

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: March 13, 2023

+ RFA 243/2020 & CM APPL. 25444/2020

PAWAN HANS HELICOPTERS LTD.

..... Appellant

Through: Mr. Puneet Taneja and
Mr. Manmohan Singh Narula, Advs.

versus

NIDHEESH TOURS & TRAVELS PVT. LTD.

..... Respondent

Through: Mr. Hemant Chaudhri and
Mr. Piyush Arora, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM. No. 25444/2020

1. This is an application filed by the appellant who was the plaintiff before the Trial Court under Order XLI Rule 27 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC', for short) for bringing additional evidence on record. The additional evidence that the appellant intends to bring on record are: (i) Affidavit of Ranjit Singh Chauhan, working as Company Secretary-cum-Joint General Manager (Legal) with the appellant company, to buttress that the suit has been filed through a duly authorised person; (ii) The copies of the Minutes of the meeting of the Board of Directors of the appellant dated April 09, 1986, and June 15-16, 1987 (hereinafter referred to as 'Board

Meetings'). The documents are sought to be brought on record primarily in view of the observation of the Trial Court that the appellant company had failed to place on record the aforesaid documents. As per the understanding of the appellant, the same was not required to be produced in view of the production of duly notarised Power of Attorney dated November 30, 2004, in favour of Sanjiv Agrawal, the then Company Secretary, to obviate the technicality which resulted in the dismissal of the suit.

2. The affidavit has been filed by Ranjit Singh Chauhan, Company Secretary-cum-Joint General Manager (Legal), wherein in paragraph 4 he has also stated that the aforesaid Minutes of the Board Meetings were not traceable and accordingly could not be filed before the Trial Court. After the pronouncement of the impugned judgment dated February 18, 2020, the appellant carried out an extensive search of its records and found the old Minutes books containing Minutes of Board Meetings dated April 09, 1986, and June 15-16, 1987. It is stated that the said Board Meetings clearly confirm delegation of powers in favour of the Managing Director who may sub-delegate such powers from time to time as per the requirement of the company. It is also stated that at the time of institution of the suit Sanjiv Agrawal was the Company Secretary and was authorised *vide* Power of Attorney dated July 16, 1996. At the time of leading evidence, the appellant had adduced the evidence of Sanjiv Agrawal as PW1. Since the original Power of Attorney dated July 16, 1996, was not readily available, he produced the latest Power of Attorney dated November 30, 2004 in his favour.

3. A reply has been filed to this application by the respondent / defendant (hereinafter referred to as 'respondent') stating that Order XLI Rule 27 (1) (a) of CPC stipulates certain exceptional situations when additional evidence can be taken on record, none of which arises in this case. It is also stated by the counsel for the respondent that the appellant had purposely not filed the documents on record, though it was in possession of the same.

4. It is submitted that Order XLI Rule 27 of CPC allows leading of additional evidence in an appeal, subject to the conditions laid down in the Rule. Mr. Chaudhri contended that none of the provisions of Order XLI Rule 27 of CPC were satisfied by the appellant in the present case. Reference is made to the judgment of the Supreme Court in the case of *Union of India vs. Ibrahim Uddin and Anr., (2012) 8 SCC 148*, wherein it was held that the discretion of the Court to allow additional evidence under Order XLI Rule 27 of CPC is to be used sparingly and where a party on whom the onus of proving a certain point lies, fails to discharge the onus, he is not entitled to a fresh opportunity to produce evidence, as the Court can in such a case, pronounce judgment against him and does not require any additional evidence to enable it to pronounce such judgment. It was further held that it is not for the appellate Court to supplement the evidence adduced by the parties in the Trial Court. The inadvertence of a party or its inability to understand the legal issues involved or the wrong advice of a pleader or the negligence of a pleader or that the party did not realise the importance of a document does not constitute a 'substantial cause' within the meaning of Rule XXVII of Order 41 of

CPC. It was also held that no evidence is permissible to be taken on record in absence of the pleadings in that respect as the Court cannot travel beyond the pleadings and the decision of a case cannot be based on grounds outside the pleadings of the parties.

5. Having heard the learned counsel for the parties, there is no dispute that the Power of Attorney dated November 30, 2004, was adduced before the Trial Court by the appellant company. The Trial Court framed issue No.1, i.e., whether the suit has been filed by the duly authorised person, and decided the same against the appellant. This is primarily because the Minutes of the Board Meetings dated April 09, 1986, and June 15-16, 1987, were not produced on record, though a reference to the same was made in the Power of Attorney. Even the veracity of the Power of Attorney dated November 30, 2004, was doubted as the two resolutions / Minutes of the Board Meetings were not produced. The plea of the learned counsel for the appellant and also the contents of the affidavit filed by Ranjit Singh Chauhan is that the said resolutions were not traceable in the appellant's organisation. After the pronouncement of the judgment / impugned order, the appellant carried out an extensive search of its record and was able to lay hands on the old Minutes books containing the Minutes of the Board Meetings dated April 09, 1986, and June 15-16, 1987, which have been filed on record.

6. Hence, the application of the appellant squarely falls within the exception carved out in Order XLI Rule 27(1)(aa) of the CPC inasmuch as after the exercise of due diligence, the documents could

not be produced by the appellant at the time when the decree against the appellant was passed.

7. This Court is of the view that the appellant having been non-suited only on the ground that the Minutes of Board Meetings dated April 09, 1986, and June 15-16, 1987 are not on record, and as the fate of the appeal hinges upon this aspect, the present application needs to be allowed. The said documents are taken on record for deciding the accompanying appeal.

8. The application is disposed of.

RFA 243/2020

9. This Regular First Appeal has been filed against the judgment and decree dated February 18, 2020 passed by the learned Addl. District Judge-01 (West), Tis Hazari Courts, Delhi. The appellant is a Government of India Enterprise carrying out the business of providing helicopter services to Governments and other organisations. The respondent is a private limited company carrying on the business of tour and travel operations.

10. The appellant was entrusted by Shri Mata Vaishno Devi Shrine Board (hereinafter referred to as Shrine Board) to provide helicopter services for passengers in Jammu-Katra-Sanjhichat sector. Keeping in view the representations given by the respondent company, the appellant decided to award the contract for ticketing and handling of ticketing arrangements in favour of the respondent company.

11. Subsequently, an agreement between the appellant and the respondent company was entered on April 06, 2000. As per the terms and conditions mentioned in the said agreement, the respondent was

required to deposit the amounts collected from the sale of tickets with the bankers of the appellant or with the appellant's representative and intimate the same to the appellant on a weekly basis. The monies collected from the sale of tickets was being held by the respondent in trust for and on behalf of the appellant. The agreement was entered into by the parties at New Delhi and the respondent was supposed to return the unsold tickets and monies to the appellant's officer at Safdarjung Airport, New Delhi. Moreover, the respondent was authorised to carry passengers of the Shrine Board against authorisation slips to be issued by the concerned authorities of the Shrine Board.

12. As per the agreement between the parties, the respondent was required to submit a Bank Guarantee with the appellant as security. Accordingly, the respondent had submitted a Bank Guarantee of ₹30,00,000/- in favour of the appellant.

13. It is submitted that initially upon entering into the agreement, the respondent was honouring the terms of the contract by depositing the amounts as stipulated in the agreement, but thereafter started faltering in depositing the amounts received from the sale of tickets on the due dates as stipulated in the agreement. Due to the delay in the deposit of weekly collection amounts, a huge amount got accumulated.

14. As per the agreement between the parties, the appellant was to provide free tickets to the Shrine Board and in case of non-use of free tickets by the Shrine Board, the same was to be sold to the fare-paying passengers to the credit of the appellant.

15. The respondent initially carried Shrine Board officials against authorisation slips issued by the Board. It is further contended that the respondent became dishonest and complimentary tickets / passes were utilised by them without any authorisation from the Shrine Board and without any information to the appellant thereby causing loss to the appellant.

16. It is submitted that as the respondent was delaying the deposit of amounts, the appellant apprehended misappropriation of monies by the respondent and accordingly called upon the respondent company to deposit the collections made by them. It is further submitted that towards discharge of the amounts collected by them, the respondent company issued three cheques bearing Nos. 492698, 492700 and 492699 dated November 30, 2001, November 01, 2001 and November 15, 2001 respectively for ₹13,77,145/-, ₹7,71,669/- and ₹8,12,924/- respectively. The said payment was towards the amount collected by the respondent for the week ending May 27, 2001, and June 17, 2001. It is submitted by Mr. Taneja that the said cheques upon presentation by the appellant were returned by the bank with the remarks “payment stopped by drawer”.

17. It is stated that the respondent had no valid reason for instructing its bank to stop payment when the cheques were issued by them in partial discharge of their liability. Accordingly, the appellant company issued a legal notice dated November 23, 2001, and another legal notice dated December 18, 2001, under the provisions of Section 138 of the Negotiable Instruments Act, 1881 (for short, ‘NI Act’). Despite the issuance of the said legal notices, the respondent company

failed to honour its obligation under the contract as well as the said legal instruments.

18. The appellant being aggrieved by the said conduct of the respondent approached the bank of the respondent for the encashment of the Bank Guarantee. It is submitted that in a meeting dated January 11, 2002, the respondent confirmed that a sum of ₹30,60,869/- is due and payable to the appellant company towards the sale of tickets. Apart from the said amount, there were further dues payable by the respondent which were also discussed and accordingly Minutes of the meeting were prepared and countersigned by Capt. Murti Gupta and O.P. Garg, CA for the respondent, and also by the representatives of the appellant. Furthermore, in the said meeting, the respondent undertook to pay ₹30,60,869/- to the appellant which Capt. Murti Gupta of the respondent promised to clear by January 16, 2002. However, the respondent did not honour its commitment made in the meeting dated January 11, 2002, and failed to release the agreed amount of ₹30,60,869/-. Thus, the appellant was constrained to encash the Bank Guarantee amount of ₹30,00,000/-.

19. It is stated that in the meeting dated January 11, 2002, the issue with regard to the respondent failing to return the unsold and complimentary tickets was also taken up. The respondent agreed to submit the authorisation slips against the complimentary tickets issued by the Shrine Board by January 31, 2002. However, the said commitment was also not honoured by the respondent and it was apparent that the respondent has misused the tickets and misappropriated the money. Furthermore, in the same meeting, the

respondent had agreed to pay a sum of ₹30,60,869/- towards sale of tickets, ₹4,26,045/- towards complimentary tickets and ₹6,73,655/- towards interest on delayed payments. The total amount, thus, came to ₹41,60,569/- and out of the same, a sum of ₹30,00,000/- stood adjusted upon encashment of the Bank Guarantee. Thus, a balance of ₹11,60,569/- was still due and payable by the respondent.

20. The appellant filed a Summary Suit under Order XXXVII of CPC based on the admitted dues for recovery of ₹11,60,569/- along with the *pendente lite* interest @18% till realisation of the amount. Consequently, the respondent was served with summons under Order XXXVII of CPC and thereafter entered appearance. Upon being served with the summons for judgment, the respondent filed an application seeking leave to defend which was allowed *vide* order dated May 27, 2011, and the respondent was granted unconditional leave to contest the case.

21. It is submitted that upon the grant of leave to defend, the respondent had filed its written statement taking preliminary objection regarding the territorial jurisdiction of the court to entertain the suit apart from disputing the claim of the appellant on its merits. The respondent also challenged the authority of Sanjiv Agrawal through whom the suit had been filed as well as the Power of Attorney in his favour. In this regard, the contention of the respondent was that there is no authorisation letter or Minutes of any Board Meeting authorising Sanjiv Agrawal to institute the suit.

22. Upon completion of pleadings, issues were framed by the Trial Court *vide* order dated May 08, 2014. The issues framed by the Trial Court are as under:

“(1) Whether the suit has not been filed, signed and verified by a duly authorized person? OPD

(2) Whether the plaintiff has falsely claimed an amount of Rs.4,26,045/- towards the complementary tickets issued to Mata Vaishno Devi Shrine Board as mentioned in para 3 of the preliminary objection in the WS? OPD

(3) Whether the defendant is not liable to pay any alleged dues to the Plaintiff in view of the preliminary objection no. 5 in the WS? OPD

(4) Whether the plaintiff is entitled to recover the suit amount from the defendant, as prayed in the prayer clause? OPP

(5) Whether the Plaintiff is entitled to any interest on the suit amount, as prayed in the prayer clause? OPP

(6) Relief.”

23. It is submitted that thereafter, the matter was posted for trial and the appellant examined its Company Secretary / authorised representative Sanjiv Agrawal as PW-1. The appellant relied upon a copy of Power of Attorney dated November 30, 2004, exhibited as Ex.PW1/A, copy of the agreement dated April 06, 2000, i.e., Ex.PW1/B, copies of cheques marked as Mark-A, B and C along with their return memos marked as Mark-D, E and F respectively, original copy of the ledger, i.e., Ex.PW1/C and copy of Minutes of meeting dated January 11, 2002, i.e., Ex.PW1/D.

24. It is further submitted that on behalf of the respondent, Capt. Murti Gupta had deposed as DW1 in his capacity as the Managing Director of the respondent company. DW-1 relied upon an extract of Board Resolution dated July 01, 2011, Ex. DW1/1 and certified copy of Order dated July 23, 2014, passed in CrI. L.P. No. 447/2014 and 448/2014 Ex.DW1/2.

25. By the impugned judgment the Trial Court dismissed the suit on the technical ground that the suit has not been instituted by a duly authorised person despite coming to the conclusion that the appellant is entitled to a sum of ₹4,86,914/- towards the amount due from the respondent on account of sale of tickets as well as unauthorised use of complimentary tickets, apart from granting interest @ 9% on the said amount from the date of filing of the suit till its payment. It is further submitted that the rejection of the suit by the Trial Court on a technical ground of lack of authority of the person through whom the suit has been instituted is contrary to the basic principle of law that the substantive right of a party should not be allowed to be defeated on technical grounds of procedural irregularity so as to ensure that no injustice is done to any party. Furthermore, the impugned judgment is against the established law relating to the pleadings to be filed by a company as per the provisions of Order VI Rule 14 read with Order XXIX Rule 1 of CPC.

26. Mr. Puneet Taneja, learned counsel appearing for the appellant contended that the Trial Court erred in relying on the judgment of this Court in the case of *M/s. Nibro Ltd. vs. National Insurance Co. Ltd., AIR 1991 Delhi 25*, in support of its findings that the suit has not been

instituted by the appellant through a duly authorised person. According to him, the law with regard to authorisation by a company for institution, signing and verification of the pleading / suit is well settled by the Supreme Court in the case of ***United Bank of India vs. Naresh Kumar & Ors. (1996) 6 SCC 660***. Further, reliance is placed in this regard on the judgment in the case of ***Uday Shankar Tariyar vs. Ram Kalewar Prasad Singh & Anr., (2006) 1 SCC 7***.

27. It is contended that the impugned order also failed to take note of Order XXIX Rule 1 of CPC which is the relevant provision with regard to pleadings in suits by or against a corporation. The said provision reads as under:

“Subscription and verification of pleading

In suits by or against a corporation, any pleading 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.”

In this regard, it is submitted that from a bare perusal of the said provision itself, it is evident that the Company Secretary is legally treated as a duly authorised person for signing and verification on behalf of the corporation. In the present case, Sanjiv Agrawal had not only signed the plaint, but also came as a witness for the appellant i.e., PW1 in his official capacity as the Company Secretary. Moreover, all the pleadings and affidavits were bearing not only his signatures but also the official stamp / seal as the Company Secretary of the appellant company.

28. Furthermore, he submitted that the reliance placed by the respondent in the case of ***State Bank of Travancore vs. M/s Kingston Computers India Pvt. Ltd., (2011) 11 SCC 524***, is also misplaced. Mr. Taneja contended that, unlike the said case, there is no challenge to the appointment of Sanjiv Agrawal as the Company Secretary of the appellant. Sanjiv Agrawal being the Company Secretary of the appellant company is duly authorised to verify and sign the plaint on behalf of the appellant company in terms of the provisions of Order XXIX Rule 1 of CPC and further had the authority to institute the suit keeping in view the Power of Attorney dated July 16, 1996, which is further reaffirmed by the fact that Sanjiv Agrawal appeared as a witness on behalf of the appellant company to depose in respect of the facts of the case and the documents relied upon by the appellant company. Therefore, by virtue of provisions of Order XXIX Rule 1 of CPC itself, Sanjiv Agrawal was duly authorised and competent to institute the suit and sign and verify the pleadings.

29. That apart, it is submitted that in the case of ***United Bank of India (supra)***, the Court has observed that as per provisions of Order XXIX Rule 1 of CPC even in the absence of any formal letter of authority or Power of Attorney having been executed in favour of the person signing and verifying the pleading, he can do so by virtue of the office which he holds in the company. The Court also observed that even in the absence of any authorisation letter, if the suit has been filed through an officer as referred to in Order XXIX Rule 1 of CPC, it can be presumed that the Company has duly authorised the said officer to sign, verify and institute the suit based on the evidence on

record and considering all the circumstances of the case like the suit has been filed in the name of the Company, the full amount of court fee has been paid by the Company, documentary, as well as oral evidence has been led on behalf of the Company and the suit has continued for a substantial period of time running into several years. In such circumstances, the only conclusion which can be drawn is that the person signing the plaint was duly authorised and the said act has been ratified by the Company.

30. Mr.Taneja also placed reliance on the judgment of this Court in the case of ***City Corp. International Ltd. vs. Shiv Vani Oil and Gas Exploration, 2016 232 DLT 441***, wherein it was observed that since the officer filing the application happens to be the Managing Director and CEO of ICICI Bank, UK, he is competent to file sign and verify any pleading being a Principal Officer of the Corporation in terms of the Order XXIX Rule 1 of CPC.

31. Reference is also drawn by Mr. Taneja to the judgment of this Court in the case of ***Mahanagar Telephone Nigam Ltd. vs. Smt. Suman Sharma, (2010) SCC Online Del 4290***, wherein this Court relying upon the judgment in the case of ***United Bank of India (supra)*** has held that the test as laid down by Supreme Court in the said case is satisfied in the present case as well, in as much as the suit has been instituted for about two years by the appellant company seeking an appropriate decree against the respondent by adducing evidence. Mr. Taneja relied upon the following paragraph of the judgment in the case of ***Mahanagar Telephone Nigam Ltd. (supra)***:

“I may note that the appellant is a public sector undertaking and not a private company where there would be disputes between two sets of shareholders claiming right to management and one set of shareholders are opposing another set of shareholders with respect to control and management of the company. This thus is an additional fact that there can be no dispute as to the authority of the person signing / verifying the pleadings and instituting the suit.”

In this regard, it is submitted by Mr. Taneja that in the present case as well, the appellant is a public sector undertaking and there cannot be any dispute amongst the Directors or the shareholders in respect of the control and management of the company and as to the authority of the officer (Sanjiv Agrawal) to sign and verify the pleadings and institute the suit.

32. Mr. Taneja further contended that the impugned order failed to appreciate that is settled law that on account of technicalities, substantive rights of the parties should not be defeated as the same would amount to injustice to one of the parties as has been done to the appellant in the present case. Moreover, it is averred that the Court on the basis of evidence on record and after taking all the circumstances of the case especially with regard to the conduct of the trial, could have come to the conclusion that the corporation has ratified the act of signing of the pleadings by its Company Secretary i.e., PW-1. In this regard, reliance has been placed in the judgment of this Court in the case of ***Peerless General Finance & Investment Co. Ltd. vs. Punjab & Sind Bank, ILR (2008) I Delhi 203.***

33. Mr. Taneja stated that the Trial Court has failed to appreciate the law with regard to authorisation when as per the Supreme Court, even an appellate court under the provisions of Order XLI Rule 2 (1) (b) of CPC can exercise its powers to call upon a party for production of Power of Attorney or order a competent person of the company to be examined as a witness to prove the ratification when the Trial Court has found the plaint to be not duly signed and verified by a competent person. Thus, before rejecting the suit, an opportunity was to be granted to the concerned party for ratification of the acts of persons through whom the suit has been instituted rather than making the parties litigate for years.

34. He further submitted that the denial of interest by the Trial Court on the principal sum for the pre-reference period is an abuse of the process of law. It is a settled law that if there is no bar in the payment of interest, the party which has been deprived of any payment on the due date should be entitled to the damages for the delayed release of payment which is by way of interest. There has been a delay on the part of the respondent in the release of ₹30,60,869/- towards the sale of tickets and ₹4,86,914/- towards misappropriation of the complimentary tickets. Hence, interest from the date of cause of action was certainly liable to be awarded in favour of the appellant relating to the pre-reference period. In this regard, reliance has been placed upon the judgment of the Supreme Court in the case of ***Secretary, Irrigation Department, Government of Orissa and Ors. vs. G.C. Roy and Ors., (1992) 1 SCC 508.***

35. Mr. Hemant Chaudhri, learned counsel appearing on behalf of the respondent, stated that the appellant has misrepresented the facts. According to Mr. Chaudhri, the correct facts of the present case are as under:

- a) On the basis of three cheques being cheque no. 492698 dated November 30, 2001 for ₹13,77,145; cheque no. 492700 dated November 01, 2001, for ₹7,71,669; and cheque no. 492699 dated November 15, 2011 for ₹8,12,924, the appellant on April 02, 2002, filed a Civil Suit being C.S No. 9467 of 2016 against the respondent under Order XXXVII of the CPC for recovery of ₹ 11,60,569. However, the said Civil Suit has been dismissed by the Trial Court *vide* impugned judgment dated February 18, 2020. Furthermore, prior to filing the said Civil Suit, the appellant on December 20, 2001, filed a criminal complaint under Section 138 of the NI Act, against the respondent and its Directors, on the basis of cheque no. 492700 dated November 01, 2001, for ₹7,71,669 being complaint case no. 2209/1/11 (Old No. 1643).
- b) That apart, another criminal complaint under Section 138 of the NI Act, was also made against the respondent and its Directors, on the basis of cheque no. 492698 dated November 30, 2001, for ₹13,77,445 and cheque no.492699 dated November 15, 2001, for ₹8,12,924 being complaint case No. 2210/1/11.
- c) The above-stated criminal complaints as well as the Civil Suit had been filed by the appellant through Sanjiv

Agrawal, who claimed himself to be the authorised signatory of the appellant. It is stated that Sanjiv Agrawal filed his evidence by way of affidavit in the above-stated criminal complaints and was also cross-examined. The said evidence by way of affidavit of Sanjiv Agrawal and his cross-examination in the criminal complaints is a part of the record of C.S. No. 9467/2016.

d) It is submitted that in the cross-examination dated March 27, 2012, in the above-stated criminal complaints, Sanjiv Agrawal made a statement that he was not employed with the appellant from March 2002 to May 2003.

e) In the cross-examination dated December 17, 2014, in the C.S No. 9467/2016, Sanjiv Agrawal who appeared as PW-1 (being the only witness examined by the appellant) reiterated that he had been not working with the appellant for the period 2002 to 2003.

f) From the statements made by Sanjiv Agrawal in the criminal complaint as well as in the Civil Suit, it is the assertion of the appellant's witness that he was not in employment of the appellant on April 02, 2002, which is the date of institution of the Civil Suit. In this regard, Mr. Chaudhri contended that the reliance placed by the appellant on some judicial pronouncements, claiming that Sanjiv Agrawal was the Company Secretary of the appellant on the date of institution of the suit and was therefore authorised to

file the suit, is false and incorrect, as per the statement of Sanjiv Agrawal himself.

g) The criminal complaints under Section 138 of the NI Act, filed by the appellant against the respondent, were dismissed by the Trial Court *vide* judgment dated June 29, 2013. Mr. Chaudhri contended that in the said judgment in paragraph 3.1, the respondent had placed strong reliance on the dismissal of the complaints, on the ground that Sanjiv Agrawal did not have the authority to file the criminal complaint on behalf of the appellant. In paragraph 4 of the said judgment, the Trial Court held that there is no resolution passed by the Board of the appellant company in favour of Sanjiv Agrawal and the Power of Attorney dated July 16, 1996 (Ex.CW1/A) is not proved and hence it is held that Sanjiv Agrawal is not authorised to file the complaints.

h) An appeal was filed against the judgment dated June 29, 2013, passed in the criminal complaints filed CrI. L.P. Nos 447/2014 and 448/2014, before this Court, which was dismissed *vide* a common order dated July 23, 2014. Mr. Chaudhri stated that in the said judgment this Court in paragraph 10 has recorded that the Trial Court had held that there was no express authorisation of Mr. Sanjiv Agrawal to institute the said complaints. The Order dated July 23, 2014, passed by this Court was not challenged by the appellant before any superior forum and has hence become final.

i) Mr. Chaudhri further contended that the appellant having filed the present Regular First Appeal, it was expected from the appellant that the correct and complete facts of the case, including all the relevant evidence and documents forming a part of the Trial Court, were placed before this Court by it along with the appeal. That apart, even the complete evidence of the respondent has not been placed on record by the appellant. In this regard, reference is made to the judgment of the Supreme Court in the case of ***S.P. Chengalvaraya Naidu vs. Jagannath, 1994 SCC (1) 1***, wherein it was held that the person who approaches the Court, must come with clean hands. Non-production and even non-mentioning of documents amount to playing fraud on the Court. A litigant who approaches the Court is bound to produce all the documents relevant to the litigation and if he withholds vital documents then he would be guilty of playing fraud on the Court and can be summarily thrown out at any stage of the litigation.

36. Mr. Chaudhri further relied upon the judgment of this Court in the case of ***M/s Nibro Ltd. (supra)***, wherein it has been observed that the question of the authority to institute a suit on behalf of a company is not a technical matter, as it has far-reaching effects. This Court has also observed that Order XXIX Rule 1 of CPC, 1908 does not authorise persons mentioned therein to institute a suit on behalf of the Corporation and it only authorises them to sign and verify the

pleadings on behalf of the Corporation. This Court further held that in view of Section 291 of the Companies Act, 1956, unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of a company. Reference is also made to the judgment in *University of Kashmir vs. Ghulam Nabir Mir*, AIR 1978 NOC 144 (J&K).

37. He submitted that the Supreme Court in the case of *State Bank of Travancore (supra)* while referring to *M/s Nibro Ltd. (supra)* has held that in the absence of a Board Resolution, a person would not have the authority to file a suit on behalf of the company.

38. Mr. Chaudhri has opposed the contention of Mr. Taneja that Sanjiv Agrawal being the Company Secretary of the appellant, had the authority to institute the suit, in terms of Order XXIX Rule 1 of CPC. According to him, Order XXIX Rule 1 of CPC only refers to signing and verifying of pleadings and does not refer to or authorise the institution of a suit.

39. Mr. Chaudhri contended that the reliance placed upon the judgment in the case of *United Bank of India (supra)* by the appellant is misplaced as in paragraph 10 of the said decision the Supreme Court only discusses the authority to sign and verify the pleadings and holds that the action of the officer signing and verifying the pleadings has to be subsequently ratified. Moreover, it is submitted that in the present case, there has been no subsequent ratification by the appellant company, which could have taken place only by passing a specific Board Resolution. Further, there is not even implied ratification as Sanjiv Agrawal (PW-1) was the sole

witness on behalf of the appellant company and no other officer was produced as a witness, to even establish implied ratification of his action of instituting the suit.

40. Furthermore, the High Court of Himachal Pradesh in the case of *Apple Valley Resort vs. H.P. State Electricity Board and Ors., (2004) 118 CompCas 328 (HP)*, while distinguishing the decision of the Supreme Court in the case of *United Bank of India (supra)* held that Order XXIX Rule 1 of CPC only authorises the persons mentioned therein to sign and verify the pleadings and does not authorise such persons to institute an action on behalf of a corporation / company. It was further held that in the absence of a specific resolution of the Board of Directors, the petition therein cannot be said to have been filed by a duly authorised and competent person for and on behalf of the company. He has further relied upon the following judgments in support of his contention:

1. *C. Krishniah Chetty and Sons Pvt. Ltd. v. Deepali Company Pvt. Ltd. & Ors., 2021 (4) KarLJ 445*
2. *Vimal Telektronix Pvt. Ltd. v. Tata Telecom Pvt. Ltd., CS(OS) 952/2004*
3. *Raj Cylinder & Containers Pvt. Ltd. v. Hindustan General Industries & Ors., 2013 VIII AD (Delhi) 298*
4. *Rajgarhia Papers Mill Ltd. v. General Manager, Indian Security Press & Ors., AIR 2000 (Delhi) 239*

41. That apart, he submitted that the Power of Attorney dated July 16, 1996, which was mentioned by the appellant in paragraph 1 of the plaint was filed along with the plaint, however, the same was not proved by the appellant during the evidence. No steps were taken to lead any secondary evidence, as the appellant claimed that the

original Power of Attorney dated July 16, 1996, had been lost. The same was also not being marked in evidence by way of affidavit. Furthermore, Sanjiv Agrawal also did not mention the execution of the said Power of Attorney dated July 16, 1996, but merely stated that he has been authorised by Power of Attorney dated November 30, 2004, to file the plaint. Paragraph 1 of the evidence by way of affidavit of PW1 Sanjiv Agrawal is reproduced as under:

“1. I say that Plaintiff Company is a Government of India Enterprise carrying of the business of providing helicopter support services to various State Governments, Central PSUs & other organizations. I have been authorised by Power of Attorney dated 30.11.2004 to file, verify, present and pursue the present plaint on behalf of the Plaintiff Company.”

In this regard, Mr. Chaudhri stated that the appellant relied only upon the Power of Attorney dated November 30, 2004, whereas the suit had been filed in the year 2002. Even the Power of Attorney dated November 30, 2004, had not been proved to give any authority to Sanjiv Agrawal to file the suit.

42. It is the case of the respondent that Sanjiv Agrawal is not authorised to file the suit as the Power of Attorney dated July 16, 1996, is neither a valid document nor has been validly executed and although the same mentions certain Board Resolutions of the year 1987 but those Board Resolutions have not been placed on record. In this regard, Mr. Chaudhri relied upon the judgment of this Court in the case of **Lucas Indian Services Ltd. vs. Sanjay Kumar Agarwal, 173 (2010) DLT 438**, wherein it was held that if the Board Resolution is not proved then there is no authority on the person

verifying the plaint and instituting the suit and the suit has to be dismissed.

43. Moreover, it is submitted that the suit had been filed under Order XXXVII of CPC and the unconditional leave to defend was granted in favour of the respondent on May 27, 2011, and it was only thereafter i.e., on September 07, 2011, that the written statement was filed by the respondent. Therefore, the appellant had sufficient time i.e., at least 7 years, to amend its plaint and make appropriate pleadings regarding the loss of the original Power of Attorney dated July 16, 1996, and subsequent Power of Attorney dated November 30, 2004. However, the appellant did not choose to amend the plaint and make any assertion about the above-stated Power of Attorney. It is only for the first time the appellant filed the evidence by way of affidavit brought forth the story of the Power of Attorney dated November 30, 2004. In this regard, Mr. Chaudhri relied upon the judgment of the Supreme Court in the case of ***Biraji @ Brijraji & Anr. vs. Surya Pratap & Anr., Civil Appeal Nos. 4883-4884/2017***, wherein it was held that evidence cannot be led beyond the pleadings and in absence of pleadings, any amount of evidence will not help the party in the Civil Suit. Therefore, the stand of the appellant that Sanjiv Agrawal was authorised to file the suit through Power of Attorney dated November 30, 2004, is beyond the pleadings and thus cannot be considered.

44. He submitted that the issue pertaining to the claim of ₹4,26,045 towards complimentary tickets, has been wrongly decided by the Trial Court inasmuch as it failed to appreciate that the

appellant had failed to place on record any document. The entire basis of the claim of the appellant is the Minutes of the Meeting dated January 11, 2002, which was also not proved by the appellant.

45. As per the admission of Sanjiv Agrawal, he was not a part of the Meeting dated January 11, 2002. Mr. Chaudhri contended that as per the claim of the appellant, the meeting dated January 11, 2002, was attended on behalf of the appellant by its officers Sanjiv Takru DGM (F&A); R.K. Gupta and Ram Gupta Chartered Accountant of the appellant; Arvind Singh Assistant Manager (F&A); and Irshad Ahmad DGM (OPS). However, none of these officers were deposed as witnesses by the appellant, to prove the Minutes of the Meeting dated January 11, 2002. Mr. Chaudhri has referred to the judgment of the Supreme Court in the case of *Mehta Ravindrarai Ajitrai (deceased) vs. State of Gujarat, AIR 1989 SC 2051*, wherein it was held that personal knowledge is a must for proving any document. Moreover, reliance has also been placed on the judgment in the case of *Narbada Devi Gupta vs. Birendra Kumar Jaiswal and Ors., AIR 2004 SC 175*, wherein it was held that the execution of a document has to be proved by a person who can vouchsafe for the truth of the facts in issue. Therefore, since Sanjiv Agrawal was neither present in the meeting dated January 11, 2002, nor a signatory to the same and was not even with the appellant at the relevant time, he can neither be said to have personal knowledge nor can vouchsafe for the truth of the facts of the meeting dated January 11, 2002, and the subsequent events.

46. Mr. Chaudhri further submitted that Section 74 of the Indian Contract Act, 1872, stipulates that the party claiming damages must prove actual loss and damages, to get the sum stipulated in the agreement. In the present case, even if the Minutes of the meeting dated January 11, 2002, are treated as proved, the appellant was still bound to establish or prove the loss or damage to the extent of ₹4,26,045/- which it failed to do. In this regard, he relied upon the judgment in the case of **Narendra Singh Motilal Johary vs. Karamchand Premchand (P) Ltd., (1969) 10 GLR 584**, wherein it was held that simply because a sum is stipulated in the agreement as payable on the breach thereof, the appellant is not entitled to the entire sum *simpliciter* but has to prove actual damages. Reliance is also placed upon the judgment in the case of **Fateh Chand vs. Balkishan Das, AIR 1963 SC 1405**, wherein it was held that until and unless specific evidence is led to prove the loss suffered by the appellant, the compensation stipulated in the contract cannot be awarded.

47. According to Mr. Chaudhri, the reliance placed by Mr. Taneja during the course of the hearing on the judgment in the case of **Mahanagar Telephone Nigam Ltd. (supra)**, is also misplaced, as the decision in the said judgment was passed by relying upon the judgment of a Division Bench of this Court in the case of **Kingston Computers India Pvt. Ltd. vs. State Bank of Travancore, 153 (2008) DLT 239 (DB)**, which was assailed before the Supreme Court and has been set aside *vide* judgment dated February 22, 2011, titled **State Bank of Travancore (supra)**.

48. It is contended by Mr. Chaudhri that the appellant does not deserve any indulgence from this Court and the present appeal is liable to be dismissed, and the impugned judgment dated February 18, 2020, passed by the Trial Court, dismissing the suit, deserves to be upheld.

ANALYSIS

49. Having heard the learned counsel for the parties, the primary issue which arises for consideration is Issue No.1 framed by the Trial Court, i.e., whether the suit has been filed by a duly authorised person. The Trial Court noted the evidence of PW1, Sanjiv Agrawal, that the Power of Attorney dated July 16, 1996, on the basis of which the suit has been instituted has been lost and in view of the same, a new Power of Attorney dated November 30, 2004, was issued which was exhibited as PW1/A. On a perusal of the same wherein a reference has been made that the Board Meetings held on April 09, 1986 and June 15-16, 1987, had delegated certain powers to the Managing Director with the power to sub-delegate the same to any officer of the company. However, it has come in the cross-examination of Sanjiv Agrawal that the Minutes of the Board Meetings of April 09, 1986 or June 15-16 were not produced on record. In other words, Sanjiv Agrawal had failed to prove that he has been authorised to sign, verify and institute the suit. Hence, the suit was decided and the Issue No.1 was decided against the appellant which resulted in the dismissal of the suit.

50. I have seen the Minutes of the Board Meetings dated April 09, 1986, and June 15-16, 1987 which have been adduced as additional evidence before this Court, wherein the Board of Directors of the appellant company had delegated its powers in favour of the Managing Director, further conferring on him the power to sub-delegate any of the powers enjoyed by him or any officer of the corporation, if, in his opinion, such sub-delegation is necessary for the smooth operation of the company. A Power of Attorney was executed by the Managing Director on November 30, 2004 (Ex.PW-1/A) in favour of Sanjiv Agrawal, which authorised him to prosecute or defend all legal proceedings relating to or affecting any matters in which the appellant Company is interested or may be interested, and further, file suit of any value and if he deems fit, file criminal complaints or to refer to arbitration or contest judgments and decrees in such proceedings. The said Power of Attorney is reproduced as under:-

“This Power of Attorney is executed on this 30th day of November, 2004 by Shri Nagar V. Sridhar, Son of Late Shri Nagar Vaidyanathan Venkataraman, Chairman-cum- Managing Director (CMD) of M/s. Pawan Hans Helicopters Limited (A Government of India Enterprise) for & on behalf of said Company (hereinafter to be referred as the said Company) (& formerly known as Pawan Hans Limited) having its registered office at Safdarjung Airport, New Delhi-110 003.

Whereas the Board of Directors of Pawan Hans Helicopters Limited in their 6th Meeting held on 9.4.1986 delegated inter alia certain powers pertaining to legal matters to the Officer on Special Duty. The Board of Directors in their 11th Meeting on 15-16th June,

1987 substituted the word Officer on Special Duty by the word Managing Director and also authorised the Managing Director to sub delegate powers to any officer of the Company.

Now all men know by this Power of Attorney that I the above named Chairman & Managing Director of the Company in conformity of the aforesaid Delegatein /sub- delegation of powers to the Managing Director hereby sub-delegate the powers pertaining to legal matters so vested in me to Shri Sanjiv Agrawal, son of Shri G.K.Agrawal, resident of B-203, Narwana Apartments, 89, Patparganj, Delhi, Company Secretary and Deputy General Manager, of Pawan Hans Helicopters Limited, (A Government of India Enterprise), Safdarjung Airport, New Delhi-3 as true and lawful attorney of the Company in its name and on my behalf to do an execute and perform or caused to be done, executed and performed all or any of the following acts deeds and things:-

- 1) Initiate, prosecute or defend all legal proceedings relating to or affecting any matters in which the Company is interested or may be interested.
- 2) File suit of any value and, if he deems fit, file criminal complaint or to refer to arbitration or contest judgements and decrees in such proceedings as aforesaid.
- 3) Do or execute any or all of the following acts or things in connection with the aforesaid suit or proceedings;
 - a) to sign, verify and file plaint, written statement and affidavit;
 - b) to appear before Court as witness on behalf of the Company;
 - c) to make and present and file an application in connection with any proceedings in the suit;
 - d) to introduce summons, receive back documentary evidence, to deposit and withdraw any money for the purpose of any proceedings in

consultation with the Finance & Accounts Department, and to file an application for execution of a decree or order based on the said suit and sign and verify such application;

e) to receive any money due to Company under such decree, order and to certify payment to the court;

f) to apply for instruction pending settlements and records;

g) make necessary statements, compromise cases etc.

h) to obtain copies of documents and papers and generally to do all other lawful acts necessary for the conduct of the said case;

i) to execute and sign vakalatnamas, muktiarnamas, powers of attorney and other papers, representations and applications to be submitted to the Government and other bodies and any competent authority & court of law.

To do all other lawful acts and things in connection with the case as effectually as I could do the same if I were personally present. And all and whatever my said attorney shall lawfully do I do hereby agree to ratify and confirm in witnesses etc. sign sealed and delivered. Further the Power of attorney dated 16th July, 1996 issued in his favour, original of which is not traceable at present the acts performed under the said attorney till date shall be valid."

51. The above Power of Attorney clearly delegates the power in favour of Sanjiv Agrawal and also ratifies all and whatever the said attorney lawfully does. Further the Power of Attorney of November 30, 2004 also states that all acts performed by Sanjiv Agrawal under the Power of Attorney dated July 16, 1996 shall be valid. Hence, the

Power of Attorney dated November 30, 2004 (Ex.PW-1/A) is held to be validly executed.

52. Learned counsel for the respondent had relied upon the judgments in the case of *M/s. Nibro Ltd. (supra)* wherein the Court had held the question of authority to institute the suit on behalf of a company is not a technical matter, and has far-reaching effects. Thus, unless the power to institute a suit is specifically conferred on a particular Director, he has no authority to institute a suit on behalf of the company. Such a power can be conferred by the Board of Directors only by passing a resolution in that regard and the suit can be presented by an authorised person duly appointed by him for the purpose. This Court also observed that the authorisation in case of a company can be given only after a decision to institute a suit is taken by the Board of Directors of a company. The Board of Directors may in turn authorise a particular Director, Principal Officer, or a Secretary to institute a suit. In that case, this Court has observed that the appellant has not placed on record any resolution passed by the company authorising the person to institute the suit and thus, there is no evidence to prove that the person has the authority to institute the suit. Reliance has also been placed on the judgment in the case of *University of Kashmir (supra)*, wherein it was held that the signing and verification of plaint are different from filing the suit by a competent person.

53. There is no dispute that Sanjiv Agrawal being a Company Secretary is an authorised officer to sign and verify the plaint. I am unable to agree with the said submission of the counsel for the

respondent in view of the judgment of the Supreme Court in ***United Bank of India (supra)*** wherein in paragraph 11 to 13, the Court has held as under:-

11. The courts below could have held that Shri 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 Shri 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 and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri 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.

12. The courts below having come to a conclusion that money had been taken by Respondent 1 and that Respondent 2 and the husband of Respondent 3 had stood as guarantors and that the claim of the appellant was justified it will be a travesty of justice if the appellant is to be non-suited for a technical reason which does not go to the root of the matter. The suit did not suffer from any jurisdictional infirmity and the only defect which was alleged on behalf of the respondents was one which was curable.

13. The court had to be satisfied that Shri 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 Shri 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 Shri L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.”
(emphasis supplied)

54. The aforesaid judgment in **United Bank of India (supra)** has been followed by a Co-ordinate Bench of this Court in the case of **Mahanagar Telephone Nigam Ltd. (supra)**, wherein it was held as under:-

“5. Reference may also be made usefully to the judgment of the Supreme Court in the **United Bank of India v. Naresh Kumar & others** (1996) 6 SCC 660, in which, in para 13, it is said that there is a presumption of valid institution of a suit once the same is prosecuted for a number of years. This test as laid down by the Supreme Court is also satisfied in the present case inasmuch as the suit in fact has been prosecuted for about two years by the appellant corporation for seeking an appropriate decree against the respondent by adducing evidence.

I may note that the appellant is a public sector undertaking and not a private company where there would be disputes between two sets of shareholders claiming right to management and one set of shareholders are opposing another set of shareholders with respect to control and management of the company. This thus is an additional fact that there can be no dispute as to the authority of the person signing/verifying the pleadings and instituting the suit.”
(emphasis supplied)

55. On similar lines, a co-ordinate Bench of this Court in the case of **M/s. Sangat Printers Pvt. Ltd. v. M/s. Wimpy International Ltd.,**

2012 SCC OnLine 299, referring to the **State Bank of Travancore (supra)** has held in paragraph 5 as under:-

“5. Learned counsel for the respondent relied upon the judgment in the case of State Bank of Travancore v. Kingston computers (I) Pvt. Ltd. 2011 (3) Scale 33 to argue that it should be held that the suit was not validly instituted. The Supreme Court in the case of State Bank of Travancore (supra) has held that once there is no resolution which has been filed, then, because no resolution is filed, a person who claims to have instituted the suit, cannot be said to have validly instituted the suit, more so, because the person who claimed to have instituted the suit as a Director, did not file any proof that he was the Director of the Company. This judgment therefore has no application to facts of the case where the resolution was filed on record and also exhibited/proved thereafter. I must also mention that this judgment of the Supreme Court does not make reference to the earlier binding judgment in the case of United Bank of India (supra) and which goes to the extent of saying that the suits should not be dismissed on the technical grounds once the legal entity which files the case, contests the case to the hilt, i.e. till the stage of the final arguments.”

(emphasis supplied)

56. The Minutes of the Board Meetings of 1986 and 1987 delegating the powers of the Board of Directors to the Managing Director have been brought on record now as additional evidence which I have allowed while considering the application of the appellant in paragraph 7 above. The Power of Attorney dated November 30, 2004 executed by the Managing Director in favour of Sanjiv Agrawal apart from sub-delegating the powers conferred on the Managing Director in the said Board Meetings additionally states

that the acts performed under the Power of Attorney dated July 16, 1996 which could not be found, shall be deemed valid. Further, the affidavit of Ranjit Singh Chauhan, the current Company Secretary of the appellant, which has been taken on record as additional evidence, seeks to establish that the suit has been instituted through a duly authorised and competent person, i.e., Sanjiv Agrawal. Relevant part of the said affidavit reads as under:-

“I am placing on record this affidavit by way of additional evidence in support of the fact that the suit titled as Pawan Hans Helicopters Ltd. Vs. Nidheesh Tours and Travles Pvt. Ltd. CS 9467/2016 was instituted through a duly authorized and competent person...”

In view of these facts, it is clear that the appellant company has expressly ratified the action of Sanjiv Agrawal in instituting/filing the suit in 2002.

57. That apart, upon a perusal of the history of the present *lis*, it is also apparent that the appellant, a public sector enterprise has paid the Court Fee in full, has pursued the suit for 18 long years and has lead documentary as well as oral evidence in its name and the pleadings have been signed and verified by its Principal Officer, i.e., the Company Secretary. If that be so, it cannot be presumed that the suit was filed by Sanjiv Agrawal without authorisation of the appellant company. Therefore, there is also an implied ratification of the institution of the suit.

58. Even in ***Peerless General Finance and Investment Co. Ltd. (supra)***, a Coordinate Bench of this Court following the decision in ***United Bank of India (supra)*** was of the opinion that even in the

absence of Board Resolution authorising the person who filed the suit to do so, a subsequent ratification of such authority by the Board would justify the institution of the suit. The relevant portion of the judgment reads as under:

“30. It is apparent that in the meeting dated 22.02.1993, the institution of suits at Delhi against the plaintiff and against Bhasin Associates was discussed and a resolution was framed to authorize Sh. Ray to institute the two suits. The resolution was not however specifically passed. No reasons are forthcoming from the said minutes as to why the same was not passed/adopted. However, suits were instituted against Bhasin Associates [C.S. (OS) 2835/1998]] and against the defendant being the present suit, in which pleadings have been signed by Sh. P.P. Ray. The decision in United Bank of India case (supra) is to the effect that technicalities should not be permitted to defeat the substantive rights of parties and in a case where the pleadings have been signed by an officer of the corporation, the corporation can ratify the action of its officer in signing the pleadings. The board of directors of the plaintiff has in a subsequent meeting expressly recognized/ratified the authority of Sh. P.P. Ray to institute the present suit. I am of the view that the copy of the minutes of meeting dated 07.02.2006 can be permitted to be taken on record.

31. In my considered view, the defect is a merely technical one and not one of a nature which could not be cured. The resolution permitting Sh. P.P. Ray to institute the two suits was discussed though not passed but subsequently, his authority has been ratified by the board. The suit has thus been properly instituted. The issue is thus decided accordingly.”

59. At this stage, I may state that the counsel for the respondent had relied upon the judgment of the Supreme Court in the case of

State Bank of Travancore (supra) to contend that unless there is a specific resolution in favour of the Director of a Company, the Director would not be competent to institute/file a suit. The relevant paragraph of the judgment reads as under:-

“14. In our view, the judgment under challenge is liable to be set aside because the respondent had not produced any evidence to prove that Shri Ashok K. Shukla was appointed as a Director of the Company and a resolution was passed by the Board of Directors of the Company to file a suit against the appellant and authorised Shri Ashok K. Shukla to do so. The letter of authority issued by Shri Raj K. Shukla, who described himself as the Chief Executive Officer of the Company, was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to Shri Raj K. Shukla to authorise another person to file a suit on behalf of the Company.”

60. Suffice to state that the said judgment shall not be applicable in the case in hand inasmuch as in that case, it was not proved that Ashok Kumar Shukla, in whose favour the resolution was passed, was actually a Director of the Company. But in the case in hand, the designation of Sanjiv Agrawal as the Company Secretary was not under dispute before the Trial Court nor before this Court.

61. Mr. Chaudhri by relying upon the judgment of this Court in **M/s. Nibro Ltd. (supra)** has endeavored to establish the following:

- i. Order XXIX Rule 1 of the CPC only deals with signing and verification of pleadings and not with power / authority to institute the suit.

- ii. The question of authority to institute the suit on behalf of a company is not a technical and has far reaching effects.
- iii. Unless there is a specific delegation of power in favour of Sanjiv Agrawal to institute a suit he could not have done the same.

Suffice it to state, there is no dispute to the position of law as stated in *M/s. Nibro Ltd. (supra)*. However, from the bedrock of the law enunciated by the Supreme Court in *United Bank of India (supra)* and by this Court in *Mahanagar Telephone Nigam Ltd. (supra)*, *M/s. Sangat Printers Pvt. Ltd. (supra)* and *Peerless General Finance and Investment Co. Ltd. (supra)*, which I have already reproduced above, and in view of the Power of Attorney dated November 30, 2004, which is now supported and proved by the Minutes of the Board Meetings of April 09, 1986 and June 15-16, 1987, that have been taken on record as additional evidence, it must be held that the institution of the suit in 2002 by Sanjiv Agrawal is proper and justified.

62. Though the argument of Mr. Chaudhri is that the judgment in *United Bank of India (supra)* is only applicable to signing and verifying the pleadings and its subsequent ratification, I am of the view that the said judgment, which has become a *locus classicus* must not be interpreted so narrowly. What flows from the said judgment is that technicalities and procedural defects, which do not go to the root of the matter, should not be permitted to defeat a just cause, more so in cases where suits are initiated or defended on

behalf of public corporations. This is clear from paragraph 9 of the judgment which is reproduced below:

“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.”

63. One of the submissions of Mr. Chaudhri was that Sanjiv Agrawal was not in employment of the appellant from March 2002 to May 2003, and as such he could not have filed the suit. He has duly relied upon the cross-examination of Sanjiv Agrawal who appeared as PW-1 in the suit, wherein, according to Mr. Chaudhri, Mr. Agrawal has stated that he had not been working with the appellant for the period 2002 to 2003. He has also relied upon statement made by Sanjiv Agrawal in the proceedings regarding criminal complaints under Section 138 of NI Act wherein Mr. Agrawal had stated that he was not in employment of the appellant between March 2002 to May 2003, which according to Mr. Chaudhri means that Sanjiv Agrawal was not employed with the appellant on April 2, 2002, which according to him, is the date of institution of the suit. It may be stated that Mr. Chaudhri has in his submissions before the Court stated that though the date of institution of the suit has been

mentioned as April 02, 2002 in the impugned judgment, the suit was filed around March 15, 2002.

64. The question now is whether the statement of Mr. Sanjiv Agrawal that he was not in employment of appellant between March, 2002 to May, 2003 must be construed to mean that on the date of institution of the suit he was not in the employment of the appellant and he could not have filed the suit. The answer has to be in the negative for the reason that mere showing that he was not employed with the appellant from March, 2002 to May, 2003 without the respondent/defendant seeking a further clarification from Sanjiv Agrawal by putting to him the date of his actual leaving the appellant's employment, it cannot be said that he was not in employment of the appellant when the suit was filed. It is the case of the appellant that Sanjiv Agrawal was working with the appellant till March 20, 2002. The respondent has failed to satisfy this Court to the contrary.

65. In fact, I find the suit was filed before the Trial Court on March 06, 2002. Even the affidavit of Mr. Sanjiv Agrawal demonstrates that the same was signed on March 06, 2002. The matter was listed before the Trial Court for the first time on March 30, 2002. Hence, it is apparent that the suit was filed on March 06, 2002 i.e., much before March 20, 2002 when Sanjiv Agrawal had left the appellant company.

66. In so far as Issue No.2 as framed by the Trial Court is concerned, the case of the appellant was that free tickets were to be availed by the Shrine Board on the basis of authorisation slips issued

by it. However, the respondent started issuing complimentary passes without any authorisation either from the appellant or the Shrine Board and did not give statements of tickets to the appellant. Though the contention of the respondent was that no authorisation slips were being issued by the Shrine Board and that even the agreement dated April 6, 2000, i.e., Ex.PW1/B does not deal with the issuance of authorisation slips, the Trial Court rejected this contention finding that the issuance of authorisation for the purpose of complimentary tickets has been admitted by the respondent in its written statement wherein it was stated that authorisation slips of the Shrine Board were handed over by passengers directly to the pilot of the helicopter. Further, it had come in the evidence of PW1 Sanjiv Agrawal that the respondent company was required to provide a list of passengers on daily basis, which it failed to do and instead started raising disputes regarding their liability. Accordingly, a meeting was held between the representatives of the parties on January 11, 2002 wherein the respondent agreed to submit the authorisation slips against complementary tickets by January 31, 2002, failing which it agreed to pay ₹4,26,045/- against the complementary tickets. PW1 Sanjiv Agrawal produced on record the Minutes of the said meeting as PW1/D. Relevant part of which is reproduced hereunder:-

“1. The CA's at Jammu office have pointed out time and again that complementary passengers have been noticed on the Board without any proper authorization/complimentary slips from the appropriate authorities Such complimentary tickets works out to Rs.4,26,045/-. The Agent has clarified that he shall be submitting the authorization slips duly signed by the

concerned authorities within a period of 20 days, i.e. latest by 31 Jan. 2002 failing which the said amount can be debited to his account.”

67. The Trial Court found that the respondent in its written statement had admitted that the meeting was held on January 11, 2002 and that it had participated in the same while taking up a defence that DW1, Capt. Murti Gupta was forced to sign the Minutes of the meeting dated January 11, 2002. However in his cross-examination, DW1, Capt. Murti Gupta while admitting that the meeting had taken place on January 11, 2002, denied having signed the Minutes of the said meeting. The Trial Court was of the view of the denial of DW1, Capt. Murti Gupta regarding signing the Minutes of the meeting dated January 11, 2002 is nothing but an afterthought as he had not disputed signing the Minutes in the written statement or even when the Minutes of the meeting were tendered in evidence by PW1 Sanjiv Agrawal, wherein his defence was that he was forced to sign the document. Further the Trial Court found that apart from DW1, Capt. Murti Gupta one O.P. Garg, Chartered Accountant of the respondent Company had also participated in the said meeting and had signed the same. The respondent could have examined O.P. Garg, Chartered Accountant who would have been their best witness to conclusively prove the forceful signing / non-signing of the Minutes of the meeting dated January 11, 2002 by DW1, Capt. Murti Gupta. In not doing so, the Trial Court held that an adverse inference is required to be drawn against the respondent under Section 114 of the Indian Evidence Act, 1872 that in case O.P. Garg was examined

in this case, he would not have supported the defence of the respondent. Further, the respondent had raised another contention that it is apparent to the naked eye that the signature of DW1, Capt. Murti Gupta appearing in all three pages of the Minutes of the meeting dated January 11, 2002, i.e. Ex.PW1/D are different which supports the defence of the respondent that DW1, Capt. Murti Gupta was forced to sign the document. The Trial Court rejected this contention stating that it was never the defence of DW1, Capt. Murti Gupta right from the filing of the written statement till the defence evidence that he had not signed on all the pages of the Minutes of the meeting dated January 11, 2002, Ex.PW1/D. Even throughout the trial the defence of DW1, Capt. Murti Gupta was that his signatures were obtained forcefully and not that he had not signed on all the pages of the document. The Trial Court held that since DW1, Capt. Murti Gupta had not disputed signing of the minutes dated January 11, 2002, i.e., Ex.PW1/D, there was no occasion for the Trial Court to compare signatures of DW1, Capt. Murti Gupta, though on the first two pages of the Minutes of the meeting dated January 11, 2002 Ex.PW1/D, the signatures of DW1, Capt. Murti Gupta are different from what is seen on the last page of the said document. The Trial Court opined that on the first two pages DW1, Capt. Murti Gupta could have put his short initials, whereas on the last page he might put his signature. Therefore, the Trial Court held that the respondent had failed to prove that the Minutes of the meeting dated January 11, 2002. i.e., Ex.PW1/D was made to be signed by DW1, Capt. Murti Gupta forcefully and as such concluded that Ex.PW1/D stood proved.

68. The contention advanced on behalf of the appellant company before the Trial Court and even by Mr. Chaudhri before this Court is that as Sanjiv Agrawal had not participated in the meeting of January 11, 2002 and he had no personal knowledge of the proceedings and could not have vouched for the same. It was also averred that none of the persons who were present in the meeting had deposed as witnesses. The Trial Court has held the Minutes of the said meeting have been proved in view of the signature affixed on the same by DW1, Capt. Murti Gupta. Once the document was proved on record, the appellant was discharged from proving the same by deposing any of the witnesses who were present in the said meeting.

69. The Trial Court found that in the Minutes of the meeting dated January 11, 2002 exhibited as Ex.PW1/D which was now proved on record, it was stated that the respondent Company through DW1, Capt. Murti Gupta has admitted its liability to pay ₹4,26,045/- on account of complementary tickets if it failed to provide authorisation slips duly signed by the authorities by January 31, 2002. It held that as the authorisation slips were not provided by the respondent by January 31, 2002 and no evidence to the contrary was led on record by the respondent, the respondent was liable to pay the amount of ₹4,26,045/- to the appellant, and decided issue No.2 in favour of the appellant. The Trial Court rejected the contention of the DW1, Capt. Murti Gupta that he was forced to sign the Minutes of the said meeting dated January 11, 2002. The argument of Mr. Chaudhri with regard to Issue No.2 is that the appellant has failed to establish/prove the loss or damage to the extent of ₹4,26,045/- in order for it to claim

the said amount. In other words, his contention is that the appellant needs to prove the actual damages caused to it, for being entitled to any relief. The submission of Mr. Chaudhri is not impressive for the reason that the Minutes of the meeting between the parties dated January 11, 2002, i.e., Ex. PW1/D, which has been held to be proved by the Trial Court, conclusively demonstrate that the respondent through its representative Capt. Murti Gupta, who was examined as DW1, had admitted that the cost of the complimentary tickets work out to ₹4,26,045/- and further stated that he would produce the authorization slips for the tickets by January 31, 2002, failing which the said amount could be debited to his account. There is no dispute to the fact that the respondent has failed to produce the authorization slips by the date stipulated. In any case, in the present matter, the amount of ₹ 4,26,045/- is admittedly the cost of the complimentary tickets, as is clear from the minutes of the Meeting dated January 31, 2002, relevant part of which I have already reproduced in paragraph 63 above. If that be so, the appellant is ipso facto entitled to ₹4,26,045/- from the respondent. Much reliance has been placed by the learned counsel for the respondent on the judgments in *Fateh Chand (supra)* and *Narendra Singh Motilal Johary (supra)* to contend that the appellant needs to prove the actual damages caused in order for it to be entitled to ₹4,26,045/-. In the said judgments, the Supreme Court and the Gujarat High Court respectively were dealing with cases where the contract contained stipulations by way of penalty, and not where the cost of a particular article was specified to be paid. As such, the judgments are distinguishable in the facts of this

case. In view of the express acknowledgement of the exact liability made by the representative of the respondent in the meeting dated January 11, 2002, and the Minutes of the meeting having been proved as Ex.PW-1/D, this contention of Mr. Chaudhri also needs to be rejected.

70. As for Issue No.3, the Trial Court having decided Issue No.2 in favour of the appellant, thereby acknowledging the entitlement of the appellant to ₹4,26,045/- the issue which remained was whether the respondent is liable to pay an interest of ₹6,73,655/- to the appellant. The case of the appellant before the Trial Court was that due the withholding of legitimate dues of the appellant company, the respondent was liable to pay an interest of ₹6,73,655/- till January 11, 2002. The appellant relied upon the Minutes of the meeting dated January 11, 2002 (Ex.PW1/D). The respondent contended that the appellant has failed to prove its entitlement to the said amount as the rate of interest and the amount on which the interest was charged and the period for which the interest was claimed was not deposed by PW1 Sanjiv Agrawal. The Trial Court agreed with the contention of the respondent and held that PW1 Sanjiv Agrawal was not able to specifically state the rate of interest, the amount on which the interest was charged and the period for which it was claimed. Further, it found that even the agreement dated April 6, 2000, i.e., Ex. PW1/B does not mention any specific rate of interest to be charged in case of delayed payment. The Minutes of the meeting dated January 11, 2002, i.e., Ex.PW1/D states that the Chartered Accountant of the appellant company had pointed out that the respondent was liable to

pay interest of ₹6,73,655/- on account of delayed payment. However, no such calculation made by the Chartered Accountant was brought on record. The Court further found that in the Minutes of the meeting dated January 11, 2002, DW1, Capt. Murti Gupta has nowhere admitted his liability to pay the said amount. Though, PW1 Sanjiv Agrawal stated in cross-examination that one instance whereby six months delay was caused in making payment of ₹29,61,738/- and vaguely deposed regarding other delays. The Court was of the view that even if the evidence of PW-1 Sanjiv Agrawal is presumed to be correct, delay of six months in payment of ₹29,61,738/- will not fetch an interest of ₹6,73,655/-. The Trial Court therefore, held that the appellant company has failed to prove its entitlement to interest of ₹6,73,655/- and accordingly decided issue No.3 in favour of the respondent and against the appellant.

71. Now coming to Issue Nos.4 and 5, which were taken up together by the Trial Court for disposal, the Court observed that the appellant had filed the suit for recovery of ₹11,60,569/-. As per the case set up by the appellant, the total amount due towards the respondent was ₹41,60,569/-, out of which ₹30,60,869/- was on account of sale of tickets, ₹4,26,045/- was on account of unauthorised use of complementary tickets and ₹6,73,655/- was on account of interest. As a Bank Guarantee of ₹30,00,000/- already stood encashed, the amount of sale of tickets stood adjusted except for ₹60,869/-. Having already decided that the appellant is entitled to ₹4,26,045/- and that the appellant is not entitled to the interest of ₹6,73,655/-, the Trial Court held that the appellant is entitled to

₹4,86,914/-, i.e., ₹4,26,045/- plus ₹60,869/- as per document dated January 11, 2002, i.e., Ex.PW1/D. The Court rejected the contention of the appellant that an interest of 18% per annum need to be granted, as the same was not supported by any agreement between the parties and while exercising its discretion under Section 34 of CPC, granted interest @ 9% per annum on ₹4,86,914/- from the date of filing of the suit till its payment and as such decided issue Nos. 4 and 5 in favour of the appellant.

72. In view of the foregoing discussion, and as the other judgments cited by the learned counsel for the respondent would not come to the aid of the respondent, the Issue No.1 as framed by the Trial Court is decided in favour of the appellant. Insofar as the other issues are concerned, I am in agreement with the reasoned conclusions arrived at by the Trial Court. Issue Nos. 2, 4 and 5 are also decided in favour of the appellant. Issue No. 3 is decided in favour of the respondent.

73. Accordingly, this appeal is accepted. The impugned judgment/decreed dated February 18, 2020 is set aside to the extent of Issue No.1. The suit is decreed in favour of the appellant/plaintiff in terms of the above. Decree sheet be drawn accordingly.

74. No costs.

V. KAMESWAR RAO, J

MARCH 13, 2023/ds