

(2001) 09 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1732 of 1981

Municipal Committee, Sirhind

APPELLANT

Vs

Bawa Uttam Gir Chela and Another

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 1

Citation : (2002) 1 RCR(Civil) 316 : (2002) 1 RCR(Civil) 275

Hon'ble Judges : M.M. Kumar, J

Bench : Single Bench

Advocate : J.K. Kataria, for the Appellant; S.N. Chopra, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This is a second appeal filed by the Defendants against the judgment of the learned District Judge, Patiala dated 12.5.1981 who has sustained the preliminary objection with regard to the competence of the Executive Officer of the Municipal Committee to file the appeal on the ground that the resolution authorising him to file the appeal was general in terms.

2. The substantive question of law which arises for determination in this appeal is whether "An Executive Officer is competent to file an appeal before the District Judge on the basis of a resolution passed by the Municipal Committee which is general in terms or he could acquire competence only if the resolution is specific to the filing of that appeal alone?".

3. Respondents-Plaintiffs (for brevity the Plaintiffs) No. 1 and 2 filed a suit for permanent perpetual injunction seeking to restrain the Appellants-Defendants (hereinafter to be referred to as "the Defendants") or their agents or servants from intervening in any manner in the ownership and possession of their agricultural land fully described in the head note of the plaint and also from alienating it by way of lease or otherwise. The suit of the Plaintiffs was decreed and permanent perpetual injunction was granted in terms of the prayer made by

the Plaintiffs. The Defendants, who are Municipal Committee, Sirhind, through its Executive Officer and its officers filed written statement and contested the suit. It was claimed by the Defendants that they were owners because mutation has been sanctioned in their favour. Even possession of the Plaintiff was denied.

4. The Defendants filed an appeal through its Executive Officer before the learned District Judge against the judgment and decree of the trial Court dated 24.12.1980. At the time of arguments of the appeal before the learned District Judge, the Plaintiffs raised an objection that the appeal was not competent as there was no resolution authorising the Executive Officer to file appeal. Therefore, he was not competent to file the appeal. The learned District Judge relying on a Division Bench judgment in the case of AIR 1943 318 (Lahore) dismissed the appeal. The plea of the Defendant that there was a resolution passed by the Municipal Committee, Sirhind authorising the Executive Officer to file the appeal or defend suits or appeals was rejected. A reference was made to resolution No. 6 dated 15.1.1980. The principal ground for sustaining the preliminary objection with regard to the competence of the Executive Officer to file the appeal was that there was a defect in the resolution dated 15.1.1980 namely it was worded in general terms and there was no specific mention for filing and authorisation of a particular appeal. Resolution No. 6 dated 15.1.1980 reads as under:

Agenda according to which Proceedings passed,
proceedings taken.

6. Repoit Rent Clerk that Resolution No. 6

cases which are pending in approved

the Court, their filing.

re-filing/appeal filing

powers be given to the

Executive Officer, and those

already filed/defended/

appeals filed, their

pursuance/fifing powers be given to the Executive Officer.

Submitted for approval.

The findings of the learned District Judge for rejection of the appeal are reflected in paras 4 and 5 which read as under:

The Learned Counsel for the Plaintiff Respondent took me through the observations in AIR 1943 318 (Lahore)) wherein it was held as under:

The words for the purpose of carrying on the administration of the municipality do not confer any power to file an appeal. The act of filing an appeal in a suit against the municipality for injunction restraining the municipal committee from obstructing Plaintiff from building on his land cannot be reached as an act for carrying on the administration of the municipality. The administration by the municipality of affairs which it is by statute entitled or liable to perform is one thing and the carrying on of its own administration which the words "administration of municipality" seem to suggest another. The act of filing an appeal still requires a special resolution of the committee (and the authority of the decision in AIR 1935 345 (Lahore) cannot be said to have been shaken by what is contained in S. 4 Executive Officer Act or in the rules framed by the Local Government u/s 11 of that Act). The fact that the Plaintiff filed the suit against the municipality through its executive officer is beside the point.

In *Garth Chand v. Municipal Committee Budhladha* (ILR 1979 P&H it was observed as under:)

Held that the Municipal Committee had to pass the resolution giving authority to file appeal on its behalf against the judgment and decree of the trial Court. Local bodies, corporate bodies or registered bodies or associations are independent legal entities and are capable of holding property and of suing and to be sued. Local bodies like a M.C. can only act through resolutions and unless by a resolution it authorises some body to file appeal on its behalf, no appeal could be presented on behalf of the committee. The provisions of Order 41 Rule 1 of the Code of Civil Procedure, 1908 are mandatory.

The resolution referred above is general in nature. In the absence of a specific resolution I hold the appeal to be incompetent and dismiss the same. However, the parties are left to bear their own costs.

6. I have heard Shri V.K. Kataria, Advocate for the Defendant and Shri S.N. Chopra, Advocate for the Plaintiffs. *

7. From the facts it is clear that the Executive Officer, Municipal Committee, Sirhind has filed written statement on 26.5.1979 and have also signed the power of attorney before the trial Court. On 15.1.1980, the Municipal Committee, Sirhind passed a resolution, arming the Executive Officer with the powers to defend the suits which are pending in the Court or to file or refile appeal or to defend those which are already filed or pending. Thereafter legal opinion for the filing of appeal against the judgment dated 24.12.1980 was obtained on 20.1.1981 and then appeal was filed on 3.2.1981.

8. Shri V.K. Kataria, Learned Counsel for the Defendants, makes two fold submissions. He submits firstly, that the resolution dated 15.1.1980 empowered the Executive Officer to defend the suit or file or refile appeal and the same resolution can be successfully relied upon even for filing appeal. According to him there is no requirement of law that a specific resolution to file a separate and particular appeal is required. For this proposition, he relies on *The State Bank of*

Patiala v. Shri Balbir Singh and Ors. (1971) 173 PLR 504 and also National Insurance Company Ltd. Vs. Smt. Bant Kaur and Others, . The second submission of Shri V.K. Kataria is that when the suit was decided by the trial Court on 24.12.1980, no objection was taken. Therefore, it is not permissible for the lower appellate court to allow this objection to be raised for the first time at the Stage of first appeal and the defect if any is cured by resolution dated 15.1.1980. For this proposition, he places firm reliance on the case of Garib Chand v. M.C. Budhladha (1979) 81 P.L.R. 527 and Maharshi Dayanand University Vs. Dr. Jitender Singh Lauria,

9. Appearing for the Plaintiffs Shri S.N. Chopra, Advocate argue that the law requires a specific and special resolution for filing of an appeal. He submits that resolution authorising to defend suit cannot be interpreted to mean that the power to file appeal also flows from that resolution, According to the Learned Counsel the filing of appeal requires application of mind and expenses are also involved. Therefore, a special resolution would be required authorising the Executive Officer to file an appeal. For this proposition, he relies on the Division Bench Judgments reported as AIR 1943 318 (Lahore) Murti Shri Raghunath Ji v. Joginder Singh etc. 1971 Curr. L.J. 47; Municipal Committee Karnal v. Mehlo Ram (1976) 78 PLR 453. He further submits that in the memorandum of appeal it must be set out that the appeal was authorised to be filed and a reference to that specific resolution authorising the filing of that appeal should have been made. He made reference to the provisions of Order 29 of the CPC and relies on the judgment rendered in the case of Municipal Committee Sirhind v. Ishwar Dass and another (2001) 127 PLR 691.

10. Having have given my thoughtful consideration to the respective submissions made by the Learned Counsel for the parties and after going through the record, I am of the considered opinion that this appeal deserves to be allowed as agricultural land allegedly belonging to the Municipal Council to the extent of more than 20 kanals is involved and a decree has already been passed in favour of the Plaintiffs. Their Lordships of the Supreme Court in paras 9,10 and 11 of United Bank of India Vs. Naresh Kumar and others, observed as under:

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.

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 Code of Civil Procedure, 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 I 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 the 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, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleadings by its officer.

The Courts below could have held that Shri L.K. Rohatgi must have been empowered to sign the plaint on; behalf of the Appellant. In the alternative it would have been legitimate to hold that the manner in which the suit was conducted showed that the Appellant bank must have ratified the action of Shri L.K. Rohatgi in signing the plaint. If, for any reason whatsoever, the Courts below were still unable to come to this conclusion, then either of the appellate Courts ought to have exercised their jurisdiction under Order 41, Rule 27(1)(b) of the CPC and should have directed a proper power of attorney to be produced or they could have ordered Shri L.K. Rohatgi or any other competent person to be examined as a witness in order to prove ratification or the authority of Shri L.K. Rohatgi to sign the plaint. Such a power should be exercised by a Court in order to ensure that injustice is not done by rejection of a genuine claim.

11. The judgment in the case of Naresh Kumar (*supra*) has been followed by this Court in the case of Municipal Corporation Vs. Preet Builders Pvt. Ltd. and Others, . In that case appeal filed by the counsel for the Municipal Corporation who was authorised to act on behalf of the Municipal Corporation was dismissed by the Addl. District Judge on the ground that no authority was given to the counsel. this Court while setting aside the order of the additional District Judge held that there was authority with the counsel to file appeal and relied upon the observations made in the Naresh Kumar's case (*supra*). Various judgments which have been cited by the Learned Counsel for the Plaintiffs Shri S.N. Chopra have to be viewed and considered in the light of the observations made by the Supreme Court.

12. The Division Bench of the Lahore High Court in Baba Bhagwan Dass's case (supra) is absolutely distinguishable. In that case, no resolution has been passed by the Municipal Committee authorising the Executive Officer to file an appeal. There reliance was placed on the provisions of Section 4 of the Punjab Municipal (Executive Officers) Act 1941 to argue that the executive power for the purpose of carrying out administration of the municipality vested in the Executive Officer and on that basis, there was no necessity to pass a separate resolution. The argument was rejected by the Division Bench. Reliance of Shri S.N. Chopra on the judgment in the case of Murti Shri Raghu-nath ji's case (supra) is also misplaced. The Division Bench was dealing with Section 6 of the Societies Registration Act which required a specific resolution authorising the filing of appeal against the order of the trial Court. Such is not the position in the present case before me as no provision has been cited to show any such requirement. Even the judgment in the case of Ishwar Dass (supra) does not advance the case of the Plaintiffs. In that case also there was no resolution authorising the Executive Officer to file/refile the suit or to defend or file appeal. There is no requirement of any law that the resolution should be set out in the memorandum of appeal.

13. In so far as the Judgments cited by Shri V.K. Kataria are concerned, they lend substantial support to the arguments advanced by the Learned Counsel. The case of Garib Chand (supra) involves filing of an appeal by the Municipal Committee and the Executive Officer authorised to defend the same on behalf of the Municipal Committee. In that case no objection was taken regarding the competence for the appeal before the first appellate Court because of absence of resolution. When this objection was taken for the first time, the High Court repelled the objection taken before it. Similarly, in the case of Balbir Singh (supra), the resolution which was passed by the Board of Directors of the Bank authorising the General Manager to defend the suit was considered sufficient for filing of appeal. Moreover, the Plaintiffs has not suffered any prejudice by the resolution dated 15.1.1980 filed on record. The sole object of authorisation by the resolution appears to be that the corporate bodies are not hood winked by the presentation of pleadings by way of defence or appeal in the courts by strangers. To guard against such unscrupulous elements in the working of the corporate bodies the passing of resolution has been emphasised. Another object of authorising the filing of pleadings or appeal before the Courts could be that a decision is there to contest the case or file an appeal after its proper examination. All these objects are completely satisfied in the present case. It is no body's case that the appeal was filed by a personal non grata or that there was no legal opinion for the filing of an appeal.

14. Therefore, the question posed in para 2 of this judgment is answered in the affirmative and it is held that resolution No. 6 dated 15.1.1980 was adequate to arm the Executive Officer to file the appeal before the Addl. District Judge.

15. In view of the reasons stated above, the appeal is allowed. Judgment of the

learned district Judge dated 12.5.1981 is set aside. The learned District Judge is directed to decide the appeal on merits after affording opportunity of hearing to the parties. Considering the fact that the judgment was rendered by the District Judge on 12.5.1981 i.e. over 20 years ago, I deem it appropriate to issue directions to the District Judge Fatehgarh Sahib to decide this appeal within a period of six months. 16. The parties through their counsel are directed to appear before the Ld. District Judge, Fatehgarh Sahib on 20.9.2001.

7. The Bench Secretary is directed to supply a copy of this order, after due attestation, under his signatures to the Learned Counsel for the parties. Registry is also directed to send a copy of this order alongwith the records to the court concerned before the date fixed.