

(1975) 04 MAD CK 0004
In the Madras High Court

M.C.S. Rajan and Company		APPELLANT
	Vs	
National Nail Industries and Others		RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 30 Rule 10

Citation : AIR 1976 Mad 151 : (1975) ILR (Mad) 485 : (1975) 88 LW 673 : (1975) 2 MLJ 490

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Division Bench

Judgement

T. Ramaprasada Rao, J.—A very short question arises in this appeal. Plaintiff filed a suit for recovery of money due on accounts. The

plaintiff was admittedly a sole proprietary concern of which one Padmanabhan was the sole proprietor. He was trading under the name and style of

M.C.S. Rajan & Company. He had a Manager by name Narayanan. The defendants owed on account and dealings a sum of Rs. 22,361.83. As

per the books of accounts, the amount due was arrived at and the plaintiff claimed interest at 12 per cent. per annum on the out-standings so struck

in the accounts. The plaintiffs gave notice Exhibit A-2 prior to. the suit and the defendants replied that so much amount was not due as the goods

were priced at a very high rate not agreed to specifically between the parties. The plaintiff, therefore, on the basis of his accounts came to Court.

While instituting the suit, the cause title was correctly given as M.C.S. Rajan and Company and in paragraph 1 thereto, the Company was

described as the sole proprietary concern of Padmanabhan. It was also stated that the suit was being filed by its Manager M.A. Narayanan.

Obviously, this was done since the claim will be barred by limitation, if there was

any delay in the matter of the filing of the action The plaintiff was verified by Mr. Narayanar as Manager of the plaintiff-firm. The plaintiff sought for the usual money decree. The plaintiff was duly numbered without any objection by the Court. The defendants in their written statement after raising several pleas on merits, said that the suit as framed was not maintainable, as it is not made clear as to how the Manager can sue on behalf of the plaintiff's proprietor, Padmanabhan who has not filed the suit in his individual name. As in our view, it is not necessary to consider the merits in the defence as is presently seen, we are not stating the defence in full.

2. The main question and controversy touched upon by the defendants in their defence was that the suit as framed and as presented by Mr.

Narayanan as the Manager of the proprietary concern was not maintainable.

The following issues were framed for trial.

- (1) What is the agreed price of goods ?
- (2) Whether the statement of account of plaintiff is correct ?
- (3) Whether the plaintiff is entitled to interest ?
- (4) Whether the suit is barred by limitation ?
- (5) Whether the suit is not maintainable for the reasons stated in para. 10 of the written statement ?
- (6) Whether this Court has no jurisdiction to try this suit ?
- (7) To what reliefs, if any, is the plaintiff entitled ?

3. On all the issues excepting issue No. 5, the learned trial Judge agreed with the plaintiff. But, on issue No. 5, he was of the view that as the

authority which enabled Narayanan to sign the plaint and verify the pleadings was not produced at or about the time when the suit was filed by him

the presentation of the plaint is irregular and the acceptance of the same ought not to have been done and hence, no decree can be passed, even

though there is no real defence on the merits of the case The learned trial Judge was of the view that as Padmanabhan has not signed the plaint and

as Narayanan did not produce the power of attorney on the day when he signed the pleading, and as Exhibit A-20, the power of attorney, under

which the act of Narayanan was ratified by Padmanabhan was produced late and in particular at the time of trial, the learned trial Judge, while

agreeing With the plaintiff on all the other issues, found against it on issue No. 5 and held that the suit was not maintainable. It is as against this

portion of the judgment which has of course, resulted in the dismissal of the suit that the appeal has been filed. In our view, this is a case in which

the sole proprietary concern whose proprietor was Padmanabhan and whose name also has been disclosed as such is the plaintiff. One way by

which a sole proprietor who has a trading style can file a suit in respect of his commercial activity is by signing the plaint himself as proprietor on

causing the same to be signed by a person who has a requisite authority to do so. In the Civil Procedure Code, there is no express bar to this

procedure. In fact, Order 30, Rule 10 refers to a suit against a person carrying on business in a name other than his own name. But, there is no

express provision in the CPC for suits filed by persons carrying on business in a name other than his own. There-fore the regularity or acceptance

of such suits" by Courts has to be tested by common law principles. No doubt, to some extent Order 6 dealing with pleadings and in particular

Order 6, Rules 14 and 15 might give a clue. Under Order 6, Rule 14:

Every pleading shall be signed by the party and his pleader (if any) : provided that where a party pleading is, by reason of absence or for other

good cause, unable to sign the pleading, it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

Order 6, Rule 15 reads thus:

(1) Save as otherwise provided by any law for the time being in force every pleading shall be verified at the foot by the party or by one of the

parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what be

verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the case on which and the place at which it was signed.

4. Under both the rules, the pleading could be signed or verified as the case may be by any person duly authorised by the person who has to sign

the same. In fact, the pleading could be verified by a person proved to the satisfaction of the Court to be acquainted with the facts of the case. The

purport of Rules 14 and 15 of Order 6 is to avoid impersonation and unauthorised persons ushering in pleadings into Court and cause confusion

later on. But in a case where a Manager of a proprietorship concern signs the pleadings and verifies them as a person who has been duly

authorised to sign the same and as one who has been acquainted with the facts of the case, then it is reasonable to say that, if at any material point

of time and particularly when the defendants raise a specific plea that the pleadings have not been properly signed or verified, he produces] the

requisite authority from the sole proprietor or satisfies the Court that he is fully acquainted with the facts of the case, the principle and substance of

Rules 14 and 15 are satisfied. The case has to be decided on the elementary principle of ratification of an act by a principal. That the person who

signed the pleadings and verified it is the Manager of the concern is not in dispute. It can, therefore be safely presumed that he is acquainted with

the facts of the case. The question, however, is whether he was authorised to sign the pleadings by the principal namely, the proprietor. Exhibit A-

20 is the power of attorney produced during the trial of the case which establishes that Padmanabhan has appointed and constituted Mr.

Narayanan to file a suit against the defendants and take all such steps necessary in the said matter. He has also expressly stated that any acts done

by its attorney in that behalf shall be ratified and confirmed by him. Probably, this was the main anticipation which prompted the principal

administrative officer of the City Civil Court to accept the pleadings and number the suit. Even assuming that there was an irregular signing of the

pleading and a verification of the same, the power of attorney Exhibits A-20 produced would plug the laches said to have been created in the

situation concerned and would make the pleading a perfect one and also the verification an acceptable one. So long as the principal has ratified an

act authorised or unauthorised by him, and if there is no dispute by the contesting defendants that there Was no such ratification by the principal,

then in our view and in the facts and circumstances of this case, there has been a proper presentation of the plaint by Mr. Narayanan and Exhibit

A-20, through supervening in point of time would date back to the date of presentation of the plaint, and would make it a proper presentation of

the same by the agent with due authority [Of the principal. Sections 196 and 199 of the Indian Contract Act : make it clear that an act done by one

person on behalf of another, but without his knowledge or authority, may be ratified by that other and if that other so elects to ratify, the same,

effect will follow as if the act was performed by that other.

5. Even so, Section 199 of the Indian Contract Act say that a person ratifying any authorised act done on his behalf ratifies the whole of the

transaction of which such act formed a part. Even, as we said if the contention of the defendants is accepted for argument's sake, that there was an

irregularity in the transaction when Mr. Narayanan presented the plaint, such an irregularity has been cured by the express ratification of that

irregular act by Mr. Padmanabhan and this, as we said, has bridged the gulf, if at all there was one, in the matter of proper presentation of the

plaint in the Court below. The learned trial Judge was, therefore, wrong in having dismissed the suit as not being maintainable. The circumstances

of the case prompt us to hold that Narayanan had the requisite authority to present the plaint, sign the same and verify the same and if this is

accepted on the broad common law principle based on ratification of the act by the principal, then it follows that the suit was maintainable.

6. In fact we entertained slight doubt about the legal position and We requested Mr. T.R. Rajagopal to assist us as amicus curiae. Apart from the

common law principle referred to above by us, he has brought to our notice certain decisions of our Court and other High Courts. In *Lodd*

Govindoss Krishnadas Varu Vs. P.M.A.R.M. Muthiah Chetty, , Srinivasa Aiyangar, J. observed as follows:

I am not at all sure that with the plaint signed and verified as it was by the person who purported to act as the agent of the plaintiff and the order of

the learned Judge or this Court granting leave such leave when granted did not relate back to the institution of the suit and cure any irregularity

attaching to the signing or verification of the plaint.

That was a case where the plaint was presented by a person purporting to act as agent, but without producing the power of attorney. Later, the

power was produced and the contention was that the power not having been filed along with the plaint and as the leave to accept the plaint by the

administrative officer or the Judge, as the case may be, is a condition precedent and such leave not having been obtained, there was no proper

plaint before the Court. The learned Judge did not accept that contention. A

Division Bench of our High Court consisting of Chief Justice Gentle

and Yahya Ali, J in Subbiah Pillai alias S.S.M. Subramania Pillai Vs. Sankarapandiam Pillai and Others, , in a similar situation following the

observation of the Judicial Committee in Mohinimohun Das v. Bungst Buddon Saha Das ILR (1890) Cal. 580 observed thus:

Where plaintiff has not signed a plaint filed with his knowledge and consent, it is an omission which can be cured, and indeed, should be corrected

in the interests of justice. The omission to sign or verify a plaint is not such a defect as could affect the merits of a case or the jurisdiction of the

Court and is curable under the provisions of Section 99, Civil Procedure Code.

The learned Judges have gone to the extent of saying that:

If the defect is not discovered until the case comes on for hearing before an appellate Court, the appellate Court may order the amendment to be

made in that Court. The appellate Court ought not to dismiss the suit or interfere with the decree of the lower Court merely because the plaint has

not been signed.

Even the Allahabad High Court dealing with a similar situation, but under the old Act, (reported in Maharajah of Rewah v. Swami Saran and Anr.

ILR (1903) All. 635) in a case where a plaint was filed in the Revenue Court by a person not properly authorised to sign the same at the time of

presentation, but which was cured by subsequent sanction, observed as follows:

Where the plaint in a suit filed in a Court of Revenue on behalf of a Ruling Chief was signed by a person who at the time of signing had not been

specially appointed by Government for such purpose, u/s 432 Civil Procedure Code, but was so appointed before the period of limitation in

respect of such suit had expired, the plaint was a valid plaint for all purposes.

Therefore, (he finding of the Court below on this point has to be set aside. As all other issues have been found in favour of the appellant and as

there is no one appearing for the respondents before us, the appeal is allowed with cost? and the plaintiff-appellant would be entitled to the decree

as prayed for.

7. We are thankful to Mr. T.R. Rajagopal for the assistance he to this Court.