

(1984) 03 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1055 of 1981

Grind Lays Bank

APPELLANT

Vs

Mikado Woollen Mills

RESPONDENT

Date of Decision : 20-03-1984

Acts Referred:

Citation : (1984) 03 P&H CK 0114

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Advocate : H.L. Sarin, with Mr. M.L. Sarin, for the Appellant; Bhagirath Dass with Mr. Ramesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This judgment will dispose of Regular Second Appeals Nos. 1055, 1056 and 1057 of 1981, as the question involved is the same in all the appeals and even the learned lower appellate Court disposed them of by one judgment.

2. The Grindlays Bank, Amritsar, filed the suits for the recovery of the money, which were dismissed by the trial Court on January 16, 1978. Appeals were filed on behalf of the Bank in the Court of the District Judge, Amritsar. At the time of the hearing of the appeals, a preliminary objection was taken on behalf of the Respondents that no competent appeal was presented by a competent person as no resolution taking the decision to file the appeals against the judgments and decrees of the trial Court was filed with the appeals, nor any resolution authorizing the person who gave the power of attorney to the Advocate to present the appeals was filed and, therefore, the presentation of the appeals was unauthorized as in the absence of any resolution to that effect, there was no proper filing of the appeal in Court. Application was moved on behalf of the Plaintiff Bank, requesting that the Appellant be allowed to lead evidence to show that Sh. G.S. Khurana, the then Manager of the Appellant Bank was competent to institute the appeal. The lower appellate Court vide order dated June 13, 1980, allowed the said prayer and the witness was examined in the Court. The lower

appellate Court found the Appellant Bank had been able to prove on the record the certificate of incorporation of the Bank and also the power of attorney, Exhibit A-I. The contention raised on behalf of the Defendants that the power of attorney, Exhibit A-I, was not duly proved was negated. However the lower appellate Court took the view that the mere power of attorney did not entitle the Appellant Bank to file the appeals unless there was a resolution passed authorizing somebody to file the appeals on behalf of the Appellant Bank and on that account, it was held that the appeals were not competent and were dismissed accordingly. Dissatisfied with the same, these appeals have been filed on behalf of the Bank.

3. The Learned Counsel for the Appellant contended that Clause 20 of the power of attorney, Exhibit A-I, which reads as follows:

To bring and defend suits and actions. To institute bring commence and prosecute and appear for and represent the Bank in and defend all and any suits actions summons petitions appeals or other proceedings in any Court of Law or Equity or other Judicature or in any Court or Tribunal of Criminal Revenue Fiscal Labour or other Jurisdiction generally or before any other officer or authority having judicial or quasi-judicial functions or duties at or In the Country In which the said Branch is situate or at or in all or any of the other places aforesaid or elsewhere whether arising out of the matters or things aforesaid or otherwise in which the Bank may now or shall hereafter be in any way interested or concerned and in any such suit action appeals or other proceedings to consent to or submit to or apply for the enforcement of or appeal against any judgment decree or order or to discontinue become non suit compromise compound withdraw or refer to arbitration upon any terms as the Attorney shall think fit or to resist payment of any amount or sum of money or compliance with or fulfillment of any claim or demand or otherwise to pay and satisfy the same aid in connection with any of the aforesaid to deposit and withdraw any money in cash or securities and to do all such generally as the Attorney may in his absolute discretion think fit clearly shows that Shri Rajinder Pal Goel was duly authorised to file the appeal etc. Thus, argued the Learned Counsel, once the power of preferring an appeal is given by virtue of the said power of attorney, then the question of passing a separate resolution to that effect, was not required In support of the contention, the Learned Counsel relied upon *Punjab and Sind Bank Ltd v. Tosh Metal and Alloys Industrial* 1980 Curr. L.J. (C) 57; *State Bank of India v. Kashmir Art Printing Press Sirsa* 1981 (83) P.L. R. 308 and *National Fertilizers Ltd Bhatinda v. Municipal Committee, Bhatinda* (1982) 84 P.L. R. 322.

3. After hearing the Learned Counsel for the parties, I find force to the contention raised by the Learned Counsel for the Appellant.

4. The view taken by the lower appellate Court is not warranted in view of Clause 20 of the Power of attorney, Exhibit A-1, reproduced above. It was held in *National Fertilizers* case 1982 P.L.R. 322 (supra), that it is well settled that

appeals and revisions are continuation of a suit. Therefore, if power has been given by a company to a person to institute suits or other legal proceedings, that power will include the power to file appeals and revisions. That will also include the power to take a decision as to whether a suit or appeal or revision should be filed by the company or not. The ratio of the above-said case is fully applicable to the facts of the present cases.

5. On behalf of the Defendants-respondents, reliance was placed on *Garib Chand v. Municipal Committee, Budhlada* (1973) 75 P.L. R. 527, to contend that the appeals filed in the lower appellate Court were incompetent as the same were not filed by a duly authorised person. The ratio of the said case has no applicability to the facts of the present cases. In that case, there was no resolution passed by the Municipal Committee authorising its Executive Officer to file the appeal and, therefore, it was held therein that no properly constituted appeal was filed because the Municipal Committee had never authorised its Executive Officer to file the appeal. Such is not the ratio to appeals.

6. Consequently, all the three appeals succeed and are allowed. The judgments and decrees of the lower appellate Court are set aside and the cases are remanded to the lower appellate Court for decision on merits in accordance with law. The parties have been directed to appear in the lower appellate Court on April 25, 1984. The records of the case be sent back forthwith.