

(2013) 09 MP CK 0138

In the Madhya Pradesh High Court

Case No : First Appeal No. 117 of 2000

Madhya Pradesh State Road Transport Corpn.

APPELLANT

Vs

Nathuram Dubey and Others

RESPONDENT

Date of Decision : 03-09-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 6 Rule 14, Order 6 Rule 15, 96

Citation : (2013) 4 MPLJ 149

Hon'ble Judges : G.D. Saxena, J

Bench : Single Bench

Advocate : S.K. Shrivastava, for the MPSRTC, for the Appellant; M.B. Mangal, for the Respondent

Final Decision : Allowed

Judgement

G.D. Saxena, J.—This appeal u/s 96 of the CPC 1908 has been preferred by the plaintiff/appellant against a judgment and decree dated 6th January 2000 in Civil Suit No. 1B/1995 passed by the Fifth Additional District Judge Gwalior (M.P.), dismissing thereby the suit of the plaintiff for recovery of rent and ancillary charges amounting to Rs. 36586=20 from the contractor-defendant No. 1. Brief facts of this appeal are that for providing the foodstuffs as breakfast and tea with snacks to the employees, open tenders for the period from 1st April 1986 to 31st August 1989 were invited from public. On submission of the tenders they were opened in which the tender of defendant No. 1 was finalised. As per terms of the contract-deed executed by the defendant No. 1 in favour of the plaintiff Corporation, it was decided that the monthly rent of canteen as Rs. 3151/- alongwith monthly charges of electric consumption shall be paid up to 7th day of each month. For performance of such contract, Rs. 19,000/- was deposited as security amount with the Corporation and Rs. 2000/- was deposited at the time of submitting the application for tender. It was further resolved between the parties that in case of non-deposit of the rent and ancillary electricity charges, the Corporation shall have a right to recover the arrears with 15% monthly

interest on due payment and in that event the security money shall be liable to be utilised for recovery of the arrears. It was further decided that as per terms of the contract, the contractor shall provide quality wise foodstuffs. Defendant No. 2 stood as surety for the defendant No. 1-contractor and so he was bound to comply with the terms of the contract at the behest of the contractor and was also responsible to pay the arrears amount. On inspection, it was complained by the Health Officer of the Municipal Corporation Gwalior that the foodstuffs provided by the contractor were substandard and not up to the prescribed quality. However, after issuing the notices and warning, no improvement in the quality of the material was noticed. On 18th August 1987, the contractor/defendant No. 1 informed by letter against due acknowledgment that he is suffering from epilepsy and expressed his inability due to such disease to run the canteen properly. Thereafter by uplifting his goods he vacated the canteen premises. On the date of vacation of the canteen, Rs. 57,586=20 was due against arrears of rent, interest and electricity charges against him. After deducting the security deposit and tender charges which were deposited at the beginning by the defendant No. 1/contractor, remaining amount of Rs. 36,586=20 was to be recovered from the contractor-defendant No. 1. So, the suit for recovery of this amount was filed by the appellant-Corporation. The defendant by admitting the terms of contract and other pleadings of the plaintiff regarding the terms of contract and by way of counter-claim prayed for rendition of accounts. The trial Judge after trial dismissed the suit filed by the plaintiff. Being aggrieved by the judgment and decree, this appeal has been filed.

2. Learned counsel for the appellant/plaintiff contended the judgment and decree under appeal appears to be against the law and the evidence as adduced by the parties before trial court, hence, same is liable to be set aside. It is further submitted that the defect which appeared before the trial court was that the plaint was not signed and verified by the authorised officer appointed by the Corporation which was curable by appropriate amendments and therefore proper course in such case is not to dismiss the suit or reject the plaint but to get the plaint amended. However, the learned trial court without following the relevant provision dismissed the suit. Hence, it is prayed that by allowing the appeal, the judgment and decree assailed herein may be set aside and a decree as prayed for may be granted in favour of the plaintiff and/or in alternative by setting aside the judgment and decree under appeal, matter may be remanded back to the trial court with a direction to consider the evidence and after affording an opportunity of hearing, fresh judgment and decree may be passed.

3. On the other hand, learned counsel for the respondents opposed the prayer and prayed for dismissal of the appeal.

4. Heard the learned counsel for the parties. Also perused the record of the trial court and the law applicable to the case at hand.

5. The question for consideration in this appeal is whether the trial judge was justified in deciding the suit on the ground that the suit filed by the Corporation

was not properly signed and verified by the authorised officer and on this ground the suit filed by plaintiff is rightly rejected or whether the defendant No. 1, is entitled to get the security amount after deducting the arrears which were due with 12% interest from the appellant-plaintiff?

6. On perusal of the judgment under appeal and admissions of the parties, the following facts are admitted.

(i) that, on calling the tenders for running the canteen in Central Workshop M.P. State Transport Corporation for the period from 1st April 1986 to 31st August 1989, the tender submitted by the defendant No. 1 was accepted and accordingly the contract-deed was signed and executed between the parties.

(ii) that, in compliance of the deed, earnest money of Rs. 19,000/- was deposited with Rs. 2000/- as cost of the tender form and the rate of monthly rent between the parties was decided as Rs. 3151/-.

(iii) that, the contract was rescinded on 10th may 1988, resultantly the defendant No. 1-Contractor vacated the canteen premises of Central Workshop.

(iv) that, as per counter claim, the defendant No. 1 is entitled to get the rendition of accounts with respect to finalisation of the payment of dues regarding the contract between parties.

7. On perusal of the record of the trial court, it appears that the suit was filed by the M.P. State Transport Corporation through Chief Works Manager Central Workshop Gwalior. However, at the time of presentation of the plaint and verification, the signature on verification of the plaint was found to be doubtful and so Issue No. 1 to that respect was framed by the trial court and while deciding the same, the suit was held to be not maintainable. The statement of T.K. Rawal (PW-1), Chief Works Manager, Central workshop Gwalior being incomplete, the trial court left to consider his statement in the impugned judgment. In such circumstances, the signature on verification of the plaint remained under clog of doubts.

8. In the case of United Bank of India Vs. Naresh Kumar and others, the Hon. Apex court observed on this point as under:-

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. 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.

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, especially 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.

9. It is settled in law that omission to verify a pleading or a pleading not verified in the manner prescribed by law does not vitiate the pleading. There may be cases where the date of pleading and verification may be relevant and important, but it would be a wrong to reject the pleading on the sole ground of absence of date of verification while exercising discretionary power. In such cases, normally, the person verifying the pleading should be called upon by the Court to remove such defects. In view of the specific facts and in the light of the law laid down by the Hon. Apex Court in the case of United Bank of India (supra), by setting aside the judgment and decree dated 6th January 2000 in Civil Suit No. 1-B/1995 passed by the Fifth Additional District Judge Gwalior (M.P.), the matter is remanded to the trial court to record the statement of T.K. Rawal (PW-1), whose statement is found in-complete with other witnesses, if the parties so desire. If the trial court comes to the conclusion that the verification on plaint is defective in that case it shall afford an opportunity to cure the defects under Order VI Rule 15 of C.P.C. It is further directed that the trial court while deciding afresh the case on the touchstone of the said issue shall afford an opportunity of hearing to both the parties and thereafter pass a fresh judgment and decree in terms of the above in accordance with law, at the earliest possibility, preferably within a period of six months from the date of communication of the order of this court. Accordingly, the appeal stands allowed in the manner indicated above.