

(1982) 02 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No's. 1406 and 1696 of 1981

National Fertilizers Ltd.

APPELLANT

Vs

Municipal Committee, Bhatinda and Another

RESPONDENT

Date of Decision : 26-02-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1982 P&H 432

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Judgement

1. This order will dispose of Civil Revision Nos. 1406 and 1696 of 1981, which contain the similar questions of law and fact. The facts in the judgment are being given from Civil Revision No. 1406 of 1981.

2. The plaintiff instituted a suit for perpetual injunction for restraining the Municipal Committee, Bhatinda, defendant No. 1, from recovering octroi from the plaintiff in pursuance of notices dated 10th Jan., 1978, 14th Feb., 1978, 14th April, 1978 and 23rd April, 1978 and also from recovering the same in future on the ground that it was illegal and against the provisions of the Punjab Municipal Act. After the conclusion of the evidence of the defendants, time was given to the plaintiff to lead evidence in rebuttal. The Municipal committee filed an application that it was not entitled to lead evidence in rebuttal as it had not reserved its right to do so. It was further stated that under the garb of the rebuttal evidence it wanted to fill in the lacuna in its evidence in affirmative, which it should not be allowed to do so. The trial Court accepted the application of the Municipal Committee and held that the plaintiff-petitioner could not be given an opportunity to lead evidence in rebuttal. It has come up in revision against that order to this Court.

3. A preliminary objection has been raised by the counsel for the Committee that the revision petition had not been filed by a duly authorised person. It has also been urged that the petitioner had not taken any decision to file a revision

petition against the impugned order. In the aforesaid circumstances, it is argued that the revision petition is liable to be dismissed on that short ground. On the other hand, the contention of the learned counsel for the petitioner is that the revision petition has been filed by a duly authorised person and he has also the right to take a decision. In the alternative he has submitted that the revision petition has been admitted by this Court and even if it is held that it was not filed by a duly authorised person, the Court cannot dismiss it now on this ground as it has the power to revise the impugned order u/s 115 of the Civil P. C. (hereinafter referred to as "the Code") suo motu.

4. I have given due consideration to the arguments of the learned counsel. The petitioner, in order to show that the revision was filed by a duly authorised person, produced an affidavit of Mr. R. D. Gharana, who signed the Vakalatnama, showing as to how he derives his power to do so. Article 77(6) of the Memorandum of Association relates to the power of the Directors to bring and defend actions. It reads as follows:--

"To institute, conduct, defend, compound or abandon any legal proceedings by or against the company or its officer or otherwise concerning the affairs of the Company and also to compound and allow time for payment or satisfaction of claims or demands by or against the Company."

The Board of Directors under Art. 82 is competent to delegate its powers to the Standing/Executive Committee of Directors, Chairman, the Managing Director, an Executive Director and a Functional Director, subject to such terms and conditions and restrictions as it thinks fit to impose. The Board of Directors approved the delegation of powers in favour of the Chairman and Managing Director. The relevant item reads as follows:--

"To institute, conduct, defend, compound or abandon any legal proceedings by or against the company or its officer or otherwise, concerning the officers of the Company and also to compound and allow time for payment or satisfaction of any claims or demands by or against the Company."

He has also been empowered to sub-delegate the powers to subordinate officers, by the Board of Directors. The Chairman and Managing Director further delegated his powers to the General Managing of Nangal, Bhatinda and Panipat Units by virtue of office order dated 15th Dec., 1979. That power includes the power to institute any civil suit or conduct and defend any legal proceedings by or against the Company. The relevant extract is as follows:--

Name of powers Extent General Conditions

12.3 Powers to institute any civil suits or Subject to guidelines issued by
conduct and defend any legal proceedings the Head Office from time to time."
by or against the Company or its
officers in connection with the affairs Full

of the Company

The General Managers have been empowered to further sub-delegate the powers to subordinate officers. In the present case the General Manager, National Fertilizers, in pursuance of that power has executed a special power of attorney dated 29th May, 1981 in favour of Mr. R. D. Gharana, Estate Officer, to institute civil suits, to file appeals, revisions etc.

5. From a reading of the above affidavit and the power of attorney dated 29th May, 1981, it is evident that the Estate Officer was authorised to sign the Vakalatnama in favour of Mr. T. S. Doabia, who filed the revision petition. It is well settled that appeals and revisions are continuation of a suit. Therefore if power has been given by a company to a person to institute suits and other legal proceedings, that power will include the power to file appeals and revision. That will also include power to take a decision as to whether a suit or appeal or revision should be filed by the company or not.

6. Learned counsel for the respondents has made reference to Municipal Committee, Ludhiana v. Surinder Kumar 1970 Cur LJ 631 ; Municipal Committee, Karnal v. Sh. Mehlo Ram (1976) 78 Pun LR 453; Garib Chand v. Municipal Committee, Budhlada 1979 Rev LR 3441 ; and Food Corporation of India Vs. Baldev Kaur and Others,). The former three cases relate to various Municipal Committees, wherein it has been held that it was incumbent for the Municipal Committee to pass a resolution before filing an appeal and thereafter it could do so. The abovesaid cases are, however, distinguishable. In those cases no powers had been conferred by resolutions on the persons who were pursuing the cases on behalf of the Municipal committees. In the Food Corporation of India's case (supra) an ex parte decree was passed against it. An application was filed for setting aside the ex parte decree wherein an objection was raised that it was not filed by a competent person. The Corporation relied upon the provisions of O. 29, R. 1 of the Code where it is prescribed that in a suit by or against Corporation any pleading may be signed and verified on behalf of the Corporation by the Secretary or by any Director or other principal Officer thereof, who is able to depose to the facts of the case. It was held by this Court that the provision did not empower the officer who filed the application for setting aside the ex parte decree, to conduct the case on behalf of the Corporation. Thus it is apparent that the facts of that case are also different. In my view, Mr. Mittal cannot derive any benefit from the aforesaid cases. After taking into consideration all the facts and circumstances, I am of the opinion that Mr. R. D. Gharana was duly authorised to file the revision petition in this Court and that the General Manager of the petitioner had the power to make a decision to file it.

7. The contention of the learned counsel for the petitioner in the alternative is that if once a revision petition has been admitted by a Court, it cannot be dismissed later on the ground that it was not filed by a duly authorised person. I agree with it. Sub-section (1) of S. 115 of the Code inter alia provides that the High Court may call for the record of any case which has been decided by any

Court subordinate to the High Court and in which no appeal lies thereto and it may make such order in the case as it thinks fit. The High Court thus can call for the record of the case suo motu and revise the same if it finds that the Subordinate Court exercised a jurisdiction not vested in it or failed or exercise the jurisdiction to vested or acted in the exercise of it jurisdiction illegally or with material irregularity. Therefore, if the case is not presented by a duly authorised person and the Court finds that the impugned order falls within the purview of Section 115, it can suo motu revise it. In the said view, I am fortified by the observations in J. P. Ojha v. Firm R. R. Tandon AIR 1962 AIR 485, wherein it was held that if the Court wants to throw out the revision on the ground that it was not properly presented it should do so at the earlier stage. It further observed that once the revision has been admitted, entertained and listed for final hearing the Court cannot take the view that the revision was not properly presented.

8. On merits, Mr. Sibal, learned counsel for the petitioner, has argued that according to the practice in the Courts at Bhatinda, the right of leading evidence in rebuttal by the plaintiff on the issues the burden of which is on the defendants, is not reserved. He further urges that in view of that practice, the Court had earlier allowed the plaintiff to lead evidence in rebuttal after the defendant had concluded its evidence. The learned counsel for the respondent has controverted the submission of the counsel for the petitioner.

9. I have considered the argument of the learned counsel for the petitioner but regret my inability to accept it. Order 18, Rule 3 of the Code relates to the evidence where there are several issues and the burden of some of which lies on the defendant. It reads as follows:--

"Evidence where several issues:--

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case."

10. From a perusal of the rule, it is clear that in case the burden of proving some of the issues lies on the defendant, the plaintiff while starting his evidence may lead the same on all the issues, including those the burden of which is on the defendant or reserve his right to lead evidence on the issues the burden of which is on the defendant after the later has produced his evidence. However, the plaintiff did not reserve his right to do so. No practice, as referred to by the learned counsel, can be taken notice of in a revision petition.

11. I have also gone through the issues carefully the burden of which is on the defendants. The learned counsel for the petitioner has also not been able to

show that any of such issues required any evidence in rebuttal.

12. Faced with that situation, the learned counsel for the petitioner has urged that the petitioner should be given an opportunity to lead additional evidence. He made a reference to Kaviraj Ganpat Lal Sindhwani v. Om Parkash (1975) 77 Pun LR (D) 10.

12-A. I am not impressed with this contention of the learned counsel as well. In case he wants to lead additional evidence, he should make an application before the trial Court which will decide that on merits. He cannot be allowed to contend in this revision petition that he should be given an opportunity to lead additional evidence. The facts of Kaviraj Ganpat Lal Sindhwani's case (supra) are different. In that case, the plaintiff had reserved his right to lead rebuttal in the application while summoning the witnesses. However, he was not allowed to lead rebuttal evidence. Therefore, the ratio in that case will not apply to the present case. Accordingly, I do not find any merit in Civil Revn. No. 1406 of 1981.

13. As regards Civil Revision No. 1696 of 1981, the learned counsel for the petitioner has tried to make an additional point, that when the petitioner was producing evidence on the issues the burden of which lay on it, the Court, vide its order dated 9th Jan., 1981, closed its evidence. He urges that the petitioner itself did not close the evidence and, therefore, it was entitled to lead evidence in rebuttal.

14. I have considered the argument but find it without any substance. The order closing the evidence of the petitioner amounts to closing its evidence in affirmative as well as in rebuttal. In case it was aggrieved against that order, it could have come up in revision to this Court. After the respondent has led evidence, it cannot be said that the order amounts to closure of the evidence of the petitioner in affirmative only. It is true that in the present case, there were some issues on which the petitioner could lead evidence in rebuttal. However, as its evidence has been closed, now it has no right to do so.

15. Before parting with the judgment, another preliminary objection taken by the learned counsel for the respondent may be noticed. It is that no revision petition is maintainable against the impugned order u/s 115 of the Code. In view of the fact that I do not find any substance in the revision petition on merits, it is not necessary to decide this point.

16. For the aforesaid reasons, these revision petitions fail and are hereby dismissed. The costs in the revision petitions shall be the costs in the cause. Counsel fee, in each revision petition, Rs.250/-.

17. Petitions dismissed.