

Supreme Court of India

M/S Haryana State Coop Spy & Mkt Fed ... vs M/S Jayam Textiles & Anr on 7 April, 1947

Author: N Ramana

Bench: P Sathasivam, Ranjan Gogoi, N.V. Ramana

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 833 OF 2014
ARISING OUT OF
SPECIAL LEAVE PETITION (CRIMINAL) NO. 7700 OF 2007

M/S. HARYANA STATE COOP. SUPPLY
AND MARKETING FEDERATION LTD. ... APPELLANT

VERSUS
M/S. JAYAM TEXTILES & ANR. ... RESPONDENTS

WITH

CRIMINAL APPEAL NO. 834 OF 2014
ARISING OUT OF
SPECIAL LEAVE PETITION (CRIMINAL) NO. 20 OF 2008

M/S. HARYANA STATE COOP. SUPPLY
AND MARKETING FEDERATION LTD. ... APPELLANT

VERSUS
M/S. JAYAM TEXTILES & ANR. ... RESPONDENTS

-
J U D G M E N T

N.V. RAMANA, J.

1. Leave granted.

2. The present appeals have been filed against the judgment dated 18.06.2007 passed by the High Court of Judicature at Madras in Crl. A. Nos. 348 and 410 of 2001 thereby dismissing the said appeals on the ground that Mr. Davinder Kumar Lal, claiming to be the power of attorney holder of the appellant-Federation, has no locus standi to file the complaints/appeals as he has failed to prove that the Appellant-Federation had authorised him to file the same.

3. The facts of the two appeals are – the appellant-Federation supplied cotton bales to the respondents of the value of Rs.30,45,602/- vide three invoices dated 19.12.1994, 21.12.1994 and 20.01.1995. The respondents, to discharge their liability, issued in total four cheques – two cheques for Rs.5 lakhs each dated 16.01.1995 and 20.01.1995 respectively and two -

4. cheques for Rs. 11 lakhs each dated 20.01.1995 and 25.01.1995 respectively. However, on presentation, all the said four cheques were returned unpaid by the bank with an endorsement 'for want of sufficient funds'. The appellant-Federation sent legal notice(s) dated 19.04.1995 and 27.04.1995 under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'), which were duly received by the respondents. On failure of the respondents to pay the amount within the stipulated time of 15 days from the date of receipt of the notice, the appellant-Federation filed complaints under Section 138 and 140 of the N.I. Act read with Section 420 of the Indian Penal Code, 1860 (for short, 'the I.P.C.') against the respondents. The said complaints were dismissed by the Judicial Magistrate vide order dated 07.02.2001 and the appeals filed against the said order were dismissed vide impugned judgment dated 18.06.2007, solely on the ground that the 'authorisation' was not produced by the complainant-appellant.

5. -

6. It is submitted by the counsel for the appellant-Federation that in fact there was an authorisation from the Board of Directors of the Federation, but unfortunately, the same was not filed along with the complaint and on account of this reason only, the complaint was dismissed, and as a matter of record, the said authorisation delegating powers was passed in the meeting of the Federation on 15th April, 1976 and an opportunity to the appellant-Federation could have been afforded by the Courts below to furnish the authorisation, particularly when the appellant-Federation is a Public Sector Undertaking and money which has to be paid by the respondents is public money. In support of his submission, learned counsel has drawn our attention to Annexure-P/7, the extracts of the meeting of the Board of Directors of the Federation held on 15.04.1976, which are in the following terms:

"14 DELEGATION OF POWERS The Board of Directors of the Haryana State Co-operative Supply and Marketing -

Federation in their meeting held on 15.4.1976 resolved to delegate the following powers to the authorities mentioned against each and to the extent indicated as under.

Delegation of Powers to various officers of the Federation.

Sr. No.	Nature of Powers	Authority to whom	Extent of powers delegated
------------	------------------	-------------------	-------------------------------

A) Administration 1 to 23 xx xx xx

24. Institution and defence of legal proceeding etc.

i) To institute, conduct, M.D. Full Power defend, compromise, refer to arbitration and abandon legal or other proceedings and claims and also to file appeals, revisions, review petitions and executing by and against the Federation and also to engage lawyers for that purpose from time to time.

ii) To give general power of M.D. Full Power attorney to any person / officer for conducting the cases in Courts etc. B) Financial Administration 25 o Category B xx xx xx”

7. Learned counsel for the appellant-Federation further submitted that it is in pursuance of the above-said delegation of powers to the Managing -

8. Director, the general power of attorney in question was executed by him authorising Mr. Davinder Kumar Lal to take civil and criminal action against the defaulters including the respondents herein. He, therefore, prayed to remit back the matter to the Trial Court with a direction to consider the whole issue taking into consideration the authorisation delegating powers to the Managing Director as passed by the appellant-Federation in its meeting held on 15th April, 1976.

9. Learned senior counsel for the respondents, on the other hand, contended that several years have already been passed in the litigation and despite sufficient opportunity has been granted by the Courts below, the appellant-Federation has failed to produce authorisation and hence there is no reason for this Court to interfere at this stage. When the matter was listed before us on 11.03.2014, a specific query was, however, put to the learned senior counsel appearing for the respondents as to whether the respondents have paid the amounts which are due and payable to -

10. the appellant-Federation. It was submitted, on instructions, that, in fact, arbitration had taken place and even the award had been passed against the respondents, but the respondents have not complied with the terms of the award so far.

11. Having heard learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant-Federation was not placed before the Courts below. But, we may notice that a specific averment was made by the appellant-Federation before the learned Judicial Magistrate that the said General Power of Attorney has been filed in connected case being CC No. 1409/1995, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the Courts below were not satisfied, an opportunity ought to have been granted to the appellant-Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should -

12. not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. {See Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh, (2006) 1 SCC 75}.

13. In view of the fact that in spite of arbitration award against the respondents, there was non-payment of amount by the respondents to the appellant-Federation, and also in the light of

authorisation contained in Annexure–P/7, we are of the opinion that, in the facts and circumstances of the case, an opportunity should be given to the appellant-Federation to produce and prove the authorisation before the Trial Court, more so, when money involved is public money. We, therefore, set aside the judgments of the Courts below and remit the matters back to the Trial Court with a direction to conduct trial afresh taking into consideration the authorisation placed before us and dispose of the -

14. matter as expeditiously as possible in accordance with law.

15. The appeals and the interlocutory applications stand disposed of accordingly.

.....C.J.I.

(P. Sathasivam)J.

(Ranjan Gogoi)J.

(N.V. Ramana) New Delhi;

April 07, 2014.