

(1977) 11 DEL CK 0006
In the Delhi High Court
Case No : Suit No. 428 of 1972

National and Grinday Bank

APPELLANT

Vs

Radio Electronics Corporation P. Ltd.

RESPONDENT

Date of Decision : 03-11-1977

Acts Referred:

Citation : (1978) RLR 217

Hon'ble Judges : F.S. Gill, J

Bench : Single Bench

Advocate : Rajiv Sawhney, M.G. Ramachandran, R.M. Gupta and S.N. Kumar, for the Appellant;

Judgement

F.S. Gill, J.

(1) In his statement Sh. Udayan Bose, Public Witness .I. wanted to prove, Power of Attorney, dt. 3.11.62 executed by two officers of the plaintiff company (The National & Grindlays Bank Limited) in favor of Mr. John Herbert Keeble. This power of attorney had been duly authenticated by a Notary Public in London. An objection has been raised on behalf of the defendants that unless and until the resolution of the Board of Directors authorising the said officers of the Company to execute the general power of attorney in favor of Mr. Keeble is proved, the locus standi and power of those officers to act on behalf of the Company cannot be established. It is accordingly submitted that the said document can only be marked for the purposes of identification and cannot be exhibited for being read in evidence.

(2) In answer, Shri Rajiv Sawhney, the learned counsel for the plaintiff Company, has combated this objection and has relied on Section 85 of the Indian Evidence Act. He has submitted that under this provision a power of attorney, after authentication, is not only admissible in evidence but also raises a legal presumption about its due execution. It is further canvassed that such a presumption is rebuttable and that the other side has, Therefore, every right to

produce evidence to show that the executant had no authority to execute the instrument. To reinforce his arguments, he has placed relies on *Jugraj Singh and Another Vs. Jaswant Singh and Others*, *National and Grindlays Bank Ltd. Vs. World Science News and Others*, *Performing Right Society Ltd. v. Indian Morning Post Restaurant*, AIR 1939 Bom 347, *The Jaipur Udyog Ltd., Sawaimadhopur and Others Vs. The Union of India (UOI) and Others*, and *Wali Mohammad Chaudhari and Others Vs. Jamal Uddin Chaudhari*.

(3) In this connection the learned counsel for the defendants has contended that a power of attorney can be executed by two type of persons. One may be executed by an individual in favor of another person and the other can be on behalf of a corporate body in favor of a particular person. So far as the first category is concerned, there is no dispute as an authentication by a Notary Public establishes the identity of the executant and section 85 of the Indian Evidence Act raises the requisite presumption about its execution. Difficulty, however, sparkles in the case of the second type, where an executant derives the authority to execute the instrument from the company. Such an authority can be provided either in the Articles of Association of the Company or may be conferred by a resolution of its Board of Directors. It is argued by Shri Kumar that in his case the power of a attorney had been executed on behalf of the Company by two of its Directors and that it is, Therefore, essential for the plaintiff to prove the resolution of the Board of Directors, which had armed them with the necessary powers. It is further contended that failure to produce and prove the resolution renders the power of attorney inadmissible, in spite of its authentication by the Notary Public.

(4) It has now to be seen whether the condition, which is being postulated by the learned counsel for the defendants, really exists in section 85 of the Indian Evidence Act. A plain reading of this section shows that it makes no distinction whether the power of attorney has been executed by an individual or some one on behalf of a company. The section prescribes in clear and unequivocal terms that a power of attorney duly authenticated by a Notary Public shall raise the presumption about its execution and authentication. Authentication is not merely attestation but something more. It means that the person authenticating has assured himself of the identity of the person who has signed the instrument as well as the act of execution. It is for this reason that the presumption u/s 85, unless rebutted, stands and the document can be admitted in evidence as a document executed by the person alleged to have executed it without any further proof. (See *Wali Mohammad Chaudhari and Others Vs. Jamal Uddin Chaudhari*).

(5) In *Aiyar's Law Terms and Phrases* (7th Edition-1973), "authentication" has been defined as:

"AN attestation made by a popular officer by which he certifies that a record is in due form of law, and that the person who certifies is the officer appointed so to do." In *Words and Phrases of West Publishing Co.* "authenticate" means "to give verity, to impart to the instrument its validity and operative effect". In the same

book "authentication" of a written instrument is described as "official attestation as will render it legally admissible in evidence".

The following meanings of the word "authenticate" appear in Webster's Third New International Dictionary:

"TO make authoritative : give authority to : To make valid and effective by the proof, attestation on formalities required by law : To verify the origin of :"

After having a clear vision about the meaning and scope of the words "authenticate" and "authentication", I proceed to consider the ratio of the cases cited by the learned counsel for the parties.

(6) Of the decisions relied on by the learned counsel for the plaintiff, Jugraj Singh and Another Vs. Jaswant Singh and Others, relate to the execution of a power of attorney by an individual and not on behalf of a Company. The case of a Company, which is stated to be on a different footing was not before any of these Courts. These cases, Therefore, do not help in determining the present controversy.

(7) Further, The Jaipur Udyog Ltd., Sawaimadhopur and Others Vs. The Union of India (UOI) and Others, was not a case where the power of attorney, duly authenticated by Notary Public, was in question. It only related to the ambit of Order 29 Rule 1 of the CPC qua the authority of a Senior Executive Officer of Jaipur Udyog Limited for signing, verifying and presenting the petition in the court. It was held that the officers of a Company are competent to sign, verify and present the petitions in the Court. The same view was taken by V.D. Mishra J. of this Court in Suit No. 11 of 1967 decided on 10th August, 1973, Mercantile Bank Limited v. Phool Chand Fateh Chand. Agreeing with Rajasthan view, Mishra J. held that order 29 Rule 1 of the CPC does not require that the Principal Officer must be authorised to sign and present the petition in a Court of law. Such authority he derives from the Statute itself i.e. from Order 29 Rule 1. A different view had, however, been earlier taken by Hardy; J. (as his Lordship then was) on 26th November, 1968 in Suit No. 469 of 1966, M/s Oberoi Hotels (India) Ltd. v. M/s Observer Publications (P) Ltd. It was held by his Lordship that the Principal Officer can sign and verify a plaint but he has no authority to file the suit on behalf of the Company.

(8) In the present case it is not the interpretation of Order 29 Rule 1 of the CPC which is involved. It is that of Section 85 of the Indian Evidence Act, and Therefore there is no necessity to go into the different views taken with regard to Order 29 Rule 1 of the C.P.C. It will suffice to observe that in the Rajasthan case the Principal Officers had filed the petitions without any resolution of the Board of Directors of the Company and the institution was held to be lawful.

(9) In National and Grindlays Bank Ltd. Vs. World Science News and Others, the same power of attorney executed in favor of Mr. John Herbert Keeble was the subject matter of consideration. It was held therein that the instrument having

been authenticated by a Notary public, the provisions of section 85 apply and the Court is bound to presume the execution and authentication. The point now urged before me was not raised before Yogeshwar Dayal, J. and, Therefore, it could not be determined. The document was admitted in evidence on different ground. This decision, Therefore, does not help in the matter.

(10) In AIR 1939 Bom 347 the power of attorney in favor of one Mr. C. M. Easley was authenticated by a Notary Public, was admitted in evidence as duly executed and attested. It was held therein that :-

"under section 85 of the Evidence Act, the court shall presume that a power of attorney executed before, and authenticated by, a Notary Public, was so executed and authenticated. The provision is mandatory, and it is open to the Court to presume that all the necessary requirements for the proper execution of the power of attorney have been duly fulfilled. I may further point out that u/s 57(6), Evidence Act, the Court shall take judicial notice of, inter alia, all seals of notaries Public. It has also been held in 21 Mad 492 that there are different legal modes of executing a power of attorney, and that the provision of Section 85 was not exhaustive."

In the above case the power of attorney had been executed on behalf of the Company, which had been duly authenticated by the Notary Public. In such circumstance no further evidence was required to be produced for deriving the legal presumption pertaining to its execution and authentication.

(11) In my view section 85 ibid does not draw any distinction between the kind of documents, viz : power of attorney executed by an individual and the one executed on behalf of a Company. Authentication of any of these instruments by a Notary Public raises a legal presumption that the same has been duly executed and the person or persons. who had executed, had the authority to do so. Undoubtedly such a presumption is not conclusive, being rebuttable. The other party is, Therefore, legally entitled to disprove such a presumption. The reason to incorporate such a provision is quite obvious. Its inclusion is intended to obviate the production of evidence as is otherwise enjoined to prove the execution of the document. Embarking on an inquiry and demanding proof about the authority of the executant would frustrate the very purpose for with section 85 has been engrafted. Moreover, asking for proof would have far reaching consequences. Apart from entailing delay and unnecessary expense, it would also hamper the entire trade, more particularly? the international trade. Thus, the interpretation placed by the learned counsel for the defendants does not reflect or effectuate the real legislative intention. It, on the other hand, unwarrantly restricts and whittles down the true meaning and legitimate scope of an unambiguous provision. Objection disallowed.

--- *** ---