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HIGH COURT OF CHHATTISGARH AT BILASPUR

PAWAN KUMAR JHA
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First Appeal No. 531 of 2019

Reserved on: 28.09.2026

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- Jai Balaji Industries Ltd. Through General Manger And Authorized Signatory Shri Sudhir Joshi, Borai Industrial Growth Center, Village And P. O. Rasmada, Durg District Durg Chhattisgarh, Registred Office- 5-Benteck First Floor Kolkata West Bengal, District : Kolkata, West Bengal

... Appellant/ Defendant

versus

- Nemichand Naher S/o Late Chunni Lal Naher Aged About 80 Years Managing Director, Durg Roadways Private Limited, Near Bus Stand, G. E. Road, Durg, District Durg Chhattisgarh, District : Durg, Chhattisgarh

... Respondent/ Plaintiff

For Appellant	: Mr. Ankit Pandey, Advocate with Ms. Rakhi Chaturvedi, Advocate
For Respondent	: Mr. Ashish Surana, Advocate

Division Bench

Hon'ble Shri Parth Prateem Sahu, Judge

Hon'ble Smt. Sushma Sawant, Judge

C.A.V. JUDGMENT

***Per* Parth Prateem Sahu, J.**

1. This appeal under Section 96 of the Code of Civil Procedure, 1908 is filed by appellant, who was defendant in the suit, questioning the legality and sustainability of the impugned judgment and decree passed in Civil Suit No. 06-B/2017 dated 30.10.2019 by learned First Additional District Judge, Durg, District Durg (C.G.), whereby the suit filed by respondent/ plaintiff

was decreed in part, and held the plaintiff to be entitled to recover ₹22,20,512/- from the defendant along with interest @ of 9% per annum from the date of institution of the suit, i.e., 13.02.2017, until realization.

2. For the sake of convenience, parties shall hereinafter be referred to as per their status and ranking before the trial Court.

3. The case of plaintiff, as pleaded before the trial Court, is that he is the Managing Director of Durg Roadways Private Limited, a company engaged in the operation of passenger buses and providing, related services. The defendant company operates an industrial plant at Industrial Area, Rasmada, District Durg, Chhattisgarh, and has its head office at Kolkata, West Bengal. It is pleaded by the plaintiff, that the defendant required buses for the transportation of its employees and staff and, accordingly, approached the company of plaintiff . After an agreement, a work order dated 14.08.2013 was issued for providing two buses on hire at a monthly rent of ₹1,50,000/-. The agreed terms also provided for the supply of 3,500 litres of diesel per month, in addition to the monthly rent, and payment against bills within one month through an account-payee cheque. The contractual period was from 16.08.2013 to 15.08.2015, with a provision for extension by mutual written consent. The plaintiff further claimed that the defendant had deposited a sum of ₹1,00,000/- as security. Plaintiff further pleaded that, pursuant to the aforesaid agreement, two buses were provided to the defendant. However, the defendant failed to pay the monthly hire charges regularly. On being approached for payment, defendant assured the plaintiff that the outstanding amount would be paid in a lump sum upon termination of the agreement. According to the plaintiff, a total sum of ₹37,74,766/- had become payable by the defendant up to 31.08.2016, against which only ₹13,79,488/- had been paid, leaving an outstanding amount of ₹23,95,278/-. The plaintiff further claimed entitlement to the security deposit of ₹1,00,000/-, thereby raising the total

claim to ₹24,95,278/-. As the defendant failed to clear the outstanding dues, the plaintiff issued a legal notice dated 19.09.2016 to the defendant at its Rasmada unit as well as its head office at Kolkata. Despite service of the notice, the defendant neither replied to it nor paid the outstanding amount. Consequently, the plaintiff instituted the suit seeking recovery of ₹24,95,278/- along with interest.

4. The defendant filed its written statement, denying the material averments made in the plaint. It was pleaded that no agreement had ever been executed between the plaintiff, Nemi Chand Nahar, in his individual capacity, and the defendant company. The defendant denied having approached the plaintiff for transportation of its employees, having entered into any contractual arrangement with him, or having received any buses from him. It also denied having paid any security deposit to the plaintiff or having any outstanding liability towards him. The defendant further contended that the alleged agreement had not been produced before the Court and that the plaintiff had no locus standi to institute the suit in his individual capacity.

5. The plaintiff examined himself as PW-1 and relied upon the work order dated 14.08.2013 (Exhibit P-1), legal notice (Exhibit P-2), postal receipts (Exhibits P-3 and P-4), and acknowledgments (Exhibits P-5 and P-6). During cross-examination, he admitted that the formal agreement had not been produced and that the work order and bills pertained to Durg Roadways Private Limited, of which he was the Managing Director.

6. The defendant examined Sudhir Joshi as DW-1, who stated that he was working as the General Manager of the defendant's Durg unit and had been authorised by a resolution dated 30.05.2017 to represent the defendant in the proceedings. He denied that the defendant had entered

into any contract with the plaintiff or issued any work order to him for the transportation of its employees. He also denied the defendant's liability to pay any amount to the plaintiff. However, During cross-examination, he admitted that he had joined the defendant company on 16.01.2016 and was unable to state about the contractual dealings between the defendant company and Durg Roadways Private Limited prior to his joining without examining the relevant documents. He also admitted receipt of the legal notice dated 19.09.2016 and non-production of the company's bank statement, but denied that the defendant had paid ₹13,79,488/- to the plaintiff by cheque and also denied any outstanding liability towards the plaintiff.

7. On the basis of pleadings of the parties and evidence, learned Trial Court has framed as many as six issues for consideration and upon appreciation of the documentary and oral evidence brought on record by the respective parties, partly decreed the suit filed by plaintiff by impugned judgment and decree for ₹22,20,512/- with simple interest at 9% per annum from 13.02.2017 until payment and directed the defendant to satisfy the decree within two months, along with the costs of the suit.

8. Learned trial Court held that work order Exhibit P-1, issued on the letterhead of defendant's company and bearing the signature of its General Manager, established the commercial transaction between the parties. It observed that the defendant had failed to satisfactorily explain the issuance of the work order or effectively rebut the plaintiff's evidence. The non-production of the formal agreement was, therefore, not considered sufficient to disbelieve the transaction. Learned trial Court, however, held that the plaintiff had failed to prove any extension of the contractual period beyond 15.08.2015, as no document evidencing such extension by mutual written consent had been produced. It accordingly restricted the claim to

the original alleged contractual period of two years, during which the hire charges at ₹1,50,000/- per month amounted to ₹36,00,000/-. After deducting the amount of ₹13,79,488/- already paid, the trial Court determined the outstanding amount at ₹22,20,512/-. It disallowed the claim of ₹1,00,000/- towards security deposit, holding that neither Exhibit P-1 nor any other documentary evidence established payment of such deposit.

9. Learned counsel for appellant/defendant would submit that learned trial court erred in decreeing the suit filed by respondent/plaintiff only on the basis of presumption and surmises. The factual pleading made in the plaint is not proved by plaintiff as required under the law. In the plaint, plaintiff has pleaded that there was a written agreement between the parties for engaging two buses of the plaintiff for carrying employees and staff of the defendant. Plaintiff had not filed the said agreement before the trial Court and proved in evidence by accepting the same and therefore the said fact remained unproved. He also contended that the document Ext. P-1 stated to be the work order remained unproved, more so when the fact of execution of any work order is denied in the written statement. There is no pleading as to when who (in person) executed document Ext. P-1. The trial Court only on the basis of Ext. P-1 has presumed that the plaintiff has proved its case. He next contended that the suit itself is not maintainable as the plaintiff has filed the suit in the personal capacity. Plaintiff has not filed any document to show that the he was authorized by the company to file the suit, and on the above grounds he contended that the impugned judgment and decree passed by the trial Court be set aside. In support of his contention, he placed reliance upon the decision in cases of **Punjab Urban Planning & Development Authority vs. Shiv Sarswati Iron & Steel Re-rolling Mills** reported in **(1998) 4 SCC 539, Chandradhar Goswami and others vs. Gauhati Bank Ltd.** reported in **AIR 1967 SC 1058, Habeeb Bhai vs. K.K. Choudhari** reported in **2007 (1) CGLJ 86,**

Gurmail Singh vs. Balbir Singh reported in **(1998) 118 PLR 443, Kishanlal vs. Kistoori** reported in **(1985) 1 WLN 381, Ms/ Rajghria Paper Mills Ltd. vs. General Manager, Indian Security Press** reported in **AIR 2000 DEL 239, Al-Amin Seatrans Ltd. vs. Owners and Party interested in Vessel M-V- Loyal Bird** reported in **AIR 1995 CAL 169, Smt. Nirmalabai D. Kale vs. Madan Balaji Ratan** reported in **AIR 2009 BOM 69** and **State Bank of Travancore vs. Kingston Computers India Pvt. Ltd.** reported in **(2011) 11 SCC 524.**

10. Learned counsel for the respondent/ plaintiff would vehemently oppose the submission of learned counsel for appellant/defendant, supports the impugned judgment and decree and would further submit that the learned trial Court, upon proper appreciation of the oral and documentary evidence available on record, has rightly passed the impugned judgment and decree which does not call for any interference. He contended that under Order 29 Rule 1 CPC, plaintiff being a Managing Director of the company is competent to file a suit and he has verified the pleadings made in the suit and had signed. He also contended that the plaintiff during pendency of suit has filed an application under Order 7 Rule 14 CPC for production of additional documents on record which is annual resolution of the company and therefore the plaintiff was having appropriate authorization to file the suit. In support of his contention, he placed reliance upon the decision of Hon'ble Supreme Court in the case of **Bhupesh Rathod v. Dayashankar Prasad Chaurasia**, reported in **(2022) 2 SCC 355, United Bank Of India v. Sh. Naresh Kumar and Ors.** reported in **1996 (6) SCC 660** and **Bank of India v. S.K. Mukherjee and Ors.** reported in **2006(1) MPLJ 477.**

11. We have heard learned counsel for the parties and also perused the record of the trial court available before this Court.

12. Perusal of pleadings made in the plaint would show that a suit is filed pleading therein that the defendant company was in requirement of two buses for transportation of their employees and staff and in that regard defendant contacted the plaintiff company and thereafter an agreement was executed between the parties on 14.08.2013. In the pleadings there is further mentioned that as per agreement the defendant is to pay ₹ 1,50,000 per month towards the buses and the defendant company deposited ₹ 1,00,000 as security deposit. The agreement was initially for a period of two years from 16.08.2013 to 15.08.2015, it was further extended, however, the agreed rent towards the two buses has not been regularly paid and it became due to ₹ 37,74,766/- till 31.08.2016 but the defendant company had paid ₹ 13,79,488/- and the remaining amount due to recover as ₹ 23,95,278/-. It is also pleaded that amount of ₹ 1,00,000/- paid towards security deposit is also to be recovered which makes the total amount due to recover as ₹ 24,95,278/-.

13. To prove the pleadings, plaintiff examined himself as PW-1. In examination-in-chief which is filed in the form of affidavit under Order XVIII Rule 4 CPC. He categorically stated that there was an agreement executed between the parties on 14.08.2013. In cross-examination, in para-9, he admitted that he has not produced the agreement dated 14.08.2013 and further made statement that he was not handed over the agreement but the work order.

14. From the pleadings made in the plaint, it is apparent that buses were hired on rent by the defendant from a company and therefore if agreement was executed between the two companies than one copy of the agreement would be in possession of each of the companies/ parties but the plaintiff had not produced the copy of agreement which is the basis of entering into the commercial relationship between the two.

15. It is settled law that merely pleadings made in the plaint about execution of document only on the basis of oral evidence cannot take place as proof of the fact of execution of the document until and unless it is produced before the Court in support of the pleadings and proved by the witnesses as required under law. In absence of the agreement before the Court, in the opinion of this Court, pleadings only to prove that there was written agreement between the parties as pleaded in the plaint when the defendant has denied execution of such agreement between them cannot be sustainable. Hon'ble Supreme Court in **U.P. State Electricity Board v. Aziz Ahmad** reported in **(2009) 2 SCC 606** has held as under:-

> "**20.** Being conscious of the aforesaid legal position we are of the considered opinion that the learned Industrial Tribunal committed a manifest error of law and of fact, initially by placing the burden on the employer to prove and establish the job requirements of the said three posts, and thereafter, again committed an error in coming to the conclusion that the posts are identical on the basis of the pleadings of the parties alone. Pleadings are required to be proved and so long evidence is not led in support of the pleadings, no reliance can be placed only on the pleadings without there being any cogent evidence in support of the pleadings. Pleadings are required to be proved by leading evidence. The Tribunal expressly stated in its findings that none of the parties have filed any objective data in regard to the work assessment of the posts of boiler overhauling mechanic, boiler mistry or fitter. In the absence of such evidence, the Tribunal was not justified in coming to a conclusion that the nature, duties and responsibilities of the three posts are identical and similar."

16. In the plaint, there is pleading that the plaintiff had paid ₹ 1,00,000/- to the defendant towards security deposit, however, in the plaint there is no pleading as to by what mode the said amount has been paid by plaintiff. As per pleadings, the agreement was with Durg Roadways Pvt. Ltd. and when any amount of such high value is to be paid then it is to be paid through bank transaction only which is not a case of plaintiff. Even the plaintiff has

not produced any document like cash book, ledger showing the entry made in the books of account of making payment of huge amount of ₹ 1,00,000/- to defendant. The burden of proof was upon the plaintiff. In absence of proof, the said pleading and stand taken by the plaintiff in its plaint fails.

17. It is settled law that the plaintiff has to stand on his own legs and cannot take advantage of the weakness of the defendant. In this regard, we take support of the decision of Hon'ble Supreme Court in the case of **Shiv Sarswati Iron & Steel Re-rolling Mills (supra)**, wherein Hon'ble Supreme Court observed that "*The whole evidence of PW 1 has also not been placed before us. We are of the view that the lower appellate court was quite justified in observing that the appellant-Board, for reasons best known to it, had not placed all materials and no effort has been made to explain what according to business terminology was meant by supply of the steel weight to weight. We cannot take exception to the conclusion taken as above by the lower appellate court. The plaintiff/appellant must succeed or fail on his own case and cannot take advantage of weakness in the defendant/respondent's case to get a decree.*"

18. Plaintiff has not pleaded about issuance of work order, however, during the course of proceeding, had produced document Ext. P-1 in the letter head of defendant about Scope, Charges and General terms and conditions for hiring of buses for the staff. Neither in the pleadings nor in the evidence plaintiff had made specific statement that as to who is signatory of the document, by name, and with whom there was an agreement between the parties.

19. To prove the contents of document, there must be specific admissible evidence towards the contents of the documents. It is also to be proved if not, who is the author of the document but who is signatory of the document to identify that whether he was actually holding post and

capable. There is no such specific averment made by the plaintiff in the plaint or his evidence.

20. Merely accepting any document during course of recording of evidence will not in itself would be proof of the contents of document including that the said document is executed or signed by a particular person, authority or the party. This fact is required to be specifically pleaded and stated in the evidence which in this case plaintiff failed to do so. Hon'ble Supreme Court in **LIC v. Ram Pal Singh Bisen**, reported in **(2010) 4 SCC 491** has observed thus:

> "**25.** We are of the firm opinion that mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law.
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> x x x x
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> **31.** Under the law of evidence also, it is necessary that contents of documents are required to be proved either by primary or by secondary evidence. At the most, admission of documents may amount to admission of contents but not its truth. Documents having not been produced and marked as required under the Evidence Act cannot be relied upon by the court. Contents of the document cannot be proved by merely filing in a court.

21. Perusal of Ext.P-1 filed by plaintiff in support of his case in evidence is a document written under letter head of defendant/ appellant company addressed to Durg Roadways Private Limited. It is signed only by one person. Plaintiff who is examined as PW-1 is neither signatory nor party to the said document and therefore the contents of document under signature made therein is of an authorized person of defendant/ appellant company is not proved. Neither the plaintiff in his evidence nor in pleading has specified name of signatory to the document so as to prove that the document alleged to be executed by the defendant/ appellant company is

under the signature of the authorized person. In absence of such evidence, execution of document Ext. P-1 by the defendant/ appellant company is not proved. In the pleading also, plaintiff has not made specific pleading as to who issued such document by name.

22. For the foregoing, in our considered view, plaintiff failed to prove execution of the document by the defendant/ appellant company.

23. In the plaint, the case of plaintiff is for recovery of the amount on the ground that he being the Managing Director of the company running buses had engaged two of his buses for carrying employees and staff of the defendant company but in the pleadings there is no specific mention of number of buses which were engaged by the plaintiff pursuant to Ext. P-1. Under the Motor Vehicles Act, 1988, if the commercial vehicle is engaged for particular means of transportation then it requires specific permit in that regard, to be issued by the competent authority of the Transport Department.

24. In the facts of he case, when the commercial vehicle has been given on hire to the defendant under agreed rate on hire as pleaded and stated by plaintiff for commercial use, then the plaintiff was under obligation to plead material facts in the pleadings, as envisaged under Order VI Rule 2 of CPC and further the plaintiff is also required to prove engagement of buses by showing requisite permit and document of the buses of which particulars are also to be pleaded in the plaint. During recording of its statement/ evidence before the trial Court, particulars of the buses is not stated nor any document has been produced in evidence to show that the particular buses have been engaged for such work.

25. In above facts of the case, this Court of the view that plaintiff failed to prove that two buses as pleaded have been engaged for carrying staff and

employees of the defendant company for the period as pleaded in the plaint and has thereby failed to make out a case for recovery of the amount so pleaded in the plaint.

26. Learned trial Court only on the basis of presumption has concluded that the plaintiff proved that there was an agreement between the parties only relying document Ext. P-1 which, as held above, has not been proved. Learned trial Court erred in taking into consideration that the notice issued by the plaintiff to the defendant is not replied to be one of the circumstances to arrive at a conclusion that the plaintiff had proved the case as pleaded in the plaint which in the opinion of this Court is erroneous, as discussed above that it is settled law that as plaintiff has to prove his case in accordance with law and cannot take benefit of weakness of defendant. Trial Court has further taken into consideration that defendant had admitted part payment and therefore execution of agreement and the arrears of the amount due is proved. The said finding in the opinion of this Court appears to be erroneous.

27. Learned trial Court has taken into consideration that the notice issued by the plaintiff to defendant for recovery of amount is not replied. In written statement, pleading made in para-5 of the plaint has been specifically denied, pleading that there was no privity of contract. In evidence in-chief filed in the form of affidavit under Order 18 Rule 4 CPC by DW-1, he has denied in specific terms that the plaintiff is having the right for recovery of the amount as pleaded in the plaint. Further, DW-1, during his cross-examination, admitted receipt of the legal notice dated 19.09.2016 but stated that no reply was given to the same, as according to the defendant company, no contract had been entered into with the plaintiff. He specifically denied the suggestion that the defendant company had paid ₹13,79,488/- to the plaintiff by cheque. Though he admitted that the bank

statement of the company had not been produced, such omission, by itself, cannot be treated as proof of the plaintiff's claim. He further denied that defendant is in due to pay a sum of ₹ 24,95,278/- to the defendant company. In his evidence, this witness has nowhere admitted about part payment. It is also relevant that DW-1 joined the defendant company on 16.01.2016, he shown his inability to state about the fact of business dealings between the defendant company and Durg Roadways Private Limited prior to his joining.

28. Learned trial Court in the impugned judgment only on the basis of pleadings made in the plaint and the oral evidence of plaintiff, without any supportive documentary evidence, accepted the alleged payment as proved. Trial court only recorded that defendant has not produced any document to controvert and came to conclusion that the defendant company has made a payment of ₹ 13,79,488/-. However, during cross-examination, DW-1 specifically denied the suggestion that the defendant company had paid the aforesaid amount to the plaintiff by cheque. Though he admitted that the bank statement of the company had not been produced before the Court, such an admission cannot be construed as an admission of payment of the aforesaid amount. The burden of proving the alleged receipt of payment was upon the plaintiff, who had asserted the same in the plaint. Trial Court erred in law in shifting the burden upon the defendant without first examining whether the plaintiff had established the same through cogent and admissible evidence who asserted the fact that a payment of ₹ 13,79,488/- is made by the defendant to the plaintiff (a company). Trial Court has relied upon the oral statement of the plaintiff and an unsigned unexhibited copy of the ledger account. The document which is not marked as exhibit, cannot be read in evidence. It is settled law that mere production or marking of a document does not, by itself, establish the

truth of its contents, unless the same is proved in accordance with the provisions of law. The trial Court, therefore, could not have accepted the alleged payment merely on the basis of the plaintiff's statement and an unproved ledger account. Learned trial Court grossly erred in presuming that the defendant had made an payment of ₹ 13,79,488/- to presume about some commercial relationship between plaintiff and the defendant. The said observation made by the trial Court therefore is erroneous.

29. In the aforesaid facts and circumstances of the case, where it is case of plaintiff that the defendant has made part payment towards the amount due of ₹ 13,79,488/-, it is for the plaintiff to produce relevant document or book of account to prove that as to by what mode that huge amount is paid, even if in different installments, to plead in specific terms as to on which dates what amount is paid, mode of payment like cash, cheque or demand draft. In absence of such pleading and proof, it cannot be said that the pleadings made in the plaint of making part payment by the defendant is proved and therefore the finding recorded by the trial court that the defendant has made part payment of ₹ 13,79,488/- and arrears of the outstanding amount due to plaintiff is proved, is only on the basis of pleading made in the plaint, without there being any admissible evidence.

30. The other grounds raised by learned counsel for applicant that the plaintiff is not authorized to file suit on behalf of company and therefore the suit is not maintainable, is concerned, from the pleadings it is apparent that plaintiff Nemichand Nahar has filed the suit on his name mentioning him to be Managing Director, Durg Roadways Pvt. Ltd. From the pleadings, it is apparent that Durg Roadways Pvt. Ltd. to be a company, however, the suit is not filed in the name of company but in the name of one person stating him to be one of the Managing Director. Further the plaintiff has not

produced any document/ power of attorney authorizing him to file the suit on behalf of the company.

31. Order 29 Rule 1 of CPC talks of ‘Suits by or against Corporation’. It provides that 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.

32. In the case at hand, the suit is not filed by the company or corporation but by a person mentioning himself to be Managing Director without any authorization by the company. The plaintiff has not placed any document showing him to be the Managing Director of the Durg Roadways Pvt. Ltd. and further has not produced any document and proved the same, like articles of association that the Managing Director is explicitly empowered to institute a suit. In absence of such arrangement in Articles of Association, there may be a specific resolution of the Board, to be passed by the Board of Directors authorizing to file proceedings on behalf of company, no such resolution is filed and exhibited in case during course of recording of evidence.

33. Submission of leaned counsel for plaintiff/ respondent is that according to Order 29 Rule 1 of CPC, the plaintiff is having the authority to file suit which in the opinion of this Court in view of specific provision under Order 29 Rule 1 CPC is misplaced and not acceptable, because Order 29 Rule 1 CPC provides for 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 which is distinct from the power to institute a suit. Hon’ble Supreme Court in **Nibro Ltd. v. National Insurance Co. Ltd.**, reported in **1990 SCC OnLine Del 65** has held thus:

"**19.** In *Mercantile Bank Limited* (supra) the learned Single Judge of this Court was dealing with the question whether the person who had signed the pleadings was a principal officer and constituted attorney of the plaintiff. The learned Judge held that Mr. Carey was the principal officer of the plaintiff company who was able to depose to the facts of the case and thus under Order, 29, Rule 1 of the Code of Civil Procedure could validly sign, verify and file the plaint. The question whether the company is required to specifically pass a resolution empowering Mr. Carey to institute the suit was not for consideration of the court. The issue that was raised in the suit was:

"Is the plaint, signed and verified by a duly authorised person?"

Since the Court found that Mr. Carey was the principal officer, it was observed that under Order, 29, Rule 1 he could sign, verify and file the plaint.

20. Learned Single Judge while deciding *Mercantile Bank's case* (supra) had relied on the case of *Jaipur Udyog Limited* (supra). I find that the facts of the case in *Jaipur Udyog Limited*(supra) were totally different. The preliminary objection raised in that case by the respondent was that the petitions were filed by unauthorized persons as they were not signed by the secretary or the director of the company concerned and, therefore, the petitions were not maintainable. On the facts of the case, the Court observed that the evidence clearly showed that the petitions were signed and verified on behalf of the company by their principal officers who were able to depose to the facts of the case and as such were entitled to sign the petitions and present them in the court. After this case as well, no objection was raised regarding the validity and power of the principal officer to institute the petitions.

21. In the case of *National Fertilisers Limited* (supra) the question whether the person who had signed the plaint had the authority to institute the suit was not for consideration before the court and, therefore, the Court held that the revision petition filed by the advocate on the basis of the Vakalatnama signed by the Estate Officer of the National Fertilisers Limited was competent.

22. On the analysis of the judgments, it is clear that Order, 29, Rule 1 of the Code of Civil Procedure does not authorise persons mentioned therein to institute suits on behalf of the Corporation. It only authorises them to sign and verify the pleadings on behalf of the Corporation.

23. In my view, the provisions of Companies Act, 1956 and particularly Sections 14, 26, 28 Schedule I, Table A and Section 291 are very clear.

> **24.** It is well-settled that under Section 291 of the Companies Act except where express provision is made that the powers of a company in respect of a particular matter are to be exercised by the company in general meeting—in all others cases the Board of Directors are entitled to exercise all its powers. Individual directors have such powers only as are vested in them by the Memorandum and Articles. It is true that ordinarily the court will not unsuit a person on account of technicalities. However, the question of authority to institute a suit on behalf of a company is not a technical matter. It has far-reaching effects. It often affects policy and finances of the company. Thus, 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 the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard."

34. The decision relied upon by the counsel for respondent in the case of **S.K. Mukherjee (supra)** dealt with the verification of the pleadings and signing of plaint. In the said case, the suit was filed by the Bank ie., the company/ corporation and the said suit was filed and signed by the Regional Manager as Principle Officer of the plaintiff bank. He was having the power of attorney and the copy of power of attorney was submitted along with the plaint.

35. In the case at hand, Nemichand Nahar, plaintiff, has filed the suit showing himself to be Managing Director, Durg Roadways Pvt. Ltd. Though there is no specific pleading in the plaint whether the company is registered under the Companies Act, 2013 or not, but, in para-11 of the evidence, in cross-examination, he stated that he is Managing Director and further admitted that he is not having the authorization letter of the company.

36. From the aforementioned facts of the case and evidence of the plaintiff, it is to be presumed that the Durg Roadways Pvt. Ltd. is a company registered under the Companies Act, 2013.

37. Section 2(20) of the Companies Act, 2013 defines "company" means a company incorporated under this Act or under any previous company law.

38. Section 2(68) defines “private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,— (i) restricts the right to transfer its shares; (ii) except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member.

39. There is no specific pleading in the plaint or in evidence that the company is a one person company. However, in evidence, it is stated that he is working as Managing Director in Durg Roadways Pvt. Ltd. and further stated that he is having maximum shares.

40. From the aforementioned evidence of the plaintiff, it is apparent that there may be some other share holder of the company. Further in the evidence, he admitted that he has not filed any document about his appointment as Managing Director. From the record and evidence available, it is apparent that plaint has been filed by a person projecting himself to be Managing Director, there is no document to prove that he is Managing Director nor any authorization letter is filed authorizing him to institute a suit, authorized by Board of Directors.

41. Board of Directors or Board as defined under Section 2(10) of the Companies Act- in relation to the company, means the collective body of the directors of the company.

42. Section 2(51) of the Companies Act, 2013 defines “key managerial personnel”, in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer, not more than one level below the directors who is in

whole-time employment, designated as key managerial personnel by the Board and; (vi) such other officer as may be prescribed.

43. Section 2(54) of the Companies Act defines “Managing Director”, which is extracted below for ready reference:

> "managing director" means a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.
> *Explanation*.—For the purposes of this clause, the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within the substantial powers of management;

44. From perusal of above definitions, it is clear that Managing Director is a director entrusted with substantial powers of management of the affairs of the company either by an agreement, by virtue of the articles of the company or resolution passed in its general meeting or by its Board of Directors. No such document in evidence is produced by the plaintiff to show that he is having substantial powers of management and also the power to file suit on behalf of company.

45. In absence of such evidence, in the opinion of this Court, plaintiff would not be a authorized person to file a suit for recovery of the amount due to the company as is the fact of the case.

46. Section 9 of the Companies Act, 2013 talks of “effect of registration”, which is extracted below for ready reference:

> “**9**. From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time

> to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name."

47. The afore-extracted provision provides that from the date of registration, the company has to sue by the name of the company as mentioned in the registration certificate or to be sued. It is apparent that the suit or the proceeding is to be filed in the name of the company, it is to be filed by the key managerial personnel subject to the provision of articles or association or the authorization made in this regard.

48. In the case at hand, articles of association is not filed to show that Managing Director is authorized to file suit. No document is filed to substantiate that plaintiff is Managing Director. No authorization letter or resolution of meeting of Board of Directors, authorizing the plaintiff to file suit, is filed. The suit is not filed by the Company, and therefore in the opinion of this Court, the suit itself is defective.

49. Hon'ble Supreme Court in the case of **Kingston Computers India Pvt. Ltd. (supra)** has observed thus:

> "**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 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 authorize another person to file suit on behalf of the company."

50. In the preliminary objection of written statement in para-2, defendant has questioned the locus standi of the plaintiff to file present suit. Though no specific pleading with regard to the Companies Act 2013 is made, as such there is challenge to the locus of the plaintiff to file a suit but even then the plaintiff has not produced any document to show his locus to file the suit and therefore the suit is defective in the eye of law. Learned Trial court though considered the objection raised by the defendant before the Court that the plaintiff is not having the authority or right to file suit as it was filed in the personal capacity but has erroneously concluded that from perusal of plaint it is appearing that the suit is filed in the capacity of Managing Director and it is pleaded in the pleadings of the plaint and therefore merely because the resolution of the Board of Directors/ company is not produced, entire pleading and evidence cannot be disbelieved. The said finding recorded in view of the specific provisions under the Companies Act, 2013 is erroneous and not sustainable, accordingly, the said finding is set aside.

51. For the foregoing discussion, we are of the considered view that the plaintiff has failed to establish the execution of the alleged agreement or work order by the defendant company, the engagement of two buses for transportation of its employees, and the outstanding liability claimed in the suit. The plaintiff has also failed to establish his authority to institute the proceedings for recovery of the alleged dues to Durg Roadways Private Limited. The learned trial Court, therefore, erred in decreeing the suit on the basis of the evidence and circumstances which were insufficient to establish the plaintiff's claim in accordance with law. The findings recorded by the learned trial Court are, accordingly, unsustainable and liable to be set aside.

52. Consequently, the appeal is allowed. The impugned judgment and decree dated 30.10.2019 passed by the learned First Additional District Judge, Durg, District Durg, in Civil Suit No. 06-B/2017 are hereby set aside.

53. All pending applications, if any, stand disposed of.

A decree be drawn up accordingly.

Parties to bear their respective cost.

Sd/-

(Parth Prateem Sahu)
Judge

Sd/-

(Sushma Sawant)
Judge

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