

CR No. 4016 of 2018 (O&amp;M)

Date of Decision: 16.11.2019

M/s Allengers Global Health Care Pvt. Ltd.

....Petitioner

Versus

Rajesh Kapoor

.....Respondent

**CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR**

Present: Mr. Harkesh Manuja, Advocate, for the petitioner.

None for the respondent.

**NIRMALJIT KAUR, J. (ORAL)**

No one is appearing for the respondent in spite of service. On the last date of hearing, it was specially said that in case, no one appears for the respondent, the matter shall be decided in their absence. Today also, no one is present for the respondent. Accordingly, this Court proceeds to decide the same.

The present revision is filed against the judgments dated 17.3.2016 and 18.4.2018 passed by the Courts below, vide which the ejectment petition filed by the petitioner, was dismissed on the ground that the same was not maintainable as Amit Arora was never authorized by M/s Lakshya Research and Development Limited to file the eviction petition and further it was not proved from the record that Vijay Bhatia remained as Director of M/s Lakshya Research and Development Limited, who is allegedly stated to have signed the resolution.

It is contended that the resolution was also placed on record as Ex.P-A, which was signed by Vijay Bhatia being the Director of M/s Lakshya Research and Development Limited and in this regard, Form 32 was produced on record showing Vijay Bhatia as one of the Directors. It is

further contended that the said documentary evidence was not relied upon as the same was not proved by way of any other evidence. It is further contended that this finding was recorded in spite of the fact that the petitioner had duly filed an application for leading additional evidence but the same too was dismissed vide order dated 18.4.2018 itself.

Learned counsel for the petitioner has placed reliance upon the judgment rendered by Hon'ble the Apex Court in the case of United Bank of India vs. Naresh Kumar and others, 1997 AIR (SC) 3, wherein, it is specifically held that the suit should not normally be dismissed on technicality just because the plaint is not signed by the competent person and that too without giving sufficient opportunity to rectify the error or to allow the party to lead evidence to prove the same. The relevant observation reads as under:-

“The courts below could have held that Sh. L.K. Rohatgi must have been empowered to sign the plaint on behalf of the appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the appellant bank must have ratified the action of Sh. L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the courts below were still unable to come to this conclusion, then either of the appellate courts ought to have exercised their jurisdiction under Order 41 Rule 27 (1) (b) of the Code of Civil Procedure Code and should have directed a proper power of attorney to be produced or they could have ordered Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. L.K. Rohatgi to sign the plaint. Such a power should be exercised by a court in order to ensure that injustice is not done by rejection of a genuine claim.”

The aforesaid judgment was followed by this Court in the case of M/s Subh Timb Steel Ltd. vs. Inder Paul Dua, 1999 (2) RCR (Rent) 596 while allowing opportunity to lead evidence to prove the resolution on record.

In the present case, the application of additional evidence to prove the amendment was rejected. Accordingly, this Court deems it proper to dispose of the revision petition as under:-

- (a) The judgments dated 17.3.2016 and 18.4.2018 are set aside.
- (b) The petitioner is granted opportunity to lead additional evidence to prove that the resolution dated 14.1.2011, which was tendered before the Rent Controller on 14.1.2013 as Ex.PA, is a genuine document.
- (c) In case, the Court comes to a conclusion that the petitioner herein was duly authorized to file the eviction petition, it shall proceed to decide the same on merits.

Disposed of as above.

**(NIRMALJIT KAUR)**  
**JUDGE**

**16.11.2019**  
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|---------------------------|---|--------|
| Whether Speaking/Reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |