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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 16.08.2024

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RFA(COMM) 181/2023 & CM APPL. 44098/2023**PADAMSHREE CREATION PVT LTD**

.....Appellant

Through: Mr Praveen Maheshwari, Adv.

versus

SHEETAL SAREES AND ANR

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM No.44098/2023**

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment and decree dated 05.06.2023. *Via* the impugned judgment, the learned trial court has dismissed the suit preferred by the appellant/plaintiff for recovery of Rs.11,68,942/-, along with interest amounting to Rs.5,61,092/- calculated at the rate of 0.05% per day, commencing from 01.04.2018 till the date of institution of the suit.

3. In all, the appellant/plaintiff claimed recovery of Rs.17,30,034/- against the goods supplied to the respondent no.1/defendant no.1.



4. The record discloses that although the respondents/defendants in the suit were served, they did not enter appearance and hence they were proceeded *ex parte* on 08.04.2022.

4.1 Consequently, the appellant/plaintiff tendered *ex parte* evidence to establish its case.

5. The trial court, however, dismissed the suit on the ground that the resolution of the Board of Directors [Ex.PW1/3] did not bear the name of the director, i.e., the authorised representative of the appellant/plaintiff.

6. To be noted, one, Mr Madan Kumar Jindal [PW-1] had filed his affidavit-of-evidence, wherein he had indicated that he is the director of the appellant/plaintiff-company.

6.1 The resolution passed by the Board of Directors [Ex.PW1/3] conferred the authorisation on one, Mr Mohan Kumar Jindal.

6.2 This error, according to the appellant/plaintiff, led to the dismissal of the suit.

7. In our opinion, the learned trial court has lost sight of the fact that in the instant case, the doctrine of ratification would apply.

8. Although an error had crept in the resolution passed by the Board of Directors concerning the name of the director of the appellant/plaintiff-company, the fact that the appellant/plaintiff was pursuing the suit proceedings through its director, who is its authorised representative, should have led to the conclusion that the suit was viable.

9. The following observations in the judgment rendered by the Supreme Court in ***United Bank of India vs Naresh Kumar and Ors*** (1996) 6 SCC 660



being apposite, are extracted hereafter:

“ 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 dehors 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.

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.”

10. The trial court could have asked the appellant/plaintiff to correct the error even at the stage of evidence since, in any event, the respondents/defendants have been proceeded *ex parte*.
11. The record discloses that notice in this appeal was issued by a coordinate bench on 27.09.2023.
12. Despite service of notice, the respondents/defendants have chosen not to enter appearance. Though we had deferred passing adverse orders against the respondents/defendants on 14.03.2024, we are of the view that the respondents/defendants do not seem to be interested in defending the appeal.
13. Thus, the impugned judgment is set aside. The suit is restored to its original number and position.
14. The appellant/plaintiff will appear before the trial court through its authorised representative/counsel on 17.09.2024.
15. The trial court will take next steps in the matter as per law. The trial court will grant an opportunity to the appellant/plaintiff to place the correct Board of Directors’ resolution on its record.
16. The appeal is disposed of in the aforesaid terms.



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17. The Registry will dispatch a copy of the judgment passed today to the respondents/defendants at the address given in the memo of parties.
18. The parties will act based on the digitally signed copy of the judgment.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 16, 2024/aj

Signature Not Verified

Digitally Signed
By: ATUL JAIN
Signing Date: 27.08.2024
22:07:36

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