
(2014) 10 BOM CK 0041

In the Bombay High Court

Case No : Chamber Summons No. 1659 of 2011 in Suit No. 2685 of 2009

Meera Housing Private Limited

APPELLANT

Vs

Khatav Makanji and Co. Pvt. Ltd.

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14
Companies Act, 1956 — Section 202

Citation : (2015) 3 ALLMR 739

Hon'ble Judges : K.R. Shriram, J

Bench : Single Bench

Advocate : S.J. Mishra i/b. SRS Legal, Advocate for the Appellant; Rajesh N. Kachare, Vishal Thakkar a/w Jyotsna Pandhi, Advocate for the Respondent

Judgement

K.R. Shriram, J.—This Chamber Summons is taken out on behalf of the Defendant No. 3 for an order that the plaint be rejected and the suit be struck off the records of the Court. The Defendant No. 3 is supported by Defendant Nos. 1 and 4. The reason that the Applicant says that the plaint should be rejected and struck off is because the plaint was signed and verified by one Digamber Mahadev Bagwe, as a Director of the Plaintiffs and the said Bagwe was barred by law from acting as Director, as he had been adjudicated an insolvent by this Court vide orders dated 20th November, 2007 read with order dated 19th July, 2011.

2. The Applicant submitted that under Order VI Rule 14, the pleadings has to be signed by the party and his pleader or if the party is unable to remain present, the same may be signed by any person duly authorised by the party to sign the same or to sue or defend on his behalf. Since the said Bagwe has been declared as insolvent, he could not have acted as a Director of the Plaintiffs and as he could not be a Director he cannot be the authorised signatory. The Applicant's counsel supported by the counsel for the Defendant Nos. 1 and 4 also submitted that even Section 202 of the Companies Act provides that an undischarged

insolvent cannot manage companies and if he does so, he shall be punishable with imprisonment or with fine or with both. Therefore, this being a penal provision, the signing of the plaint by the said Bagwe is not just an irregularity but it is an illegality which can not be rectified. The Applicant also relied upon a judgment of the Apex Court in the matter of State Bank of Travancore Vs. Kingston Computers (I) P. Ltd., , to submit that when the plaint has been signed by a person who had no authority or by a person not duly authorised by company, the suit is not maintainable.

There is no dispute to the fact that Bagwe has been declared insolvent.

3. The reply to the Chamber Summons is affirmed by one Vasant Mehta who is the Promoter Director of the Plaintiffs in which it is stated that when the suit was filed by the Plaintiffs, even the said Bagwe was not aware about the passing of the order by this Court on 20th November, 2007 declaring him to be insolvent. It is also stated that the plaint and affidavit in support of motion was filed bonafidely in ignorance of the said order and in good faith by the said Bagwe as a duly authorised Promoter Director of the Plaintiffs. A corollary to this will be, the Plaintiff company or anyone else also was not aware of this fact. The Applicants have nothing to show to the contrary.

4. Various submissions were made but the short point that arises is whether the said Bagwe could have signed as the Director of the Company or not and if he could not have signed the plaint, whether it is only an irregularity that could be corrected or an illegality that cannot be corrected.

5. The plaint has been lodged on 27th April, 2009. At page 343 of the plaint, an extract of the resolution that was passed at the meeting of the Board of Directors held on 15th April, 2009 is annexed. By the said resolution, the said Bagwe has been authorised by the Plaintiffs to give notice to file civil suit, and/or to take any such action so as to initiate legal proceedings in respect of the suit property. Therefore, the said Bagwe had authority to sign and present the plaint. Certainly the said Bagwe could not have signed as a Director of the company and it is nobody's case that Bagwe in his individual capacity could not be authorised. Article 29 Rule 1 of the CPC provides that any pleading in a suit, by or against a corporation, 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. The said Bagwe had signed as a Director of the Plaintiffs but in law he could not have been a Director of the Company on the date when the resolution was passed or the date when the suit was lodged.

6. At the same time Order VI rule 14 of the CPC permits the pleading to be signed by any person duly authorised by the Plaintiffs. In this case the Company had infact authorised the said Bagwe. The resolution annexed to the plaint is not authorising the Director of the Plaintiffs but it is authorising a specific person Mr. Bagwe, who is described as a Director of the Plaintiffs.

7. Therefore, in my view, the authority was quite valid even though the said

Bagwe could not have been a Director. Even otherwise it would be only an irregularity that could be rectified and not in illegality.

8. The Division Bench of our Court in the matter of All India Reporter Ltd. and Another Vs. Ramchandra Dhondo Datar, has held that the provision contained in Order VI Rule 14 relates only to procedure and the better view would be to regard them as mere matters of procedure and to hold that if a plaint is not properly signed or verified but is admitted and entered in the register of suits it does not cease to be a plaint and the suit cannot be said not to have been instituted merely because of the existence of some defects or irregularities in the matter of signing and verification of the plaint. The said judgment has also held that the Plaintiff should be allowed subsequently an opportunity to rectify defects in the matter of signature on the plaint.

9. The counsel for Defendant No. 3 had also submitted that even assuming for the sake of argument, if the Court is ready and willing to allow the Plaintiff to rectify the defect, at this stage the suit will be time barred. For this the Division Bench of this Court in the AIR matter (supra) at paragraph 27, 28 and 29 has held as under :-

"27. If defects in regard to the signature, verification or presentation of the plaint are cured on a day subsequent to the date of filing the suit, the date of institution of the plaint is not changed to the subsequent date. Nanjibhai Jethabhai Vs. Popatlal Shriraj, ; Ramgopal Ghose Vs. Dharendra Nath Sen and Others, ; Wali Mohammad Khan Vs. Ishak Ali. Khan and others and Shib Deo Misra and Others Vs. Ram Prasad and Others, . When a plaint is re-signed or re-verified, it may or may not amount to an amendment of the plaint. In Shib Deo Misra and Others Vs. Ram Prasad and Others, it was held that such a re-verification or re-signing would not amount to an amendment of the plaint. Even when a plaint is amended, the amendment relates back to the date of the suit except in some cases, e.g., where the amendment adds new parties or properties.

28. Holding that it was only on 24-4-51 that the plaint was properly signed and verified, the trial court held that the date of the filing of the suit must be taken to be 24-4-51. As already pointed out, the general consensus of authority of the Bombay High Court and other High Courts is in favour of the view that defects and irregularities in the matter of signing, verifying or presenting plaints are mere irregularities of procedure which do not make the suit ineffective, inoperative or void. The existence of such defects does not mean that the suit had not been filed. Even when the plaint is amended after it is properly instituted, the amendment relates back to the date of the original plaint unless the amendment adds new parties or new properties. That is why leave to amend a plaint has ordinarily to be refused, except in very exceptional cases, if the effect of the proposed amendment is to take away from the defendant the legal right which accrued to him by lapse of time. If the amendment is allowed, it relates back to the date of the original plaint. It is not a case of the amendment taking effect from the date of amendment and of condoning the bar of limitation.

If the amendment of the plaint is allowed, the question of limitation cannot be reserved. It is not a case of allowing the amendment of the plaint and reserving the question whether or not to condone the delay and the bar of limitation. If the Court feels that the bar of limitation should not be avoided, it must refuse the amendment of the plaint. After allowing the amendment the Court cannot say that the amendment takes effect from the date of the amendment. Similarly, when a defective plaint is rectified and re-signed and re-verified on a subsequent date, the re-signing or the re-verification of the plaint relates back to the original date.

29. Even in the *The Prince Line Ltd. Vs. The Trustees of the Port of Bombay*, it was held that if a plaint is not properly signed or verified or presented the Court has always got the discretion to allow the plaintiff to remedy the defect at a later stage even though the period of limitation may have already expired and the defendant has vested in him by that time a right to plead the bar of limitation, and if that discretion is exercised by the Court, the curing of the defect or the amendment of the plaint would be effective as from the date of the institution of the suit itself, and it would not be open to the defendant to plead the bar of limitation."

10. In this case also the defect is in regard to signing and verification of the plaint. The same can be cured. The curing of the defect in the plaint would be effective as from the date of the lodging of the suit, i.e., 27.4.2009.

11. As regards the Apex Court judgment relied upon by the counsel for the Defendant No. 3, the same is not really applicable to the present case. In that case the Apex Court was guided by the fact that the Company had not summoned any witness to prove that the person who had signed and declared the plaint was a Director of the Company and that the minute book of the Company had not been produced to prove appointment of the person who had signed as a Director. In this case there is a resolution which is relied upon, appointing the said Bagwe as a authorised signatory. In the affidavit in reply it is reiterated by another Promoter Director that the company wants to prosecute the suit and is ready to remedy the defect. Not only the company even the said Bagwe was not aware that he was declared insolvent. The judgment of the Apex Court therefore, is not of help to the Applicant.

12. In the circumstances, I am inclined to reject the Chamber Summons and permit the Plaintiffs to rectify the defects. The Plaintiffs" Director Mr. Vasant Mehta to re-sign and also re-verify the plaint on or before 28th October, 2014.

13. In view of the above, the Defendant Nos. 3 and 5 to file the written statement within six weeks from today. If any of the other Defendants has not filed written statement, they may also do so within six weeks from today.