

IN THE HIGH COURT OF BOMBAY AT GOA**Civil Revision Application No.38 of 2019**

M/s. Movaj Enterprises Private Ltd.,
 having their Registered office at
 100/101, RBM Road,
 Sheraton Grand Hotel, Pune-411 001.
 represented herein by their Director,
 Shri Ramkumar B. Agarwal,
 major, married, businessman ,
 having address at Pune,
 Maharashtra

..... Applicant

V e r s u s

1. Utopia Projects Private Ltd.
 Having their registered office at
 83-C, Mittal Towers, Nariman Point,
 Mumbai through
 their Director Mr. Ravinder Chouhan,
 aged 46, having office at Mumbai.
2. M/s. R.P.C Builders and Developers,
 A firm registered under the Indian
 Partnership Act, having office at
 Shop no.5, Alzira Apartments, Opp. Nehru
 Stadium, Fatorda, Margao, Goa
 through their partners.
3. Mr. Peter D'Cunha,
 aged 51 years, businessman,
 Son of late Francisco D'Cunha,
 R/o House No.800, Allem Waddo,
 Chinchinim, Salcete, Goa.
4. Mr. Tome Romaldo Rego
 aged 56 years, businessman,
 S/o late Leao Rego,
 R/o House No.545/2, Dongrim,
 Majorda, Salcete, Goa.
5. Mr. Clifford Dias,
 Aged 60 years, Businessman,
 R/o Arcter Apartments, S-2,
 Behind Don Bosco,

Fatorda, Margao, Goa.

CRA 38 20219
..... Respondents

Mr. A. R. Kantak, with Mr. R. Kantak, Advocates for the Applicant.
Mr. Y. Nadkarni, Advocate for the Respondents.

CORAM: DAMA SESHADRI NAIDU, J.
Date: 30th March 2021

Oral Order:

The respondent no.1 is the plaintiff in Special Civil Suit Commercial No.13/2020 before the Commercial Court at Vasco-da-Gama, South Goa. When the matter was pending as Commercial Suit No.9/2017 before the District Judge at Margao, the plaintiff's witness filed an Affidavit-in-Chief. Then, the fifth defendant, that is the applicant before this Court, invoked Order 18 Rule 4 (1A) of C.P.C. It insisted that the plaintiff must at once file the affidavits of all witnesses it wanted to examine on its behalf in the trial.

2. Then, the trial Court granted time to the plaintiff to comply with that provision. But on 3/5/2019, when the matter was called, there was no representation for the plaintiff. So, the Commercial Court dismissed the suit for non-prosecution.

3. Later, the plaintiff-company invoked Order 9 Rule 8 of CPC on the very same day and wanted the trial Court to set aside the order of dismissal and restore the suit to the file. It was allowed through order, dated 12/7/2019.

4. Aggrieved, the fifth defendant has filed this Civil Revision Application.

5. According to Shri A R. Kantak, the learned counsel for the applicant, the plaintiff is a company—a juristic person. One of its directors had the authorization from the company to prosecute the case. That means, the company could have filed an application under Order 9 Rule 8 of C.P.C., through its director who had the company's power delegated to him. But that director has further delegated his powers to his Power of Attorney.

And that Attorney filed the application under Order 9 Rule 8 of C.P.C for the plaintiff-company.

6. Relying on High Court of Madras's Judgment in *K. V. Sridhar v. N. Krishnasamy*, CDJ 2018 MHC 7001, Shri Kantak has contended that unless a delegate has been expressly authorized, he cannot further delegate. Thus, this further delegation failing, the company filed no application in the eye of law before the trial Court under Order 9 Rule 8 CPC. According to Shri Kantak, we must, therefore, conclude that the impugned order based on an improperly presented application cannot sustain itself.

7. On the other hand, Shri Nadkarni, the learned counsel for the first respondent, urges that this Court may not insist on technicalities. Instead, it may look at the substantial justice to be subserved. At any rate, he has fairly submitted that if the plaintiff-company's application suffers from technical shortcomings, this Court may dispose of the Civil Revision Application and give liberty to the plaintiff-company to approach the trial Court with a proper application duly signed by the company's delegate. In this context, he has urged this Court to direct the trial Court not to take into account the delay that has been occasioned because of these proceedings.

8. Under these circumstances, I set aside the impugned order and hold that the first respondent is free to file another application under Order 9 Rule 8 of C.P.C, through its duly authorized representative and invite an order on the merits. The applicant, of course, is free to raise all pleas legally available to him before the trial Court in the plaintiff's application under Order 9 Rule 8 of C.P.C.

9. At this juncture, I may also note that there is justification in Shri Nadkarni's plea that the trial Court may disregard the delay in the plaintiff's presenting the application. In fact, the initial order was in the first respondent's favour. Only now this Court has found that the company ought to have filed the application through its proper delegate rather than the delegate's delegate. Therefore, as far as the plaintiff is concerned, the delay is unforeseen and inevitable, too.

10. I, therefore, hold that the trial Court will consider the plaintiff's application under Order 9 Rule 8 of CPC without reference to the delay if any. That said, the plaintiff-company must come up with its application as mentioned above in two weeks from the date this order is uploaded. As a matter of abundant caution, I reiterate that this arrangement does not detract the applicant from raising other pleas affecting the merits of the case.

At this juncture, it has been brought to my notice that once the suit had been restored on the strength of the impugned order, the matter was transferred to the present Commercial Court. Therefore, the application now the plaintiff intends to file under Order 9 Rule 8 CPC may be filed before the transferee Court and that transferee Court will decide the matter in tune with the observations made above.

DAMA SESHADRI NAIDU, J.

AP/-

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