advance amounts paid by the plaintiffs Company, pursuant to an understanding reach between the parties on 09.02.2012. It is also claimed that the 1st defendant had executed a power of attorney in favour of the plaintiff in CS No.232 of 2018, authorising the plaintiff to sell the property. This according to the plaintiff would show that the suits are not based on the returned cheques only. It is also claimed that the 1st defendant had deposited the title deeds in respect of the property with the plaintiffs. On the question of authorisation, the

plaintiffs would contend that the absence of Board Resolution authorising the person, who had signed and verified the plaint to institute the suit is only an irregularity which can be cured by the Company, by a subsequent ratification. Therefore, the same cannot be a basis for rejection of the plaint at the threshold.

3. I have heard Mr.C.Jagadish, learned counsel appearing for the applicants and Mr.Abdul Hameed, learned counsel appearing for M/s.AAV.Partners for the respondent in both the petitions.

4. The plaints are sought to be rejected on two grounds. The first one being the absence of a Power of Attorney or an authorisation to the person, who had signed and verified the plaint to institute the suit on the date of institution of the suit and the second one is that the suit in respect of two of the cheques is barred by limitation, since the suits came to be instituted after the expiry of three years, from the date on which the cheques were dishonoured by the Bankers of the defendants 1 and 2.

5. While Mr.C.Jagadish, learned counsel appearing for the applicants, would vehemently contend that the noncompliance with the provisions of Order 29 Rule 1 of the Code of Civil Procedure and Section 291 of the

Companies Act, 1956, would be fatal to the very institution of the suit and therefore, the plaints are to be rejected.

6. Mr.Abdul Hameed, learned counsel appearing for the respondents/plaintiffs in both the suits would contend that a noncompliance with the procedural formalities required under Order 29 Rule 1 or Section 291 of the Companies Act, 1956, cannot lead to rejection of the plaint at the threshold. It is a curable defect and it is open to the Company to ratify the actions at the later date also.

7. Order 6 Rule 14 of the Code of Civil Procedure which deals with signing of pleadings, reads as follows:

14. Pleading to be signed:- Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

Order 6 Rule 15 of the Code of Civil Procedure, which deals with verification of the pleadings, reads as follows:

15. Verification of pleadings: (1) *Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.*

(2) *The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

(3) *The verification shall be signed by the person making it and shall state and date on which and the place at which it was signed*

(4) *The person verifying the pleading shall also furnish an affidavit in support of his pleadings.*

8. A reading of the above provisions would show that a person who signs the pleading is required to be a party or a person duly authorised by the said party to sign the pleading. A person verifying the pleadings could be a person who is acquainted with the facts of the case. Order 29 Rule 1 of the Code of Civil Procedure, deals with signing and verification of the pleadings in a suit or proceeding initiated by or against Corporations.

Order 29 Rule 1 of the Code of Civil Procedure, reads as follows:

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.*

9. Section 179 of the Companies Act, 2013, which corresponds to Sections 291 and 292 of the Companies Act 1956, vests the powers to do all such acts and things as the Company is authorised to do, on the Board of Directors of the Companies. As per the Memorandum of Association of the plaintiff Companies which have been produced the power to institute suits is vested in the Board of Directors or any person authorised by them.

10. According to Mr.C.Jagadish, learned counsel appearing for the applicants in view of the provisions of Order 29 Rule 1 of the Code of Civil Procedure read with provisions of Section 179 of the Companies Act 2013, in the absence of a specific authorisation to the person, who had signed and verified the pleadings by the Board of Directors, the suits filed cannot be said to be properly instituted and hence entails rejection of the plaint. In support of his submission Mr.C.Jagadish, the learned counsel appearing for

the applicants would rely upon the judgment of Division Bench of this Court in ***Swadharma Swarajya Sangha rep. By its Director Mrs.Lalitha Rathnam v. Indian Commerce & Industries Company Pvt Ltd.***, reported in ***1998 (1) LW 203***, wherein the Division Bench had confirmed a dismissal of the suit without proper authorisation by the Board of Directors.

11. A reading of the said judgment does not show that it emanated from proceedings for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure. The judgment of the Division Bench has been rendered under Letters Patent Appeal, in which a judgment of a Single Judge of this Court made in a regular Appeal, came to be challenged.

12. Contending contra, Mr. Abdul Hameed, learned counsel appearing for the respondents would rely upon a judgment of the Hon'ble Supreme Court in ***United Bank of India v. Naresh Kumar and others***, reported in ***AIR 1997 SCC 3***, wherein the Hon'ble Supreme Court had held that rejection of a plaint filed by a Corporation on the ground that lack of authorisation is improper and the irregularity being procedural can be cured. The Hon'ble Supreme Court had held that the authorisation can be post facto and rejection of a plaint at the threshold on the ground of lack of authorisation is improper. It is not shown that this judgment of the Hon'ble

Supreme Court was brought to the notice of the Division Bench of this Court, when it decided the case in ***Swadharma Swarajya Sangha rep. By its Director Mrs.Lalitha Rathnam v. Indian Commerce & Industries Company Pvt Ltd.***

13. I am therefore of the considered opinion that the plea for rejection of the plaint on the ground of lack of authorisation cannot be countenanced at the threshold. It will be open to the plaintiff Companies to rectify the defect and at a later point of time also. Therefore, the first ground on which the plaints are sought to be rejected is devoid of merits.

14. The second ground is that the plaints are barred by limitation at least in respect of two of the cheques dated 01.02.2015 and 15.02.2015. Here again, I am afraid that the plaints cannot be rejected on the ground that they are barred by limitation. In ***Dr.L.Ramachandran v. K.Ramesh and others***, reported in **2015 (5) CTC 629**, a Division Bench of this Court, had held that the plaint can be rejected, if it is exfacie barred by limitation. A reading of the plaint in both the suits would show that the cause of action for the suit is not only based on the dishonour of the cheques. The suits are actually for refund of the advance paid under an agreement of sale or Memorandum of Understanding between the parties reached during the year

2012, pursuant to which the plaintiffs had parted with huge sums of monies in favour of the defendants 1 and 2. It is also pleaded that the title deeds with regard to property were deposited with the plaintiff and they are still with the plaintiffs. These facts impel me to conclude that the suit is not exfacie barred by limitation. Once it is found that the suit is not exfacie barred by limitation and the limitation being a mixed question of facts and law, rejection of plaint on the ground of limitation cannot be resorted to for the mere asking.

15. In view of the above conclusion, I do not find any merits in these applications, the applications are dismissed. However, there shall be no order as to costs.

26.03.2019

Index : Yes
Internet: Yes
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R.SUBRAMANIAN,J.

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Pre Delivery Order

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