United Bank Of India vs Sh. Naresh Kumar And Ors on 18 September, 1996

Equivalent citations: AIR 1997 SUPREME COURT 3, 1996 (6) SCC 660, 1996 AIR SCW 4149, 1997 (4) COM LJ 160 SC, (1997) 4 COMLJ 160, (1996) 2 BANKCAS 550, (1997) 2 MAD LJ 1, (1998) BANKJ 324, (1996) 2 CIVILCOURTC 690, (1996) 4 LANDLR 241, (1996) 23 CORLA 80, (1997) 1 BANKLJ 229, (1997) 1 ICC 318, (1997) 2 APLJ 26, (1997) 1 CIVLJ 721, (1997) 90 COMCAS 329, (1996) 4 CURCC 27

Author: B.N Kirpal

Bench: B.N Kirpal, S.P Bharucha

PETITIONER:
UNITED BANK OF INDIA

Vs.

RESPONDENT:
SH. NARESH KUMAR AND ORS.

DATE OF JUDGMENT: 18/09/1996

BENCH:
KIRPAL B.N. (J)
BENCH:
KIRPAL B.N. (J)
BHARUCHA S.P. (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T KIRPAL, J.

The main question which arises in this appeal by special leave is whether the suit for recovery of

money filed by the appellant bank was properly instituted.

The appellant's branch at Ambala Cantt. had instituted a suit in the Court of Sub-ordinate Judge, Ambala Cantt. for recovery of Rs. 1,40,553.91 from the respondents. The case of the appellant was that on 12th April, 1984 a sum of Rs. 50,000/- was advanced as loan to respondent no. 1 for the purposes of his business and on that date he had executed a demand promissory note, hypothecation of goods agreement and other documents. Respondent no.2 and one Sh. Suresh Kumar, husband of respondent no.3 had stood as guarantors for the repayment of the loan. The respondents were stated to have agreed to pay interest at the rate of 18 percent per annum with quarterly rests. When default in payment of the money was committed the aforesaid suit was filed for the recovery of the principal amount and the interest thereon. The sum total came to Rs.1,40,553.91.

In the written statement filed by respondent no.1 the plea which was taken was that he had never taken loan as alleged by the appellant bank and respondent no. 2 and Sh. Suresh Kumar had not executed any guarantee deed. It was, however, admitted that certain blank documents had been got signed but it was denied that the respondents had agreed to pay interest at the rate of 18 percent per annum. He also took an additional plea challenging the authority of Sh. L.K. Rohatgi to sign and file the plaint on behalf of the appellant. Respondent no.2 filed a separate written statement taking the pleas similar to the one which had been raised by respondent no.1 in his written statement. A further plea which was taken by her was that her guarantee was limited to the extent of Rs. 50,000/- and she was not liable to pay any more amount merely because additional credit facilities may have been allowed to respondent no.1. As the other guarantor- Sh. Suresh Kumar had died his widow, namely, respondent no.3 was impleaded as one of the defendants but as she did not appear the case against her proceeded ex parte. The appellant bank filed its replication wherein it denied the allegations contained in the written statements filed by respondents 1 and 2.

On the pleadings of the parties the following issues were framed:-

> "1. Whether the plaint is duly signed and verified by a competent person? OPP
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> 2. Whether the defendant no. 1 raised a loan of Rs. 50,000/- from the plaintiff bank on 12.4.84 and executed a demand promissory note, hypothecation of goods agreement, letter of loan and other documents in favour of the plaintiff bank? OPP
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> 3. Whether the defendants no.2 and 3 stood as guarantors for the repayment of the loan and if so, what is the extent of their liability? OPP
>
> 4. What is the balance amount? OPP
>
> 5. Whether the plaintiff varied the terms of loan and if so, its effect qua the liabilities of defendants no.2 and 3, Onus on parties.

6. Whether the statement of account produced by the plaintiff is admissible in evidence? OPP

7. Whether the defendants agreed to pay interest if so, at what rate and to what amount? OPP

8. Whether the plaintiff has no cause of action? OPP

9. Relief."

The trial judge by his judgment dated 14th November, 1987 decided issue nos. 1,2 and 7 against the appellant. Issues 3,4,5 and 6 were held in the appellant's favour. The trial court, however, held, under issues 2 and 3, that respondent no.3 was not liable to pay any amount and respondent no.2 was liable to pay only a sum of Rs.55,699.20 as the principal amount plus interest at the rate or 18 per cent per annum for the period 12th April, 1984 to 11th February, 1985. In view, however, of the decision against the appellant of issue no.1 the suit filed by the appellant was dismissed with costs.

The appellant then filed an appeal which was decided on 2nd November, 1992 by the Additional District Judge, Ambala. The Additional District Judge reversed the findings of the trial court in so far as issues 2 and 7 were concerned and came to the conclusion that the appellant had been able to prove that respondent no.1 had taken a loan of Rs. 50,000/- and had also proved the execution of relevant documents by the respondents. The principal debtor and the guarantors were also held to have agreed to pay interest at the rate of 18 percent per annum. It affirmed the decision of the trial court limiting respondent no. 2'& liability to Rs. 50,000/- and interest thereon. With regard to the liability of respondent no.3 the lower appellate court held that in the absence of any evidence to prove that she had inherited any estate from her deceased husband no liability could be fastened on her and the decision of the trial court, to that effect, was affirmed. The appeal was, however, dismissed because the Additional District Judge upheld the decision of the trial court with regard to issue no.1. It was held that it has not been proved that Sh. L.K. Rohatgi had held any valid authority to file the suit on behalf of the appellant bank.

Against the aforesaid decision of the Additional District Judge the appellant filed a regular second appeal. By order dated 30th August, 1993 a single judge of the Punjab and Haryana High Court dismissed the said appeal in limine by observing that there was no ground for interference with the concurrent findings of facts recorded by two courts below. Hence this appeal by special leave.

In this appeal, therefore, the only question which arises for consideration is whether the plaint was duly signed and verified by a competent person.

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.

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 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 de hors 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 it's officers a Corporation can ratify the said action of it's 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 it's officer.

The courts below could have held that Sh. 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 Sh. 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 Sh. L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Sh. 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.

The Courts below having come to a conclusion that money had been taken by respondent no.1 and that respondent no.2 and husband of respondent no.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.

The court had to be satisfied that Sh. L.K. Rohatgi could sign the plaint on behalf of the appellant. The suit had been filed in the name of the appellant company; full amount of court fee had been paid

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

CONCLUSIONS:

The suit of the appellant had been dismissed because issue no.1 had been decided against it. Counsel for the parties have not challenged the decision of the lower appellate court on the other issues, which decision was affirmed by the High Court when it dismissed the second appeal in limine. For the reasons stated hereinabove we hold that issue no.1 was wrongly decided and this being so the appellant was entitled to a decree in view of the decision of the lower appellate court on the other issues.

The appeal of the appellant is, accordingly, allowed in the aforesaid terms. The effect of this would be that the suit of the appellant would be decreed in accordance with the decision of the lower appellate court on the other issues which that court had decided in favour of the appellant. The appellant will also be entitled to costs.