

In the High Court of Punjab and Haryana, at Chandigarh

Regular Second Appeal No. 5951 of 2016 (O&M)

Date of Decision: 28.07.2023

Daljit Singh

... Appellant(s)

Versus

Gurnam Singh and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Damanjeet Singh and Mr. Harminder Singh, Advocates
for the appellant(s).

Mr. Prateek Sodhi, Advocate
for the respondent No.1 to 5.

Mr. Sarabjit Singh, Advocate
for the respondent No.7.

Anil Kshetarpal, J.

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in ***Pankajakshi (Dead) through LRs v. Chandrika and Others (2016) 6 SCC 157.***

2. The First Appellate Court, after affirming a finding of fact in favour of the plaintiff (appellant) with regard to his substantive right to get injunction, has dismissed his first appeal on the ground that the suit was not instituted by an authorized person. In these circumstances, the issue which comes up for adjudication before this Court is “whether the suit was properly instituted or not?”

facts, in brief, are required to be noticed. The suit has been filed by as many as the following three plaintiffs:-

- “i) *M/s Satya Shiv Textile Pvt. Limited through its Attorney Shri Daljit Singh son of Lal Singh resident of Balkalan Tehsil and District Amritsar at present 1- Diamond Avenue, Majitha Road, Amritsar AND Balwinder Singh son of Kartar Singh, resident of village Tung Bala, Majitha Road, Amritsar.*
2. *Shri Daljit Singh son of Shri Lal Singh attorney of M/s Satya Shiv Textile Private Limited, resident of village Bal Kalan, Tehsil and District Amritsar at present 1- Diamond Avenue, Majitha Road, Amritsar.*
3. *Balwinder Singh son of Shri Kartar Singh, attorney of M/s Satya Shiv Textile Private Limited, resident of Tung Bala, Majitha Road, Amritsar.”*

4. It has come on record that originally the property was owned by Sukhwinder Kaur. She sold the property in favour of M/s Satya Shiv Textile Private Limited by executing two different sale deeds dated 13.01.1995 and 09.03.1995, with respect to the land measuring 6 kanals and 13 marlas. A suit for injunction was filed with respect to the aforesaid property while alleging that the defendants be restrained from interfering in the possession of the company.

5. The defendants while contesting the suit claimed that the plaintiffs want to take advantage of a new road and under that garb, they want to take over possession of the property where the defendants have

constructed the two houses and two shops in a part of the land comprised in killa No. 19/27 and 514. In order to prove the authorization in favour of the plaintiff No. 2 and 3, two separate general power of attorneys executed on 12.07.2000 by Satish Kumar, Director and Atul Khanna, Founder Director, were produced. The trial Court decreed the suit while recording a finding that the plaintiff No. 1, being an owner of the property, is entitled to protect its possession and the defendants have no right, title or interest in the suit property. The defendants have filed an appeal. The First Appellate Court upheld the finding with regard to the plaintiff-company being an owner as well as in possession of the property, however, accepted the appeal on the ground that the suit has not been filed through the Director or the Principal Officer of the other company or an authorized person.

6. Heard the learned counsel representing the parties at length and with their able assistance, perused the paper-book.

7. The learned counsel representing the appellant contends that the company, which is a juristic person, filed the suit. He submits that the only question which the Court below was required to examine was “whether the plaintiff No.2 and 3 were authorized to file a suit or not?” The learned counsel submits that two registered general power of attorneys were produced to prove authorization in their favour. He relies upon the judgment passed in *United Bank of India v. Naresh Kumar and Others (1996) 6 SCC 660*.

8. On the other hand, the learned counsel representing the respondent No.1 to 5 submits that the plaintiff No.2 and 3 claimed that a resolution dated 07.07.2000, was passed authorizing both the directors,

namely Satish Kumar and Atul Khanna to sell the property. He submits that since the aforesaid resolution has not been produced, therefore, the link evidence is missing. He also relies upon the judgment passed in *State Bank of Travancore v. M/s Kingston Computers (I) P. Ltd. (2011) 4 SCC (Civil) 282*.

9. This Court has considered the submissions while analyzing the arguments advanced by the learned counsel representing the parties.

10. The record of the lower Court has also been perused. It is evident that Ex.P1 and Ex.P3 are the two general power of attorneys executed by Satish Kumar and Atul Khanna in favour of the plaintiff No.2 and 3 on 12.07.2000. In these two general power of attorneys, the plaintiff No.2 and 3 were not only authorized to sell the property, but were also permitted to prosecute and defend any litigation. No doubt, the resolution dated 07.07.2000, from which Satish Kumar and Atul Khanna derived their power to execute the power of attorney has not been produced, however, the plaintiff company has filed a suit through the plaintiff No. 2 and 3. The plaintiffs have produced some semblance of evidence to prove that there was an authorization by the two directors in their favour. The directors of the company, who are the members of the Board of Directors, are entitled to manage the affairs of the company. In fact, the company, being a juristic person, has to act through a human being. For managing the affairs of the company, usually the Board of Directors are nominated to manage the affairs of the company. Moreover, the Supreme Court in *United Bank of India's case (supra)* has held that the procedural defects which do not go to the root of the matter of the matter should not be permitted to defeat the ends

of justice. The relevant discussion in para 9 and 13 of the judgment is extracted as under:-

“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 to 12 XXXX XXXX XXXX XXXX

13. The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company; full amount of court fee had been paid by the appellant bank; documentary as well as oral evidence had been led on behalf of the appellant and the trial of the suit before the Sub Judge, Ambala, had continued for about two years. It is difficult, in these circumstances, even to presume that the suit had been filed and tried without the appellant having authorised the institution of the same. The only reasonable conclusion which we can come to is that Sh. L.K. Rohatgi must have been authorised to sign the plaint and, in any case, it must be held that the appellant

had ratified the action of Sh. L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.”

11. If we read the judgment passed in ***State Bank of Travancore’s case (supra)***, it is evident that Court came to a conclusion that the suit was filed through Sh.Ashok Kumar Shukla, but no evidence was produced to prove that he was appointed as a Director or a resolution was passed by the Board of Directors of the company in his favour. The suit was filed only on the basis of a letter of authority from the Chief Executive Officer of the company. Whereas, in the present case, the authorization is from the two directors of the company. The plaintiff is a private limited company. Moreover, the plaintiff No. 2 and 3 should be presumed to have been authorized as held by the Supreme Court in para 13 of the aforesaid judgment.

12. The defendants have not filed any counter claim to challenge the findings of the fact with regard to the entitlement of the plaintiff for injunction.

13. The learned counsel representing the respondent No.1 to 5 submits that a reading of the general power of attorney only proves that the directors of the company were authorized vide resolution dated 07.07.2000, to sell the property. He further submits that no evidence has been led to prove that Satish Kumar and Atul Khanna were the directors of the company.

14. This Court has considered the submissions of the learned counsel representing the parties. On a comprehensive reading of both the general power of attorneys, it becomes evident that the company had decided to authorize its directors to dispose of the property in any manner

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they like. In a private limited company, the number of shareholders is limited. Atul Khanna is stated to be a Promoter Director, whereas Satish Kumar is stated to be a Director. The chances are that they were the majority shareholders. In such circumstances, once the Board of Directors, which included two directors, has taken a decision to authorize their two directors to deal with the property, there is no occasion for the Court to assume that the resolution dated 07.07.2000, did not authorize the directors to delegate their powers for filing or defending a litigation.

15. As regards the objection of the learned counsel representing the respondent No.1 to 5 that there is no evidence to prove that Satish Kumar and Atul Khanna were the directors of the company, it would be noted that the defendants have not produced any evidence except giving certain suggestions to PW.3. The objections taken by the respondents are the procedural objections which should not result in defeating the substantive justice.

13. Keeping in view the aforesaid facts and discussion, the appeal is allowed. The judgment passed by the First Appellate Court dismissing the suit on account of the fact that it was not filed by an authorized representative is set aside.

14. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 28, 2023
“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No