

State Bank Of Travancore vs M/S Kingston Computers(I) P.Ltd on 22 February, 2011

Equivalent citations: 2011 AIR SCW 1948, 2011 (11) SCC 524, AIR 2011 SC (CIVIL) 786, (2011) 3 CIVILCOURTC 179, (2011) 1 CLR 679 (SC), (2011) 5 MAD LJ 842, (2011) 4 PUN LR 120, (2011) 102 CORLA 124, (2011) 3 SCALE 33, (2011) 3 ALL WC 2931, (2011) 1 WLC(SC)CVL 470, 2011 (3) KCCR SN 305 (SC)

Bench: Asok Kumar Ganguly, G.S.Singhvi

1

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.2014 OF 2011
(Arising out of SLP(C)No.18179 of 2009)

STATE BANK OF TRAVANCORE

.....APPELLANT

VERSUS

M/S KINGSTON COMPUTERS(I) P.LTD.

.....RESPONDENT

J U D G M E N T

Delay condoned.

Leave granted.

This appeal is directed against the judgment of the Division Bench of the Delhi High Court whereby the appeal preferred by respondent-M/s.Kingston Computers (I) Private Limited (hereinafter referred to as "the company") was allowed and the suit filed by it for recovery of Rs.8,50,952/- along with interest of Rs.3,06,342/- was decreed by reversing the judgment of Additional District Judge, Delhi (hereinafter referred to as "the trial Court").

The suit was filed by the respondent through Shri Ashok K.Shukla, who described himself as one of the Directors of the company and claimed that he was authorised by Shri Raj K.Shukla, the Chief Executive Officer of the company vide authority letter dated 02.01.2003 to sign, verify and file suit for recovery on behalf of the company. A copy of the authority letter allegedly signed by Shri Raj K.Shukla was also annexed with the plaint. In the written statement filed on behalf of the appellant, a preliminary objection was taken to the maintainability of the suit on the ground that Shri Ashok K.Shukla was not authorised by the company to file the suit and the authority letter given by Shri Raj K.Shukla was not sufficient to entitle him to do so. The respondent filed replication but did not plead that Shri Ashok K.Shukla was authorised by the company to file the suit.

On the pleadings of the parties, the trial Court framed the following issues :-

- "1. Whether the suit has been signed, verified and filed by a duly authorised person?
2. What is the effect of not joining Sh.Debashish Saraswati in the present suit?
3. Whether any loss has been caused by the defendant to the plaintiff?
4. Whether payments have been made by the defendant in due course and in good faith as alleged in para-3 of the preliminary objections of the written statement if so its effect?
5. Whether the plaintiff is entitled to the suit amount?
6. Whether the plaintiff is entitled to interest, if so at what rate and for what period?
7. Relief."

After considering the pleadings and evidence of the parties, the trial Court decided all the issues except issue No.1 in favour of the company but dismissed the suit on the ground that Shri Ashok K.Shukla was not authorised to file the same.

The Division Bench of the High Court allowed the appeal of the company, reversed the judgment of the trial Court and decreed the suit by relying upon the letter of authority issued by Shri Raj K.Shukla in favour of Shri Ashok K.Shukla.

Shri J.L. Gupta, learned senior counsel appearing for the appellant assailed the impugned judgment and argued that the High Court committed serious error by reversing the finding recorded by the trial Court on issue No.1 totally ignoring that the respondent had not produced any evidence to prove that Shri Ashok K.Shukla was a Director of the company and he had been authorised by the company to file the suit. Learned senior counsel extensively referred to the pleadings of the parties including the rejoinder filed on behalf of the company before the trial Court, evidence of Shri Ashok K.Shukla and argued that the suit could not have been decreed because no evidence was produced on behalf of the company to prove that Shri Ashok K.Shukla was authorised to file the suit. Shri

Gupta pointed out that resolutions dated 14.2.2001 and 19.4.2001 passed by the Board of Directors of the company had bearing only on the issue of operating the bank account and not on the issue of filing the suit and the Division Bench of the High Court gravely erred in relying upon those resolutions and the authority letter issued by Shri Raj K. Shukla in favour of Shri Ashok K. Shukla.

We have considered the submissions of the learned counsel and scrutinized the record.

In paragraph 1 of the suit filed on behalf of the company, it was pleaded that Shri Ashok K.Shukla is one of the Directors of the company and he has been authorised by Shri Raj K.Shukla, the Chief Executive Officer vide authority letter dated 2.1.2003 to do the following things:

- (i) to sign, verify and file a suit for recovery on behalf of the company against the State Bank of Travancore, R.K. Puram Branch, New Delhi,
- (ii) to sign, verify and file any document, application to lead evidence, make statement or compromise the matter before the Hon'ble Court,
- (iii) to appoint any advocate or pleader or counsel and to sign vakalatnama,
- (iv) to represent the company or appear on its behalf before the concerned Court, any public authority or Tribunal and to represent for the purpose of representing the company, and
- (v) to do all other acts, deeds and things whatever is necessary for pursuing the case of recovery against State Bank of Travancore which are not specifically mentioned.

In the written statement filed on behalf of the appellant, an objection was taken to the maintainability of the suit on the ground that the plaint has not been signed, verified and filed by a competent and authorised representative on behalf of the company and that there is neither any valid Board resolution nor any valid authorisation on behalf of the company nor a copy of the resolution has been filed along with the suit. It was also pleaded that the person who has instituted the suit on behalf of the company is not shown to be a power of attorney holder nor a copy of such power of attorney has been filed with the plaint and the authorisation letter purported to have been given by the so- called Chief Executive Officer is not a valid authorisation.

In the rejoinder filed on behalf of the company, it was reiterated that Shri Ashok K.Shukla, who has signed, verified and filed the plaint was authorised by Shri Raj K.Shukla vide authority letter dated 2.1.2003.

In his evidence, which was filed in the form of an affidavit, Shri Ashok K.Shukla claimed that he is one of the Directors of the company and has been authorised by Shri Raj K.Shukla vide authority letter dated 2.1.2003 to file the suit. In cross- examination, Shri Ashok K.Shukla claimed that he was the only Director in the company and that the Board of Directors of the company had passed resolution authorising Shri Raj K.Shukla to take decisions independently. He also claimed that he

had been given power of attorney on behalf of the company, which was filed on record. He however admitted that no resolution was passed by the Board of Directors authorising him to sign, verify and file the plaint.

The trial Court analyzed the pleadings and evaluated the evidence produced by the parties, referred to authority letter dated 2.1.2003 issued by Shri Raj K.Shukla in favour of Shri Ashok K.Shukla and observed:

"A perusal of the aforesaid authority letter shows that Shri Raj K.Shukla in his capacity as CEO of the plaintiff company had authorised Shri A.K. Shukla to sign, verify and file the present suit. Apart from this authority letter, the plaintiff company has not filed on record any board resolution authorising Sh. A.K. Shukla to sign, verify and institute the present suit. The plaintiff has also not filed on record its memorandum/articles to show that Shri Raj Kumar Shukla had been vested with the powers or had been given a general power of attorney on behalf of the company to sign, verify and institute the suit on behalf of the company. The present suit, therefore, has been filed merely on the strength of the authority letter Ex.PW1/A....."

The trial Court then referred to the judgment of the Delhi High Court in M/s. Nibro Limited v. National Insurance Company Limited AIR 1991 Delhi 25, Shubh Shanti Services Limited v. Manjula S.Agarwalla and others (2005) 5 SCC 30, Delhi High Court (original side) Rules, 1967 and proceeded to observe:

".....As already stated, it has not been averred in the plaint nor sought to be proved that any resolution had been passed by the Board of Directors of the plaintiff company authorising Shri A.K. Shukla to sign, verify and institute the suit. It has also not been averred that the memorandum/articles of the plaintiff company give any right to Shri A.K. Shukla to sign, verify and institute a suit on behalf of the plaintiff company. It, therefore, follows that the plaint has been instituted by Shri A.K. Shukla only on the authority of Sh. Raj K.Shukla, CEO of the plaintiff company. Such an authority is not recognized under law and, therefore, I held that the plaint has not been instituted by an authorised person. Issue No.1 is accordingly, decided against the plaintiff and in favour of the defendants."

The Division Bench of the High Court did take cognizance of the fact that the company had not summoned any witness from the office of the Registrar of Company to prove that Shri Ashok K.Shukla was a Director of the company and that the minute book of the company had not been produced to prove the appointment of Shri Ashok K.Shukla as a Director, but reversed the finding of the trial Court on issue No.1 on the basis of the authority letter issued by Shri Raj K.Shukla and resolutions dated 14.2.2001 and 19.4.2001, by which the Board of Directors of the company had authorised some persons to operate the bank account.

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 authorise another person to file suit on behalf of the company.

In the result, the appeal is allowed, the impugned judgment is set aside and the one passed by the trial Court dismissing the suit of the respondent is restored. The appellant shall be free to withdraw the amount deposited by it in the trial Court in terms of this Court's order dated 24.7.2009.

Since the respondent has not appeared to contest the appeal, the costs are made easy.

.....J. (G.S.SINGHVI)J. (ASOK KUMAR GANGULY) NEW DELHI;

FEBRUARY 22, 2011.