

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.819 of 2021

Orissa Manganese and Minerals Ltd. ***Petitioner(s)***

Mr. S.K. Dash,
Advocate

-versus-

Birat Chandra Dagara ***Opposite Party(s)***

Mr. B. Baug,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
15.02.2022**

Order No.

5. 1. This Civil Miscellaneous Petition involves a challenge to the order of lower Court in rejection of an application U/s.151 of C.P.C., but at the instance of the present Petitioner.
2. At the outset of the matter Mr. Baug, learned counsel for the Opposite Party raised a question on the *locus standi* of the Petitioner in carrying out the present Civil Miscellaneous Petition to this Court even involving an allegation that since the foundation proceeding in the impugned order is at the instance of the very same person, the

foundation petition giving rise to the impugned order even would not have been entertained.

2. Mr. Dash, learned counsel for the Petitioner, however, bringing some decisions to this Court has attempted to satisfy that person being authorized has the *locus standi* to sustain such proceedings. This Court on perusal of the documents and looking to the development taken place till hearing on the question of *locus* finds, the petition involved in the trial court proceeding was undisputedly at the instance of the very same Petitioner, here also with same representation through the particular person. Several decisions have been cited at Bar by the respective parties. Going through the catena of decisions placed by both the sides, this Court on scan of decisions finds, in the case of ***United Bank of India Vrs. Naresh Kumar and Ors.*** Reported in AIR 1997 S.C. 3 through para 9, 10 held as follows :

“9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

Similarly in the case of *Shubh Shanti Services Ltd. Vrs.*

Manjula S. Agarwalla and Others as reported in (2005) 5 SCC 30

deciding such a question through para 20 & 21 held as follows :

“20. Section 291 of the Companies Act authorises the Board of Directors of the company to exercise such powers or of such acts or things as the company is authorised to exercise and do such acts or things, except in the matter where the power is to be exercised by the company in general meeting. The exercise of the powers by the Board shall be subject to the provisions contained in the Companies Act or any other Act or in the memorandum or articles of the company. Therefore, under Section 291 of the Companies Act, the action of the Board of Directors should be in conformity with the provisions of the company law or any other enactment or in conformity with the memorandum or articles of association of the company. It is the specific case of the respondents which has been found correct by the courts that they are holding possession of the Company's flat at Sonmarg on the oral assurance given by Shri Goenka, Chairman of the Board of Directors that they can continue to reside in the said flat until the possession of the flat at Blue Heaven Cooperative Society is given to them. Admittedly the flat at Sonmarg belongs to the Company. Shri S.C. Agarwalla, husband of Respondent 1 and father of Respondent 2 was the ex-employee of the Company. He expired when he was in the employment of the Company and Respondents 1 and 2 were residing in the flat after the demise of Shri Agarwalla as his heirs. Thus it is for Respondents 1 and 2 to show the authority of Shri Goenka to bind the Company on the basis of the oral assurance given to them by him to retain the possession of the flat. The High Court has not referred to any evidence to that effect led by the respondents, nor is there any finding that the Board of Directors have authorised the Chairman Shri Goenka to give such an assurance for and on behalf of the Company.

21. On 28-12-1993 a letter was sent by the appellant requesting Respondent 1 to vacate the premises and hand over peaceful possession of the premises within 45 days of the receipt of the letter. The contents of the letter are that Shri S.C. Agarwalla was occupying the premises as a facility granted to him by the Company until he was in the employment of the Company. On account of the demise of Shri Agarwalla, the Company deferred the request for vacation of the

said premises; that more than a year has lapsed since the demise of Shri Agarwalla, it is essential for the Company to take possession of the same. The correspondence placed on record by parties also does not indicate that the Chairman of the Company, Mr Goenka gave an assurance on the basis that he has been authorised to do so by the Board of Directors. In the absence of any authority to the Chairman by the Board of Directors to act for and on behalf of the Company, the assurance given by him to the respondents would not bind the Company, nor will it create a binding agreement between the parties, namely, Respondents 1 and 2 and the Company to permit the respondents to remain in possession even after the death of Shri Agarwalla, of the flat in Sonmarg. Apart from this, the Board of Directors itself could exercise the powers in accordance with the memorandum of association or the articles of the Company. Any power exercised beyond the memorandum or the articles of the Company would not bind the Company. Any assurance given by the Board of Directors either should be authorised object of the Company by the memorandum of association or the articles of the Company or its purpose should be reasonably ancillary or incidental to carrying on the Company's business.

3. Keeping in view the above settled position, this Court finds, there is no difficulty on the part of the particular person in maintaining the application in the Court below and the present Civil Miscellaneous Petition even. Further for the opinion of this Court, once such a contentious issue is raised by way of objection before the foundation Court, but not asked to be decided by way of contest on *locus* of such party in the trial court, on the other hand allowing the proceeding to be concluded finally, the Opposite Party has no scope to rake the question of *locus standi* of the person presently the

Petitioner involved herein in the present Civil Miscellaneous Petition. This Court thus declines to entertain the question of *locus standi* for having no substance in such contention.

4. Entering into hearing on the entertainability of the Civil Miscellaneous Petition involving the impugned order at Annexure-11 involved herein passed in disposal of an application U/s.151 of C.P.C by the District Judge, Mayurbhanj, this Court finds, the same was undisputedly moved after the parties attended to the finality of an execution proceeding and entering into compromise in shape of form of a Final Terms of Settlement with agreement under the title of “Escrow Agreement” i.e. forming part of the Civil Miscellaneous Petition and again availing an order undisputedly in terms of joint petition filed by the decree holder and judgment debtor thereby brining the terms of settlement finally settled by both the parties into force. The issues between the parties remain completely closed by the finality of the Execution Proceeding. Keeping in view the pleadings and the submission of the respective parties this Court finds, it is after attending to the finality of the execution proceeding vide Execution Case No.1 of 2019 on the file of the District Judge vide Annexure-8, there are several correspondences issued by the Opposite Party herein. Taking this Court to the correspondences

dated 11.12.2021 at page 207 and 208 of the brief and further also taking this Court to the correspondence at the instance of the very same Opposite Party at page 209 both addressed to the public authority Mr. Dash, learned counsel for Petitioner drew the attention of this Court to the manner of withdrawal of the correspondence dated 11.10.2021 by submission of further correspondence on 10.11.2021 and claimed that here the Petitioner is apprehending mishandling of the compromise attended to between the parties and also involving a finality to the execution proceeding by the Opposite Party. It is under such apprehension the Petitioner appears to have filed an application U/s.151 of C.P.C. It is claimed that looking to the nature of allegation the I.A. should have been allowed. Mr. Dash, learned counsel for the Petitioner thus claimed for interfering in the impugned order.

5. Mr. Baug, learned counsel for the Opposite Party in his opposition to the claim of the Petitioner submitted that for the existence of a Final Terms of Settlement also with agreement under the title of “Escrow Agreement” between the parties and further after obtaining finality of the execution proceeding involving the above two instruments, there is no escape for either of the parties for withdrawing from finality of the proceeding. Mr. Baug, learned

counsel for the Opposite Party contended that it is only after realizing that there are some mistakes in issuing correspondence dated 11.10.2021, the party was compelled to take resort to withdrawal of the application by further correspondence dated 10.11.2021 and there is no otherwise intention. It is for this development, while not disputing to the finality of the execution proceeding vide Annexure-8, Mr. Baug, learned counsel for the Opposite Party contended that in the event of any claim, it is for the authority to take up the issues raised, but however, remaining within the development taken place by the order vide Annexure-8. Mr. Baug, learned counsel for the Opposite Party thus claimed that the Section 151 C.P.C application in the circumstances was even not entertainable and the trial court is justified in rejecting the same.

6. Considering the rival contentions of the parties, this Court on reading of the provision at Section 151 of C.P.C finds as follows :

“151. Saving of inherent powers of Court –
Nothing in this Code shall be deemed to limit or otherwise effect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

7. For the opinion of this Court in the above circumstance there was no scope for the Petitioner to bring an application U/s.151 of

C.P.C. and further keeping in view both the correspondences dated 11.10.2021 & 10.11.2021, this Court finds, there has been a communication at page 207 and it is only after appreciating that such communication is bad, an attempt is made to roll back such correspondence. In the circumstance, this Court finds, there is no action as of now *de horse* finality of the terms and conditions and the finality of the execution proceeding vide Annexure-8. In the event any action of the Opposite Party created any prejudice to the Petitioner and if it is found to be contrary to the Final Terms of Settlement with agreement under the title of “Escrow Agreement” coupled with the decision of the competent authority at Annexure-8, nothing prevents the party aggrieved to bring appropriate proceeding, but in the situation there is no scope for bringing an application U/s.151 of C.P.C. Looking to the dispute involved herein being taken up by the Petitioner, there was no scope for filing of an application U/s.151 of C.P.C. This Court at this stage looking to the discussions in the rejection order at Annexure-11 finds, there has not been proper exercise of mind on the entertainability of the application and there has been unnecessarily some discussion on the subsequent development taken place in between. For the observation and the correspondences therein remaining unwanted, this Court

while declining to entertain the Civil Miscellaneous Petition also observes, any observation made in the rejection of the application U/s.151 of C.P.C. by the District Judge shall have no effect as both the parties involved herein in the circumstance have to be abided by the terms of settlement coupled with entering into ESCRO agreement and the order passed in disposal of the execution proceeding vide Annexure-8.

8. With the above observation and direction the Civil Miscellaneous Petition stands disposed of.

(Biswanath Rath)
Judge

Ayas Kanta Jena