

(2002) 07 SHI CK 0022
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 56 of 1997

H.P. General Industries Corporation Ltd.	APPELLANT
Vs	
Khushbakhat Agro Industrial Co. Pvt. Ltd. and Another	RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 6 Rule 14
Companies Act, 1956 — Section 291
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 1 ShimLC 89

Hon'ble Judges : M.R. Verma, J

Bench : Single Bench

Advocate : Jagdish Vats and Vinay Thakur, for the Appellant; Anuj Nag, for the Respondent

Judgement

M.R. Verma, J.—The Plaintiff has instituted the present suit for a decree for Rs. 83,33,804.30 in its favour and against the Defendants with costs of the suit. Future interest has also been claimed @ 15% per annum. In the alternative, in case the Court finds that some of the claims in respect of salaries etc. of the transferred staff are premature or are not payable by the Defendants to the Plaintiff, a decree for mandatory injunction directing the Defendants to pay the unpaid salaries of the transferred employees has also been prayed.

2. Briefly stated the case of the Plaintiff, as made out in the plaint, is that the Plaintiff is a general Industrial Corporation Ltd. and has instituted the present suit through its Managing Director who is also the Principal Officer of the Corporation and able to depose about the facts of the case. Defendant No. 1 is also an Industrial Company and Defendant No. 2 is its Managing Director. The Plaintiff owns Fertilizer and Salt Plants in Majholi, District Solan. The Defendants approached the Plaintiff with a proposal of taking on lease the said plants. After completion of the negotiations between the parties, the Fertilizer and Salt Plants were leased by the Plaintiff to the Defendants vide lease deed dated 18.11.1996. The term of lease was for five years and the Defendants were to pay Rs. 8 lacs

as lease money for the first year commencing from 1.1.1995 and for the following years of the duration of the lease, the Defendants were to pay lease money with 10% increase on the aforesaid amount of lease money. The Defendants were to take requisite licences etc. in the name of Defendant No. 1. The lease was to terminate on 31.12.1999 but the period could be extended subject to the specified terms and conditions. The lease money was payable in six monthly instalments and 40 employees of the Plaintiff stood transferred to the Defendant who were to be kept on rolls of employment of the Defendant as if they were on foreign service. So transferred employees were entitled of the benefits of the service like leave, bonus, medical reimbursement, T.A. etc. and the revised pay scales as might be revised by the H.P. Government from time to time. The Defendants were to contribute towards their provident fund, gratuity and pension in accordance with the rules applicable to the employees of the Plaintiff and were also to pay them leave salary and to bear the statutory and administrative expenses like electricity, water, insurance, telephone, fuel and pollution control charges etc. concerning the leased property. At the instance of the Defendants, a supplementary lease deed was executed between the parties on 16.5.1995 whereby the Schedule of payment of instalments and the period of lease was changed and it was agreed that the lease period was to commence from 18.5.1995 and was to terminate on 17.9.2000. The raw material worth Rs. 35,54,290 lying at the plant was also purchased by the Defendants and as a part payment Defendant No. 2 issued a cheque for Rs. 54,290 in favour of the Plaintiff and also gave Bank Guarantee of Rs. 35 lacs and took possession of the raw-material. The cheque aforesaid was encashed but the Bank Guarantee was found forged. Defendant No. 2, therefore, on behalf of Defendant No. 1 and self issued cheques worth Rs. 35 lacs but such cheques bounced. The Defendants further committed breaches of the terms and conditions of the lease as the 3rd and 4th instalments of lease money, insurance charges, electricity charges, telephone bills, salary, bonus, gratuity, Contributory Provident Fund etc. of the transferred employees were not paid. In between on the request of the Defendants, the Plaintiff on different dates handed over lab chemicals, tools etc. worth Rs. 44,705 to them. The FIRs for furnishing forged Bank Guarantee and complaints u/s 138 of the Negotiable Instruments Act had to be instituted against the Defendants who had failed to discharge their liabilities under the lease, some of which had to be discharged by the Plaintiff. The Defendants failed to make payments as per the conditions of the lease deeds despite demands. Hence, the present suit for recovery of the amount payable by the Defendants on account of unpaid price of the raw material, damages for withholding the payment of price, insurance charges, unpaid price of tools and spare parts, Bank charges regarding dishonour cheques, electricity bills, telephone bills unpaid lease money, interest, unpaid bonus, unpaid salary, the amount debited from the salaries of the employees but not deposited as per the terms of lease, unpaid contributory funds, administrative charges and unpaid gratuity.

3. The Defendants filed written statement and contested the suit. In the written

statement they raised as many as 17 Preliminary Objections. However, most of them contain narration of facts and the averments therein which can be said "Preliminary Objections" are to the effect that the plaint lacks material particulars and suggests falsehood and suppresses material facts, therefore, the suit is not maintainable, that the suit is barred by limitation, that the suit is not triable by this Court, that the Plaintiff has not come to the Court with clean hands, therefore, is not entitled to the discretionary relief and that the Plaintiff is estopped by its acts and conduct from instituting the present suit. On merits while admitting the execution of the lease deed between the parties, the terms and conditions thereof have not been disputed. The transaction regarding purchase of raw material worth Rs. 35,54,290 lying at the plant is also not disputed. The fact that the Bank Guarantee was forged is also not disputed but it is claimed that it was so because of the fault of Bank Official. It is further averred that the post dated cheques in question were issued on the condition and understanding that all the finished products produced by the Defendants shall be sold through HIMFED and the said cheques would be cleared on the receipt of the payment from the HIMFED but due to the unhealthy marketing policy, which was being followed by the Plaintiff, the Defendants did not sell the produce through HIMFED. It is also claimed that the Defendants have failed to perform their part of the terms and conditions of the lease, therefore, the Defendants are not liable to pay the suit amount. The liability to pay the price of the raw material has been denied on the ground that at the time of taking over of the plant by the Defendants a part of the material was lying in the factory premises. Hence, the claim Plaintiff has been denied in toto.

4. Plaintiff filed replication wherein the grounds of the defence, as taken in the written statement, have been denied except that some raw material is lying in the factory premises but it is claimed that such material is useless.

5. On the pleadings of the parties, following issues were framed:

1. Whether the plaint lacks material particulars and is not in accordance with the provisions of Code of Civil Procedure? OPD

2. Whether the suit is not triable by this Court? OPD

3. Whether the suit is not maintainable as alleged in para 14 of the preliminary objection? OPD

4. Whether the Plaintiff is estopped from filing the suit and has come to the Court with unclean hands and if so its effect? OPD

5. Whether the suit is time barred? OPD

6. Whether the post dated cheques to the tune of Rs. 35 lacs were issued by the Defendant on the condition and understanding that all the finished products produced by the Defendants will be sold through HIMFED? OPD

7. Whether the Defendants could not sell the prodlect due to any unhealthy policy

of the Defendant as stated in para 10 of the written statement? OPD

8. Whether the Plaintiff has not performed its part of the contract and for that reason, the Defendants are not liable to pay the suit amount including charges of electricity, telephone bills, instalment of lease money etc. as alleged in para 11 of the written statement? OPD

9. Whether the Defendants are not liable to pay the price of the materia 1 handed over to them by the Plaintiff? OPD

10. Whether the Defendants are not liable to pay the amount of salaries, penalties that may be imposed by the Regional Provident Commissioner? OPD

11. To what amount the Plaintiff is entitled to recover from the Defendants? OPP

12. Relief.

6. Plaintiff led evidence. However, the Defendants failed to lead evidence despite various opportunities.

7. Arguments heard.

8. My issuewise findings are as under:

Issue Nos. 1 and 3:

9. The learned Counsel for the Plaintiff while arguing these issues jointly has raised the objection that the plaint does not disclose that the Managing Director, who has signed and verified the plaint, was duly authorised by the Board of the Directors of the Plaintiff to institute the suit, therefore, the plaint lacks in material particulars and the suit is not maintainable for not having been instituted by an authorised person. It was further contended by the learned Counsel for the Defendants that the Managing Director may sign and verify the plaint but the authority to sign and verify the plaint in itself does not constitute the authority to institute the suit. While referring to Nibro Ltd. Vs. National Insurance Co. Ltd., in support of his contention, the learned Counsel has submitted that the suit having not been filed by the authorised person is liable to be dismissed.

10. There is no dispute that A.R. Basu (PW-1) being the Managing Director of the Plaintiff at the relevant time was competent to sign and verify the plaint. However, it is true that provisions of Order 29 Rule 1 of the CPC (hereafter referred to as "the Code") invests the persons mentioned therein only to sign and verify the plaint in a case where the company/Corporation is the Plaintiff but ipso facto does not clothe them with the authority to file the suit on behalf of the company/Corporation. u/s 291 of the Companies Act, it is only the Board of Directors which is empowered to confer the powers on a particular Director to institute a suit on behalf of the company and in the absence of such conferment no director will be competent to institute the suit on behalf of the company. This is precisely the ratio in Nibro Limited's case (supra).

11. The question, which in fact arises for determination in view of the submissions of the learned Counsel for the Defendants, is whether the authority to institute a suit in writing has necessarily to be averred in the plaint and has to be proved or conferment of such authority/power may be inferred from the peculiar facts of a case.

12. In the case in hand, it is averred in Para-1 of the plaint that the Plaintiff is a General Industrial Corporation Ltd. having its office in Himrus Building and "is filing this suit through its Managing Director who is also the Principal Officer of the Corporation and who is also able to depose about the facts of the case." Evidently these averments mean that the company has filed the suit through its Managing Director, therefore, it is implicit in the averment that the Managing Director has the power to institute the suit on behalf of the Plaintiff. This view is further strengthened by the fact that the aforesaid contents of the plaint have not been disputed by the Defendants in reply to Para 1 in their written statement. In the whole of the written statement no objection has been raised by the Defendants that the Managing Director of the Plaintiff had no power and authority to file the suit on behalf of the Plaintiff Corporation. The basis for the objection that the suit is not maintainable as raised in the written statement is not that the Managing Director of the Plaintiff is not authorised to file the suit but the basis for this objection is that the Plaintiff has suggested falsehood and has suppressed the material facts from the Court. Evidently on the basis of these averments, the Defendants cannot raise the plea that the suit has not been filed by a competent person. Similarly, the objection that the plaint lacks material particulars and is not in accordance with the Code is not based on the allegation that the Managing Director of the Plaintiff Corporation has no authority to file the suit. Thus there is no express challenge to the authority of the Managing Director of the Plaintiff who has filed the suit. It cannot be disputed that a body corporate, as the Plaintiff is, can sue and be sued in its own name. Since such a body is juristic entity, therefore, some person has to sign the pleadings on its behalf. Rule 1 of Order 29 of the Code provides for signing and verifying the plaint where a Corporation/company is the Plaintiff, by the Secretary, any Director or other Principal Officer who is able to depose to the facts of the case. Rule 14 of Order 6 of the Code provides that every pleading shall be signed by the party and its pleader, if any, and in a case where party pleading is unable to sign the pleading, it may be signed by any person duly authorised to sign the same or to sue or defend on his behalf. Thus, a Corporation can authorise any person to sue on its behalf. As already stated hereinabove, since the plaint discloses that the Plaintiff was filing the suit through its Managing Director, it is implicit therein that such Managing Director was competent to file the suit on behalf of the Plaintiff and any express written authority in this regard was not required to be proved.

13. In *United Bank of India Vs. Naresh Kumar and others*, while dealing with almost similar question as in hand, the Hon"ble Supreme Court held as under:

10. 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 CPC 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 or 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 CPC 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 dehors 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 its officers a corporation can ratify the said action of its 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 its officer.

13. The Court had to be satisfied that Shri 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 Shri 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 Shri L.K. Rohatgi in signing the plaint and thereafter it continued with the suit.

14. In the case in hand till the conclusion of the trial of suit in which the Court fee has been paid, issues have been framed and evidence has been led there is no suggestion even to PW-1 that he had no authority to file the suit on behalf of the Plaintiff. Therefore, the contention that PW-1 had no authority to institute the suit cannot be sustained. There is no specific allegation(s) in the written statement nor there is proof of any fact on the basis of which it may be held that the plaint lacks in material particulars or that the suit is not maintainable, as alleged. Accordingly, both these issues are held against the Defendants.

Issue No. 2:

15. There is nothing on the record nor has been urged at the time of the arguments which may show that the suit is not triable by this Court. This issue is, therefore, decided against the Defendants.

Issue No. 4:

16. Defendants have not led any evidence to prove this issue. It is, therefore, decided against the Defendants.

Issue No. 5:

17. The lease deed, out of which the cause of action accrues to the Plaintiff to institute the present suit, was executed on 18.11.1994 and was subsequently modified by lease deed executed on 16.5.1995. The suit having been instituted on 6.8.1997 has evidently been filed within the period of limitation. The Defendants have failed to show that the suit is not within the period of limitation. Accordingly, this issue is decided against the Defendants.

Issue Nos. 6, 7 and 8:

18. All these issues are issues of facts and the onus to prove these issues was on the Defendants. However, the Defendants have failed to lead any evidence whatsoever to prove these issues, therefore, these are held against the Defendants.

Issue Nos. 9, 10 and 11:

19. Since all these issues are inter-connected, therefore, are taken up together for decision. It is not in dispute that at the time of taking over the plants on the basis of the lease deeds executed between the parties raw material worth Rs. 35,54,290 was lying in the plant taken on lease by the Defendants. Against the said value of the raw material Defendant No. 2 issued a Cheque for Rs. 54,290 which was encashed by the Plaintiff as admitted in Para 9 of the plaint. However, the Plaintiff in this suit has claimed the balance price of the raw material amounting to Rs. 34,99,024. It is admitted case of the Plaintiff that it had taken over the possession of the Fertiliser Plant where the said raw material was lying at the time of execution of the lease deed. It is admitted by L.R. Sharma (PW-3) that at the time of taking over the possession of the Fertilizer Plant by the Plaintiff some raw material was lying within the Factory premises. However, he is not aware of the exact quantity of raw material so lying but some of such material had been sold by the Plaintiff and will be credited against the liability of the Defendants. He has, however, not stated as to what are the sale proceeds of the material so sold by the Plaintiff. In view of the above statement of PW-3, it was for the Plaintiff to prove as to how much raw material was available at the plant premises when it took over the possession of the plant from the Defendants and what was the value thereof and it was further to be proved as to what was the sale proceeds obtained by the Plaintiff on sale of a part of such

material. It is though admitted by the Defendants that they used a part of the raw material but at the same time receipt of Rs. 54,290 on account of part payment of the price of raw material is admitted by the Plaintiff. Therefore, in the absence of proof that the raw material used by the Defendants during the period plant remained in their possession was more than Rs. 54,290 and the sale price of the sold material and the value of the left over material is less than the sum of Rs. 35,54,290 the Plaintiff cannot be held entitled for any amount on account of the price of the raw material. This is precisely the case of the Defendants. Though they have not led any evidence to prove that they are not liable to pay the price of the raw material handed over to them by the Plaintiff but their defence is probablised by the discrepant evidence of the Plaintiff itself on this count.

20. The Plaintiff has claimed a sum of Rs. 4,80,612 on account of damages for withholding the aforesaid amount on account of the price of the raw material in lieu of the interest @ 18.5%. Since the Plaintiff is not found entitled to the principal amount on account of the price of the raw material, therefore, the Plaintiff is not entitled even to this amount, as claimed on account of damages for non payment of the principal amount.

21. The other claims of the Plaintiff on account of such payments which it had to make/deposit and on account of expenses incurred by it because of the failure of the Defendants to make such payments as per the terms and conditions of the lease deed viz. Insurance charges in the sum of Rs. 62,789, unpaid price of the tools and spare parts Rs. 44,705, Bank charges paid on account of dishonoured Cheque Rs. 4,690, payment of electricity bills in the sum of Rs. 9,346 and Rs. 3,58,383 payment against telephone bills amounting to Rs. 2,125, unpaid lease money in the sum of Rs. 8,80,000 interest on unpaid lease money in the sum of Rs. 1,30,827, bonus of the staff amounting to Rs. 92,881, balance unpaid salary of the staff amounting to Rs. 84,669.30, deductions made by the Defendants from the salaries of the transferred employees which were payable to the Plaintiff amounting to Rs. 1,12,912, unpaid salary of the transferred staff from April, 1996 to March 1997, unpaid contributory fund of the transferred employees for the period from 1.7.1995 to 31.3.1996 amounting to Rs. 3,51,569, unpaid contributory fund for the period April, 1996 to March, 1997 amounting to Rs. 1,54,352, administrative charges amounting to Rs. 10,730, gratuity not deposited in terms of the lease deed amounting to Rs. 1,66,886 and other dues of the transferred staff not paid by the Defendants but now paid by the Plaintiff amounting to Rs. 59,977 are established in view of the unrebutted evidence of the Plaintiff consisting of the statements of L.R. Sharma (PW 3), Kuldeep Sharma (PW 4), Lokinder Banshtu (PW 5) and the documents Exts. PW 3/A, PW 3/B, PW 3/D, PW 3/D-1 to PW 3/D-6, PW 3/E, PW 4/A to PW 4/C, PW 4/C-1 to PW 4/C-3, PW 4/D, PW 4/D-1 to PW 4/D-5, PW 4/E, PW 4/E-1, PW 4/F, PW 4/F-1 to PW 4/F-13, PW 4/G, PW 4/G-1 to PW 4/G-36, PW 4/H, PW 4/H-1, PW 4/H-2, PW 4/J, PW 4/J-1, PW 4/K, PW 4/K-1, PW 5/A and PW 5/B.

22. PW 3 while supporting the claim, as made out in the plaint, has produced and proved various documents. Ext. PW 3/A is the first lease deed executed between the parties followed by supplementary lease deed Ext. PW 3/B. In view of these lease deeds, the conditions governing the lease as spelt out in the plaint are proved. Ext. PW 3/D, PW 3/D-1 to PW 3/D-6 are the photocopies of the cheques and Ext. PW 3/E is the photocopy of the original Bank guarantee proved to be true according to the original. PW 4 Accountant of the Plaintiff since 1976 had maintained the accounts of the Defendants and produced such accounts in original in the Court. He has also supported the case of the Plaintiff regarding the unpaid dues. He has proved the unpaid electricity bill for Rs. 3,58,207.85 Ext. PW-4/A and Anr. bill for Rs. 9,346 Ext. PW 4/B. He has further proved the statements regarding description of the tools which were used by the Defendants during the subsistence of the lease deed and are Exts. PW 4/C, PW 4/C-1 to PW 4/C-3 and has further proved that these statements are duly signed by Defendant No. 2. He has further proved the telephone bills Exts. PW 4/D, PW 4/D-1 to PW 4/D-5 against which the payments had to be made by the Plaintiff because of the failure of the Defendants to make such payments as per the terms of the lease. The details of the bonus which was to be paid to the transferred employees by the Defendants but was " paid by the Plaintiff are contained in Ext. PW 4/E and PW 4/E-1. The details of the salary paid by the Plaintiff to its transferred employees who as per the terms and conditions of the lease deeds were to be paid by the Defendants are contained in Exts. PW 4/F, PW 4/F-1 to PW 4/F-13 which are signed by the concerned employees. The challans regarding depositing of the contributions to the provident fund of the transferred employees which were to be paid by the Defendants but had to be paid by the Plaintiff are Exts. PW 4/G and PW 4/G-1 to PW 4/G-36. Because of the delayed payments towards the Fund a penalty in the sum of Rs. 56,529 had also to be paid by the Plaintiff and it is so stated by the witness. The accounts vouchers regarding payment of charges to the bank on account of the dishonoured cheques paid by the Plaintiff are Exts. PW 4/H, PW 4/H-1 and PW 4/H-2. The details of medical reimbursement in respect of the transferred employees are Exts. PW 4/J and PW 4/J-1 and the details of the salaries are contained in Exts. PW 4/K and PW 4/K-1. The details of the salaries in the form of the statements aforesaid are proved to have been prepared by this witness and PW 5.

23. Similarly PW 5 while supporting the case of the Plaintiff has proved the salary Register of the workmen of the Plaintiff who were transferred to work for the Defendant which pertains to the period June, 1995 to March, 1997 and is Ext. PW 5/A. He has corroborated the the statement of PW 4 regarding the preparation the statements of salary and the contribution to the Provident Fund which the Plaintiff had to pay. He has further stated that the details of bonus Ext. PW 4/E and PW 4/E-1 have been prepared by him and has further proved the details of the deductions made by the Defendants from the salary of the transferred employees but not deposited with the Plaintiff as Ext. PW 5/B. He has further proved the details contained in Exts. PW 4/F, PW 4/J and PW 4/J-1. It is

the condition in the lease deed Ext. PW 3/A itself that in the event of the lessee failing to pay any of the instalment of the lease money as per the schedule the lesser shall have the right to claim the interest @ 2% per month for the period the payment is delayed by the lessee. The statements of the aforesaid witnesses and the said documents when read together establish the claim of the Plaintiff for the amount claimed in the suit except the amount claimed on account of alleged remaining price of the raw material and damages for withholding payment thereof. Thus, the claim of the Plaintiff is established to the tune of Rs. 43,54,168 only. In view of the transaction between the parties being commercial, the Plaintiff is entitled to interest on the said amount @ 15% per annum as claimed. However, the Plaintiff is not entitled to the amount claimed in the suit over and above the amount of Rs. 43,54,168. Therefore, Issue No. 9 is decided in favour of the Defendants, Issue No. 10 is held against the Defendants and Issue No. 11 to the extent indicated hereinabove is decided in favour of the Plaintiff.

Relief:

24. In view of the findings given above, a decree for Rs. 43,54,168 is passed in favour of the Plaintiff and against the Defendants with proportionate costs of the suit and with pendente lite and future interest on the decretal amount @ 15% per annum from the date of institution of the suit till the realization of the decretal amount. The claim in the suit over and above the claim hereinabove decreed is dismissed.