

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1091 OF 2017
IN
SUIT NO. 2289 OF 2007**

Anil Jalani

...Applicant/
Defendant no.5

In the matter between

S. Hajara & anr.

...Plaintiffs

Versus

TV 18 Broadcast Ltd. 7 anr.

...Defendants

Mr. Vishal Talsania, a/w Ms. Lakshmi Bussa, i/b M. V. Kini &
Co., for the Plaintiffs.

Ms. M. J. Reena Rollant, for Defendant no.5/Applicant.

CORAM: N. J. JAMADAR, J.

DATED : 27th JANUARY, 2020

PC:-

1. This Notice of Motion is taken out by defendant no.5 for the following reliefs:

“(a) That Issue No.4, viz. The issue of maintainability based on the lack of authorization of Plaintiff No.1 and Dy. Manager Mr. Rajnish and Mr. Suhas Kajrolkar to file the present suit on behalf of plaintiff no.2 and the matter of competency of Mr. Rajnish Khandelwal and Mr. Suhas Kajrolkar to verify the suit on behalf of Mr. S. Hajara plaintiff no.1 and plaintiff 2 company, be tried first as a preliminary issue.

(b) The present suit be dismissed with costs.”

2. The suit is instituted for damages for an allegedly false and defamatory telecast of a programme by defendant nos.1 to 4 under the heading, “Rebellion by the Assistant Manager of the

Shipping Corporation and allegations on the cabinet minister and Chairman of having brokerage of Rs.1,45,00,000/-”.

3. The defendants have resisted the suit. Defendant no.1 has filed the written statement on 17th October, 2008. Defendant no.5 - applicant has filed the written statement on 9th October, 2015.

4. Defendant no.5 has assailed the tenability of the suit, *inter alia*, for it having been not verified in the manner ordained under the provisions of the Code of Civil Procedure, 1908. Since, there is no proper authorisation within the contemplation of Order XXIX Rule 1 of the Code, defendant no.5 has sought dismissal of the suit, for being incorrectly framed and filed.

5. This Court framed issues on 28th October, 2015. Issue no.4 reads as under:

“(4) Whether the plaintiffs prove that the plaintiff no.1 Mr. Rajnish Khandelwal and Mr. Suhas Kajrolkar were authorised by plaintiff no.2 to file this suit against the defendants?”

6. After the settlement of the issues, admittedly, the parties have gone for trial. The evidence of plaintiffs first witness is recorded. The plaintiffs first witness was cross-examined, on commission.

7. As the suit is, thus, poised, defendant no.5 has taken out this Notice of Motion for the aforesaid reliefs. In the affidavit in

support of Notice of Motion the defendant no.5 asserts that there is no material on record to show that the officer, namely, Mr. Rajnish Khandelwal, who has verified the plaint had the authority to sign and verify the plaint. There is no resolution authorising plaintiff no.1 and/or Mr. Rajnish Khandelwal, the Deputy Manager of plaintiff no.2, to file the suit on behalf of plaintiff no.2. Nor Mr. Rajnish Khandelwal and Mr. Suhas Kajrolkar, are competent to verify the plaint on behalf of Mr. S. Hajara, the plaintiff no.1 and plaintiff no.2 company. Thus, defendant no.5 prays that issue no.4 of maintainability of the suit be determined as a preliminary issue.

8. The learned Counsel for the plaintiffs has raised the issue of tenability of the application for determination of aforesaid issue no.4 as a preliminary issue, at this stage of the suit. It was submitted that post the settlement of issues, the parties have gone for trial and, even, the evidence of plaintiffs first witness has been recorded. At this juncture, according to the learned Counsel for the plaintiffs, the resort to the provisions contained in Order XIV Rule 2 of the Code, under which a issue can be framed and determined as preliminary issue, is not warranted.

9. The learned counsel for the applicant urged that the material on record does not indicate any authorisation by the Board of Directors of plaintiff no.2 to institute the suit for damages for the alleged defamation. It was further submitted that the issue of the suit having been instituted by persons, who are not duly authorised, and the plaint having been signed and verified by the officers, who are not competent to do so, goes to the root of the matter, and, on the basis of the material on record, if a finding can be recorded that the suit is neither properly framed nor the plaint verified in the manner prescribed by the Code, the suit can be dismissed, at the threshold, and, in that event, it is not necessary to record definitive findings on the rest of the issues. Thus, the issue no.4, extracted above, be decided as a preliminary issue.

10. As the question of the authority of the officer, who has filed and verified the plaint assumes significance, the plaintiffs were called upon to indicate as to under what authority Mr. Rajnish Khandelwal has signed and verified the plaint. The learned Counsel for the plaintiffs has invited the attention of the Court to a certificate dated 2nd August, 2007, whereby plaintiff no.1, in the capacity of the Chairman and Managing Director of plaintiff no.2, authorised Mr. Rajnish Khandelwal, Deputy

Manager, (Technical and Offshore Services), to, *inter alia*, sing and verify the pleadings in respect of the defamation case against the defendants. The said certificate seems to have been issued on the proposal dated 2nd August, 2007, which preceded the same. A copy of the proposal is also placed on record. The Chairman/Managing Director of plaintiff no.2 seems to have exercised the said authority (to appoint Mr. Rajnish Khandelwal) on the basis of the powers delegated to him by a resolution of the Board of Directors. A certified true copy of the resolution is also placed on record.

11. While joining the issue, the learned Counsel for defendant no.5 – applicant would urge that the aforesaid documents were not annexed to the plaint, and did not form part of the documents, furnished to defendant no.5. The circumstances in which those documents came to be placed on the record of the Court, were thus sought to be put in contest. This aspect of the matter cannot be conclusively determined at this stage of the proceedings. The fact remains is that there are documents, which indicate authorisation given to Mr. Rajnish Khandelwal, who signed and verified the plaint on behalf of the company.

12. In view of the provisions contained in Order XXIX Rule 1 of the Code in a suit by or against corporation pleadings 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. If the plaint is signed and verified by any of the officers expressly referred to in sub-rule (1) of Order XXIX a separate authorisation is not warranted. However, this does not imply that a corporation by a resolution cannot authorise any other officer to sign and verify the plaint on its behalf. The question as to whether the plaint is signed and verified by an officer of the corporation, duly authorised by the corporation, is essentially rooted in facts. When a dispute is raised about the proper frame of the suit and authority to sign and verify the pleadings, ordinarily, evidence is required to adjudicate the said issue. It is trite that even when there is no initial authorisation, the corporation can ratify the act of filing of the plaint, including its verification.

13. On the aforesaid touchstone, reverting to the facts of the instant case, it is imperative to note that the trial has commenced and evidence of one of the plaintiffs witness has been recorded. Sub-rule (1) of Rule 2 of Order XIV enjoins the Court to pronounce the judgment on all issues even when the

Court may be in a position to dispose of the suit on a preliminary issue, unless the case is covered by the provisions of sub-rule (2) thereof. Sub-rule (2) empowers the Court to try an issue on which the case may be disposed of as a preliminary issue if it relates to the jurisdiction of the Court or a bar to the suit created by any law for the time in force and postpone the settlement of other issues.

14. The provisions of Rule (2) of Order XIV are discretionary. The normal rule is that the Court should pronounce the judgment on all issues. In exceptional cases, where the decision on a preliminary issue, which relates to either an ouster of the jurisdiction of the Court or a bar to the institution of the suit, the case may be disposed of on a preliminary issue.

15. In the case at hand, evidently, there is authorisation to Mr. Rajnish Khandelwal, for verification of the plaint. Whether the Board of Directors of plaintiff no.2 has authorised institution of the suit? Whether there was a proper authorisation for filing and verifying the Plaint? are the questions which warrant adjudication at trial. Since the issues have been framed, including the issue of maintainability of the suit for want of proper authorisation, and evidence of plaintiffs witness has also been recorded, at this juncture, it may not be justifiable to

determine issue no.4 as a preliminary issue. It would be in the fitness of things to consider the objection to tenability of the suit, including the frame of the suit, alongwith all the issues framed by this Court. Hence, the Notice of Motion deserves to be rejected.

16. The Notice of Motion stands rejected.

17. List the suit on 17th February, 2020.

[N. J. JAMADAR, J.]