

(2005) 11 DEL CK 0123
In the Delhi High Court
Case No : CS (OS) 2593 of 1999

Ms Susanne Lenatz and Another

APPELLANT

Vs

International Hotels Limited and Others

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 14

Citation : (2005) 125 DLT 498 : (2005) 85 DRJ 521

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Sanjay Jain and Natika Aggarwal, for the Appellant; Bobby Chandiok. Advocate for Defendant Nos. 1 to 3 and R.M. Gupta, for Defendant Nos. 4 and 5, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

IA. No. 9131/2003 in CS(OS) 2593/1999

1. This is an application filed by defendants 4 and 5 seeking the dismissal of the suit insofar as plaintiff No. 1 is concerned. The reason for seeking such dismissal is that the plaint was apparently signed and verified on behalf of the plaintiff No. 1 by one Mr Sampath Kumar who, according to defendants 4 and 5, was not authorised to institute the present suit on behalf of the plaintiff No. 1.

2. The application is filed under Order 6 Rule 14 of the Code of Civil Procedure, 1908 which requires that every pleading shall be signed by the party and his pleader, if any. The proviso to the said Rule indicates 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. The learned counsel for the defendants 4 and 5 submitted that it is an admitted position that the plaintiff No. 1 has not signed the plaint. It is also an admitted fact that one Mr Sampath Kumar has signed the

plaint. The learned counsel submits that in a criminal proceeding, the plaintiff No. 1, who was being examined as a witness, has stated that she had not authorised anyone to institute the present suit. Placing reliance on such a statement, the learned counsel for the defendant No. 4 and 5 submits that neither has the plaint being signed by plaintiff No. 1 nor has she authorised anyone to sign on her behalf and, Therefore, insofar as the plaintiff No. 1 is concerned, the suit is not maintainable on her behalf.

The learned counsel for the plaintiffs, however, submitted that the plaint has been signed by Mr Sampath Kumar who is the duly constituted attorney of the plaintiff No. 1. He has drawn my attention to the original power of attorney dated 17.11.1999 which is at page 121 of the documents file whereby the plaintiff No. 1 has authorised, inter alia, Mr Sampath Kumar to do various acts including to institute suits on her behalf. The power of attorney was not filed along with the plaint. However, this power of attorney was filed on 14.1.2000 along with the other documents. According to the learned counsel for the plaintiffs the very basis of moving this application has been negated inasmuch as there exists on record a power of attorney dated 17.11.1999 which is five days prior to the filing of the suit which was filed on 22.11.1999. Therefore, according to the learned counsel for the plaintiff, the provisions of Order 6 Rule 14 have not been violated. He further submitted that the deposition of any witness in a criminal trial cannot be used in a civil suit.

3. I have heard the learned counsel for the parties and I feel that it is not necessary for me to examine the question of whether deposition made in a criminal trial can be of any use in a civil proceeding nor is it necessary for me to examine the statement made by the plaintiff No. 1 in her deposition in the criminal proceedings or the statement made by her before this court on 17.11.2005 under Order 10 of the Code of Civil Procedure, 1908. The only thing that is of a material consequence is that the power of attorney by virtue of which the present plaint was signed and instituted by Mr Sampath Kumar is on record. That power of attorney pre-dates the filing of the suit and, Therefore, the suit had been instituted on behalf of plaintiff No. 1 by her duly constituted attorney Mr Sampath Kumar. Therefore, this application under Order 6 Rule 14 is not tenable.

In any event, the non-signing of the plaint is not fatal to the suit. It is an irregularity which can be cured subsequently. This position is well settled and a reference may be made to some decisions on this line. The decisions being:

1. Mohinimohun Das v. Bungsi Buddan Saha Das (1890) 17 Cal 580
2. M.C.S. Rajan and Company Vs. National Nail Industries and Others,
3. Dahyabhai Girdhardas Vs. Bobaji Dahyaji Kotwal and Others,
4. Rajeshwarhwa Vs. Sushma Govil,
- 5 Nadella Satyanarayana Vs. Yamanoori Venkata Subbiab,

In view of the settled legal position that the defect of non-signing of the plaint is a mere irregularity and not a illegality, the suit cannot be dismissed on this ground. In any event, this issue does not arise in the present proceeding inasmuch as the person who has signed the plaint on behalf of the plaintiff No. 1 was authorised to do so by virtue of the power of attorney which is on record. This application is being disposed of on a prima facie view and it is open to the defendants to take up the issue of validity of the power of attorney inasmuch as a defense has been taken in the written statement. With these observations, this application stands dismissed.