(1996) 09 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 2678 of 1988 and Civil Miscellaneous No. 2913-C of 1996 (O and M)

Indian Overseas Bank APPELLANT

Vs

Shree Saraswati Spinning Mills and Others RESPONDENT

Date of Decision : 11-09-1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1997) 115 PLR 359 : (1997) 2 RCR(Civil) 90

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : O.P. Goyal and Ashwani Verma, for the Appellant; S.C. Kapoor Gurbachan Singh and A.C. Jain, for the Respondent

Judgement

N.K. Kapoor, J.—This is plaintiffs regular second appeal against the judgment and decree of the Additional District Judge whereby decree awarded by the trial Court has been reversed, thus, dismissing the suit filed by the plaintiff.

2. Plaintiff-Bank through its Branch Manager Shri J.R. Tutlani filed suit for recovery of Rs. 21,16,837.19 paise and for mortgage decree under Order 34 CPC.

3. The suit was contested by the defendants on a number of grounds, namely, filing of the suit by a duly authorised person; execution of mortgage deed as an additional security; execution of other documents for the grant of credit facilities; amount due towards the defendants; rate of interest; suit being bad for misjoinder and non-joinder of parties; bar of limitation etc.

4. Trial Court on the basis of evidence i.e. documentary as well as oral adduced by the respective parties finally found merit in the case of the plaintiff and so awarded a preliminary decree for a sum of Rs. 21,16,837.19 paise with costs. Defendants were allowed six months time to pay or deposit the decretal amount. Interest at the rate of 14% per annum was allowed from the date of suit till 11.2.1987, the time fixed by the Court for payment the decretal amount and

thereafter the plaintiff was entitled to interest at the rate of 14% per annum at the aggrieved amount of principal, interest and costs upto the date of realisation of actual payment. In case the defendants fail to comply with the aforesaid decree plaintiff was held entitled to move the Court for final decree under Order 34 Rule 5 CPC.

5. Feeling aggrieved by the judgment and decree of the trial Court the defendants preferred an appeal before Additional District Judge. Counsel for the appellant at the out set challenged the finding of the trial Court in respect of issue No. 1. Counsel for the appellant urged that Shri J.R. Tutlani had no valid authority in his favour for filing of a suit. According to the counsel, in the absence of any resolution having been passed by the Board of Directors the alleged authority given by the Directors to Shri. Tutlani to institute the suit is infact no authority in law and so the appeal deserves to be allowed on this ground. Further arguing the counsel drew the attention of the Court to Photostat copy of General power of attorney in favour of Shri Tutlani, Exhibit P-1, and argued that the document has not been attested and in the absence of the same no reliance can be placed upon such a document especially when Shri Tutlani could not state as to who was the third Director who had appended signatures upon the power of attorney exhibit P-1. Power of attorney is also not a registered document. Lower appellate Court found substance in this plea of the appellants and so reversed the findings of the trial Court in respect of issue No. 1. Other issues too were examined by the Court but the same need not be dilated for the reason that the appeal has been primarily accepted on account of reversal of finding of trial Court in respect of issue No. 1. The lower appellate Court while allowing the appeal specifically observed that the "plaintiff bank failed to produce resolution authorising J.R. Tutlani to file this suit; the power of attorney photostat copy of the same is Ex.P.l is neither attested nor it is registered. Even it was not executed in the presence of J.R. Tutlani. He is not in a position to identify even signatures of one of the Directors of the Board. All this shows that the suit is not instituted by duly authorised person, thus deserves to be dismissed on this very preliminary objection alone.-..." Appeal was accepted, thus, dismissing the suit of the plaintiff: -

6. Feeling aggrieved by the judgment and decree of the lower appellate Court the plaintiff has filed this appeal with a view to seek reversal of the judgment and decree of the lower appellate Court. Appellant has termed the conclusion arrived at by the lower appellate Court in respect of issue No. 1 to be totally perverse. According to the appellant there was no dispute between the parties that Shri J.R. Tutlani was manager of the Bank and thus, being a principal officer of the bank could sign and verify the plaint and execute a power of attorney in favour of the counsel. In fact, Shri J.R. Tutlani has appeared as a witness and deposed on oath. As regards the objection of the Court that only a photo copy of the original power of attorney was produced on record, it has been argued by the counsel that infact the original was produced before the Court and it is thereafter that photocopy of the same was placed on record and the original document was

returned to the plaintiff. Merely for the reason that Shri J.R. Tutlani could not decipher the signatures of the third Director who had appended his signatures on the power of attorney is hardly a ground to hold that document has not been properly proved. The Court appears to have taken a very superficial view of the matter thereby depriving the plaintiff of his valuable right to recover the amount due towards the defendants.

7. In addition to the aforesaid submission, counsel pressed the two applications filed by the appellant under Order 41 Rule 27 CPC and so sought the permission to adduce certain other documents on record to meet some of the infirmities noticed by the lower appellate Court while deciding issue No. 1. The appellant initially at the time of filing the appeal filed an application under Order 41 Rule 27 CPC read with Section 151 (C.M.No. 75-CA of 1989) to produce on record the supplemental power of attorney executed by two Directors of the Bank and counter signed by the General Manager. Vide this power of attorney dated 1.11.1988 the Bank has chosen to confirm and ratify all the actions of holder of the power of attorney having exercised by him in connection with the recovery of debts due to the Bank. According to the counsel this document could not be adduced in evidence earlier as the same has been executed on 1.11.1988 i.e. after the decision by the lower appellate Court. Otherwise too, such a document will help the Court in determining the issue raised. In addition to the aforesaid application appellant filed another application bearing No. 2913-C of 1996 under Order 41 Rule 27 CPC. Vide this application the appellant has sought permission of the Court to place on record resolution of the Board dated 7.11.1973, memorandum of Association and Articles of Association of Indian Overseas Bank. According to the counsel, all these three documents have come from the proper custody and so their authenticity is beyond dispute. The aforesaid three documents will help the Court in determining the precise issue raised i.e. whether Shri J.R. Tutlani has been duly authorised to file the present suit. Earlier these documents were not produced as the plaintiff bonafidely was of the view that in view of power of attorney placed on record the production of the resolution as well as memorandum of Association and Articles of Association would merely be burdening the file. So, the permission be granted to adduce these documents by way of additional evidence.

8. Defendants have opposed the aforesaid two applications for adducing of additional evidence. According to the counsel, Shri J.R. Tutlani, Branch Manager had no authority to file the suit on behalf of Indian Overseas Bank as he had no legal and valid authority to file the suit on the date of its presentation before the - trial Court. General power of attorney produced on record does not contain any word that Shri J.R. Tutlani is empowered to institute suit for realisation of any advance and debts. Supplemental power of attorney in favour of Shri J.R. Tutlani clearly shows that power of attorney produced by Shri Tutlani during the trial did not confer any power or right with him to file the suit. In any case, such a document having been executed after the decision by the lower appellate Court the same cannot remove the inherent defect in filing and presentation of the suit.

9. Similarly, application now filed after a gap of about 7/8 years to produce on record the resolution as well as memorandum of Association and Articles of Association is merely a crude attempt to fill up the lacuna in the case. In any case, such an application does not strictly come within the purview of Order 41 Rule 27 CPC and so deserves to be dismissed on this ground alone.

10. Indian Overseas Bank, a Corporate Body constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 instituted this suit through Shri J.R. Tutlani, Branch Manager, principal officer and General power of Attorney of the Bank. In para No. 1 of the plaint it has been stated that Shri J.R. Tutlani is the Branch Manager, Principal Officer and General Attorney of the plaintiff at Bhiwani and is competent to sign, verify the pleadings and to institute and prosecute this suit on behalf of the plaintiff Bank. Defendants while replying to this para of the plaint whereas admitted that the plaintiff is a corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and has its Branch Manager at Bhiwani, the remaining contents of this para were denied. It has been specifically denied that Shri J.R. Tutlani is the Branch Manager and General Attorney of the plaintiff Bank at Bhiwani and that he is competent to sign and verify the pleadings and institute this suit on behalf of the plaintiff Bank. Precisely for this reason issue No. 1 was framed by the trial Court, which reads as:-

"1) Whether Shri J.R. Tutlani is duly authorised to file the suit on behalf of the plaintiff? OPP"

In support of this issue Bank examined Shri J.R. Tutlani who deposed that he was authorised to file the present suit as per general power of attorney, photo copy of which is exhibit P-1. The trial Court while dealing with the power of attorney exhibit P-1 (photostat copy) has specifically observed that Shri J.R. Tutlani had brought with him the original power of attorney. Since the counsel for the defendants failed to cross-examine the witness about the genuineness of the original power of attorney and as PW1 had identified the signatures of Shri S.V. Sundram and Kumar Dewan on the original power of attorney the same was taken to be duly proved. Accordingly, this issue was decided in favour of the plaintiff holding that Shri J.R. Tutlani had been duly authorised to file the suit. This finding has been reversed by the lower appellate Court on the ground that in the absence of a resolution by the Board of Directors, no power to institute the suit could be conferred upon Shri Tutlani and as in the instant case neither any resolution alleged to have been passed by the Board of Directors nor even the memorandum of Association and Articles of Association have been placed on record, the view taken by the trial Court is erroneous and so the finding in respect of this issue deserves to be reversed.

11. As per Order 29 Rule 1 CPC in suit by or against a Corporation, any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any director or other principal officer of the Corporation who is able to depose to the facts of the case. Shri J.R. Tutlani being Manager of the Bank and so a

Principal Officer of the Bank and conversant with the facts of the case could indeed sign and verify the pleadings on behalf of the Bank. However, on the basis of Order 29 Rule 1 CPC such person does not get an authority to institute the same unless duly authorised by a valid resolution of the Board of Directors of the Bank. Right to institute a suit flows from the resolution of the Board of Directors of the Bank. Shri Tutlani to prove his locus standi to institute the suit brought to the notice of the court original power of attorney authorising him to file the suit. Subsequently, a photo copy of the same was adduced in evidence and accepted as well. Vide document exhibit P-1 he had been given a general power of attorney on behalf of the Bank to do all such acts like receive and pay moneys on behalf and in the name of the said Bank, to receive and pay deposits on terms and conditions etc. and to demand, collect, receive and give effectual bona fide discharges of in the name and on behalf of the said Bank, all debits, advances and claims due to the said Bank etc. and generally to sign, execute, do and perform such instruments, documents and all such acts and things as may be requisite or necessary in or about the execution of these presents according to the true intention and meaning thereof. This resolution of Board of Directors is dated 26.4.1974. This proceeds on the basis that the Board of Directors had resolved to appoint person/persons as its attorney.

12. With a view to explain the chain of events as well as to meet objections raised by the defendants regarding the power of Shri Tutlani to institute the suit that the appellant has filed the applications to place on record certain more documents i.e. entries in the minutes book, which records conferring of power of attorney in favour of Shri J.R. Tutlani, copies of memorandum of Association and Articles of Association as well as supplemental power of attorney ratifying the earlier acts done or exercised by Shri Tutlani for recovery for recovery of the debts due to the Bank.

13. Both the respective counsel in support of their contentions have made reference to a number of judgments of this Court as well as of the apex Court. Primarily, the Courts have examined the matter in the light of provisions contained in Order 41 Rule 27 CPC and have also tried to mould the relief in view of peculiar facts and circumstances of the case. Thus, each case needs to be examined as per its facts.

14. Suit has been filed by the plaintiff Bank through Shri J.R. Tutlani, Manager, Principal Officer of the Bank who with a view to prove his authority has placed on record the power of attorney duly executed in his favour by two Directors of the Bank. Not only this to prove this document he has verified their signatures upon this document; Document was taken to have been proved by the trial Court. As per document exhibit P-1 Shri J.R. Tutlani indeed had a authority to institute the suit. This finding has, however, been reversed by the lower appellate Court and so the necessity of adducing certain other documents to prove the due execution of the power of attorney has arisen. Precisely for this reason, appellant has sought permission to place on record the resolution of the Board of Directors,

memorandum of Association and Articles of Association as well as a supplemental power of attorney. This later document is intended to ratify all such acts which Shri Tutlani had performed for and on behalf of the Bank. All these documents, if proved, are likely to have a material bearing upon the central issue the locus standi of Shri Tutlani to file the suit, bank indeed is a corporate body and acts through its agents. So, the matter needs to be examined a bit liberally. No doubt, the plaintiff has been re miss in not placing on record these documents to show locus standi of Shri Tutlani to file the suit, all the same per se it cannot be held that these documents have been fabricated some time after the decision by the lower appellate Court. In any case, such a matter can be determined by the Court after the same are permitted to be adduced in evidence according to law. Accordingly, I allow the aforesaid two applications filed under Order 41 Rule 27 CPC. Since these documents sought to be adduced in evidence are to be proved according to law and an opportunity of adducing evidence in rebuttal is to be granted to the contesting respondents, I accept the appeal, set aside the judgment and decrees of the Courts below and remand the case to the trial Court for fresh adjudication.

15. Parties are directed to appear before the trial Court on 14.10.1996.

16. Since the matter has remained pending for a pretty long time, the Court is directed to expeditiously dispose of the same within a period of six months from the receipt of order of this Court. To obviate delay parties be directed to effect service upon their witnesses personally.

