

(2012) 01 KL CK 0038
In the High Court Of Kerala
Case No : C.R.P. No. 633 of 2010

Comprehensive Digital World Pvt. Ltd. and Others	APPELLANT
Vs	
State Bank of Trvancore	RESPONDENT

Date of Decision : 31-01-2012

Acts Referred:

Subsidiary Banks General Regulations, 1959 — Regulation 55, 56, 55

Citation : (2012) 1 KLJ 753

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : Millu dandapani, for the Appellant;

Judgement

S.S. Satheesachandran, J.—The defendants in O.S.No. 42 of 2008 on the file of the Additional Sub Court, Kottayam have filed this revision challenging the finding entered on additional issue No. 3 in the above suit, by the learned Additional Sub Judge. Suit was one for realisation of money filed by the respondent a subsidiary Bank under the State Bank of India. Suit was instituted on behalf of the plaintiff Bank by its Branch manager in whose branch, presumably, the banking transaction giving rise to the suit claim with the defendants had taken place. In the written statement, among other contentions, the defendants had disputed the competency of the above said Branch manager to institute a suit in the name of the Bank. The order impugned in the revision would also show that on an application moved by them as I.A.No. 3253 of 2009, an additional issue was cast in the suit as "Whether the person who instituted the suit is competent to institute the suit in the name of the plaintiff Bank?". Plaintiff Bank produced copy of the Subsidiary Banks General Regulations, 1959, and a gazette notification dated 04.05.1996 to show that the Branch manager, who instituted the suit in the name of the Bank, has full competency to do so. The learned Additional Sub Judge, after hearing both sides and looking into the aforesaid materials produced by the plaintiff Bank, found that the challenge raised questioning the competency of the Branch manager to institute the suit in

the name of the Bank, on which additional issue was raised, is devoid of any merit and answered such issue accordingly. The finding entered on the additional issue cast in the suit is challenged in this revision by the defendants as improper, illegal and unsustainable under law. I heard the counsel on both sides. Rule 55 of the Subsidiary Banks General Regulations, 1959 and also the gazette notification dated 04.05.1996, a copy of which has been produced for perusal, does not empower the Branch manager of a bank to sue in the name of the Bank and unless there is specific authority conferred on such Branch manager to institute the suit on behalf of the Bank by virtue of a notification published thereof or authorization recognizable under law, he is incompetent to institute the suit and the court below has gone wrong in entering a finding on additional issue No. 3 against the defendants, is the submission of their counsel. Reliance is placed by the counsel on *Nibro Ltd. v. National Insurance Company Ltd.* 1991 (70) Company Cases 388 to contend that the question of authority to institute a suit on behalf of the company is not a technical matter and unless a power to institute a suit is specifically conferred on the Branch manager he has no authority to institute the suit in the name of the Bank. I do not find any merit in the submissions made by the Learned Counsel for the revision petitioners to assail the finding entered by the learned Sub Judge over the question of competency of the Branch manager of the plaintiff Bank repelling the objections raised thereto by the defendants. This Court in *South India Corporation (Agencies) Private Ltd., Madras Vs. State Trading Corporation of India Ltd., Cochin*, has held in unmistakable terms that an objection raised questioning the competency of an officer of the company to sue is a purely a technical one and even if the officer, who sued on behalf of the company is not a principal officer of the company, a mere authorization of the company was enough to make his signatures subscribed in the plaint sufficient enough to show his competency to institute the suit on behalf of the company. Even assuming that the Branch manager, who instituted the suit did not have specific authorization, if a technical objection is raised questioning his competency, a mere authorization from the Bank would remove and negate such objection. The Apex Court has held in *United Bank of India Vs. Naresh Kumar and others*, that in suits instituted or defended by public corporation like a Bank, public interest should not be permitted to be defeated on mere technicality. A note of caution has been given that even if any technical objection is canvassed that the plaint was not signed and verified by the competent person, the suit should not be dismissed. The Apex Court has held thus:

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.

In the above reported case, the dismissal of a suit for the reason that it was not signed and verified by a competent person upholding the contention of the

defendant, was reversed. When that be the law laid down by the Apex Court, no further dilation over the decision rendered in Nibro Ltd.'s case relied by the counsel, which held otherwise is called for.

2. Now, with respect to the gazette notification dated 04.05.1996, published by the Reserve Bank of India, which has been relied by the Court below to hold that the Branch managers of State Bank of Travancore have due authorization to represent that Bank in all proceedings as covered under Regulation 56 of the Subsidiary Banks General Regulations, 1959, I find, the challenge raised that it does not confer authorization on the Branch manager to institute the suit in the name of the Bank is meritless. Regulation 55 of the above Regulations envisages of conferring authority by way of a notification in the Gazette of India on officers and employees of the subsidiary bank to do various acts in relation to the activities of the Bank as to making of endorsement, transfer, acceptance and signing of banking documents connected with such business or current business of the subsidiary bank. Regulation 56 of the above Regulations envisages as to who should sign and verify plaints, written statements, petitions and applications and other documents connected with the legal proceedings on behalf of the subsidiary bank. Regulation No. 56 reads thus:

56. Plaints, written statements, petitions, and applications may be signed and verified, affidavits may be sworn or affirmed, bonds may be signed, sealed and delivered and generally all other documents connected with legal proceedings may be made and completed on behalf of a subsidiary bank by the [managing director] of the subsidiary bank or by any officer or employee empowered by or under regulation 55 to sign documents for and on behalf of the subsidiary bank.

(Emphasis supplied)

The tenor of argument canvassed by the Learned Counsel for the petitioners/defendants was that a notification under Regulation 55 on a Branch manager/employee is not sufficient to empower him to sign a plaint or written statement and to sue in the name of the bank, and, there should be a separate notification under Regulation 56. What is stated under Regulation 56 is that any officer or employee empowered under Regulation 55 to sign documents, warrants on behalf of the subsidiary bank, has full competency and empowerment to sign and verify, pleadings and do such other acts in connection with the legal proceedings as covered by that regulation. A notification issued under Regulation 55 empowering the Branch manager to do the activities connected with banking business referred to thereunder would clothe him with empowerment or authority to do whatever acts required in relation to legal proceedings as spelt out under Regulation 56, for which, no separate notification authorizing as under the latter Regulation is required. In fact even in the absence of such regulation or notification, having regard to Order XXIX Rule 1 and Order VI Rule 14 of the CPC, it can be safely stated that in cases where pleadings have been signed by one of the officers of the Corporation even if no authority is produced to do so at that stage, the Corporation can ratify the said action of that officer in signing the

pleadings. Such ratification can be expressed or implied. It is for the court, on the basis of the evidence on record, and after considering the facts and circumstances in the case, to form the conclusion whether the Corporation had ratified the act of signing of the pleadings by its officer. The Apex Court has held so in United Bank of India's case, referred to earlier. Though the Delhi High Court has taken a different view in the decision referred to by the counsel in Nibro Ltd.'s case, referred above, and also in a later decision M/s. Rajghria Paper Mills Ltd. v. General Manager, Indian Security Press and Another AIR 2000 Delhi 239 distinguishing the judgment of the Apex court in United Bank of India's case referred to above, I cannot agree with the view formed in the above two decisions, in the light of the clear cut and unambiguous expressions made by the Apex Court that at best such objection is a procedural defect which can be rectified, if warranted, and it cannot be pressed into service to defeat public interest especially where the suit is filed by a public sector bank.

There is no merit in the revision, and it is dismissed.