

(1997) 09 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1548 of 1989

National Insurance Company Ltd.

APPELLANT

Vs

Smt. Bant Kaur and Others

RESPONDENT

Date of Decision : 17-09-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1

Citation : (1998) 118 PLR 216 : (1998) 1 RCR(Civil) 419

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : L.M. Suri and Arvind Kashyap, for the Appellant; S.P. Laler, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—The controversy raised in this revision petition is a short one. In order to appreciate the question, few facts deserve to be noticed.

2. A truck owned by one Girja Singh was insured with National Insurance Company Ltd. (hereinafter referred to as the petitioner). The truck met with an accident and Girja Singh lodged claim with the petitioner for indemnifying him of the loss caused due to accident. Girja Singh in the meantime died and his legal representatives, respondents 1 to 6 in this revision, made a request to the petitioner to refer the matter to the arbitrator in pursuance of a clause of the insurance policy. Refusal to accept the prayer led to the filing of an application before the trial Court, u/s 20 of the Arbitration Act for the appointment of an arbitrator. The application was accepted by learned Addl. Senior Sub Judge, Ambala Cantt by order dated 19.11.1986 and a direction was issued to the petitioner and respondent No. 7 to appoint an arbitrator within one month of the date of that order and the award was ordered to be given by the arbitrator within three months from the date of his appointment. Aggrieved by the order of the trial Court, the National Insurance company filed appeal before the District Judge through its Divisional Manager.

3. During the course of hearing of the appeal before the learned Addl. District Judge, learned counsel appearing on behalf of the legal representatives of Girja Singh, respondents therein, raised an objection to the maintainability of the appeal on the ground that the National Insurance Company is a corporate body, incorporated under the Companies Act, 1956 and no resolution was passed by the Board of Directors of the National Insurance Company authorising the Divisional Manager to file the appeal. In order to over-come the above objection, the petitioner company moved an application before the appellate court for permission to lead evidence and to produce a certified copy of the general power of attorney dated 20.3.1981 executed by the Assistant General Manager of the petitioner Company in favour of Shri H.B. Puri, Divisional Manager. Permission was also sought to: adduce in evidence the attested copy of the certificate of incorporation of the petitioner company. It was submitted by learned counsel appearing on behalf of the petitioner company that once additional evidence is produced, it would become absolutely clear from Clause 14 of the power of attorney that the Divisional Manager was authorised to institute any action, suit or other proceedings in any court of justice. It was further submitted that the power included the power to file appeals, revisions and the power to decide whether the appeal should be filed or not. Prayer -to produce the Divisional Manager along with the general power of attorney and certificate of incorporation of the petitioner company by way of additional evidence was made on the ground that this evidence could not be produced earlier inadvertently. It was stated in the application that the appeal had been filed by a duly authorised person and there was no necessity of any specific resolution in that behalf. The application was stoutly opposed by learned counsel for the legal representatives of Girja Singh. It was submitted that the application moved by the petitioner company was nothing but an application under Order 41 Rule 27 of the CPC and, therefore, the same could not be allowed as the only ground to produce additional evidence mentioned in the application was that the evidence now sought to be produced by way of additional evidence could not be produced earlier inadvertently.

4. It is in the wake of the above objection viz. the appeal had not been properly instituted or in other words, not filed by a duly authorised person, the lower appellate court instead of going into the merits of the appeal, proceeded to consider the objection raised and the application for permission to lead additional evidence moved by the petitioner company.

5. The contention raised by learned counsel for the private respondents found favour with the learned appellate court. The application for additional evidence was consequently dismissed after observing thus :

"After hearing counsel for the parties, I am of the opinion that the contention of Shri B.B. Gupta, learned counsel for the respondents must prevail. It cannot be denied that through this application, the appellants want to adduce additional evidence and the present application would be covered under Order 41 Rule 27

C.P.C. It has been held by Punjab and Haryana High Court in *Khem Chand and Ors. v. Kamal Kishore and Ors.* (1986) 90 P.L.R. 452, that the true test for allowing additional evidence is whether the appellate Court is able to pronounce judgment on the material before it, without taking into consideration the additional evidence, sought to be adduced, or whether the appellate court itself require certain evidence to be adduced in order to enable it to pronounce judgment. The only ground put forth by the appellants in the application in hand is that these documents were not produced along with the appeal inadvertently. This appeal was filed in December, 1986, and it is to be noted that in the grounds of appeal it has nowhere been pleaded that the Divisional Manager was competent and authorised to file this appeal. It is also noteworthy that during the pendency of the petition before the trial court the written reply filed by the appellant was signed by Assistant Manager and the copy of power of attorney in favour of the Divisional manager was not produced before the trial Court also. It is now after lapse of more than two years of the filing of the appeal that the present application has been moved, and no explanation is forth coming as to why these documents were not attached with the appeal."

6. Learned appellate court also considered the effect of Clause 14 of the power of attorney sought to be produced by way of additional evidence. Clause 14 of the power of attorney, an attested copy of which was produced on the record, reads thus:-

"To accept service of process in all actions and other legal proceedings against the company and to institute and prosecute or to defend all or any actions, suits or other proceedings in any court of justice or Tribunal, Arbitrator or any statutory body, authority or authorities whatsoever at any place in India on behalf of the company in matters in any way connected with or arising out of the company's business to settle and adjust compromise or submit to arbitration any such actions, suits or proceedings."

It was submitted before the appellate court by learned counsel appearing on behalf of the petitioner-company that Clause 14 of the Power of Attorney authorised the Divisional Manager to institute or defer all actions or proceedings in any court of law and this authority included the power to file appeal. Learned counsel for the private respondents, however, countering the above submission, submitted that Clause 14 of the power of attorney only authorised the Divisional Manager to file appeals and this power did not include the power to engage a lawyer, sign the Vakalatnama in his favour, purchase the court fee, judicial papers and to sign the grounds of appeal or to do every other act which are necessary for filing the appeal and the conferment of such power was confined to certain limitations and that power did not dispense with the need of a separate resolution of taking a decision, whether appeal was required to be filed or not. Various judgments on this point were pressed into service by learned counsel for the parties. Learned appellate court, on a consideration of the matter dismissed the appeal as having not been properly instituted, "by its order dated 30.1.1989

after observing thus :-

"As the authority of Punjab Tourism Development Corporation v. Ved Parkash (supra) in latter in time, I am inclined to follow the latter authority delivered by Hon"ble Mr. Justice G.R. Majithia on 18.6.1988 and reported as Punjab Tourism Development Corporation v. Ved Parkash (1988) 94 P.L.R. 565 and hold that through Clause 14 of this power of attorney the Divisional Manager was not only authorised to file appeal but this power to file appeal included the power to take the decision or to whether the appeal should be filed Or not. In other words, had this power of attorney been adduced with the appeal, which was instituted on 23.12.1986 and preliminary objection raised by Shri B.B. Gupta, learned counsel for the respondents could not be sustained."

As per my decision in para 11 mentioned above, the application dated 2.1.1989 filed by the appellants for additional evidence having been rejected, it has to be held that the appeal has not been properly instituted and the same is hereby dismissed with no order as to costs."

It is this order of the learned Addl. District Judge, which has been challenged by the National Insurance Company Ltd. by filing the present revision.

7. Learned counsel for the petitioner submitted that the impugned order deserves to be set aside as the learned Addl. District Judge acted illegally in dismissing the appeal on technicalities. Learned counsel re-iterating the submissions made before the appellate court, submitted that the procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. Learned counsel for the private respondents in turn also re-iterated the same contentions and submitted that it is for the petitioner to show and prove on record that while filing the appeal all procedural formalities were adhered to and the appeal was filed by a duly authorised person.

8. Learned counsel for the petitioner in support of his submissions noticed above, placed strong reliance on a recent judgment of the Supreme Court reported as United Bank of India v. Naresh Kumar and Ors. AIR 1997 S.C. 3. On a consideration of the matter and going through the judgment of the Supreme Court, I am of the opinion that the order under revision cannot be sustained. The judgment of the Supreme Court as noticed above, as a matter of fact, is a clear answer to the present controversy. The Supreme Court in almost a similar matter, observed thus :

"In cases like the present where suits are instituted or defended on behalf of 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 CPC 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 he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29, Rule 1 of the Code of Civil Procedure, as a company is 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 any individual. In the 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 acts of signing of the pleading by its officer."

9. It is clear from the observations of the Supreme Court as noticed above that as per the provisions of Order 29 Rule 1 of the Code of Civil Procedure, 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 can sign and verify the pleadings and even in the absence of a formal authority letter or power of attorney having been executed, a person referred to in Rule 1 of Order 29 can sign and verify the pleadings on behalf of the corporation by virtue of the office he holds. It is also apparent from the above observations that where in the absence of a resolution or a power of attorney having been executed expressly authorising its Director or any such officer to sign the pleadings, the pleadings have been signed by one of its officers, the Corporation or the Company as the case may be, can ratify the said action of its officer in signing the pleadings.

10. In the instant case as noticed above, an objection was raised on behalf of the claimant-respondents that the appeal filed by the petitioner-company before the lower appellate court was not maintainable as no specific resolution had been passed by it expressly authorising the Divisional Manager of the company to file the appeal. It is, however, not a case where the person signing the appeal had no authority to do so or that there was no resolution in his favour authorising him to file the appeal. The only defect seems to be that the documents

authorising him to file the appeal had not been placed on record while filing the appeal. In this situation the company took immediate steps to place the documents on record when an objection to the maintainability of the appeal was raised and moved an application to produce on record a certified copy of the power of attorney dated 20.3.1981 executed by the Assistant General Manager of the company in favour of Shri H.B. Puri, Divisional Manager. In that application, permission was also sought for adducing in evidence the attested copy of the certificate of incorporation of the petitioner company and it was specifically submitted that once such additional evidence is "produced, it would become absolutely clear from Clause 14 of the power of attorney that the Divisional manager was authorised to institute any action, suit or other proceedings in any court of justice and that the said power apparently included the power to file appeals, revisions and the power to take a decision whether the appeal should be filed or not. It was also specifically submitted on behalf of the petitioner that since the appeal was filed by a duly authorised person which would be absolutely clear from the power of attorney and therefore, there was no necessity of any specific resolution in that behalf. Learned Additional District Judge apparently and in my view, rightly observed that such an application would be deemed to have been filed under Order 41 Rule 27 of the Code of Civil Procedure. Learned Judge, however, dismissed that application primarily on the ground that there was no explanation available on the record on behalf of the petitioner for not attaching those documents with the appeal. In other words, the application was rejected on the ground of having been moved at a belated stage.

11. On a consideration of the matter, I am of the opinion that the document sought to be produced by way of additional evidence with a view to show that the appeal had been filed by a duly authorised person, ought to have been permitted to be produced on record so as to show that the person signing the appeal had the authority to do so and the appeal filed by him was competent. The document sought to be produced on record did not at all affect the merits of the controversy raised in the appeal. The documents only related to the authority of the person filing the appeal i.e. the competency of the person to file the appeal. In my opinion, in fact, it is even not a case of additional evidence. If the documents sought to be produced by way of additional evidence had been attached by the person filing the appeal, while filing the appeal, the question of proving the documents i.e. the authority to file the appeal would not have arisen, at all. If that is so, the question of objecting to the production of these documents at a later stage could not arise especially in view of the judgment of the Supreme Court in *Naresh Kumar and others*'s case (*supra*). Production of these documents became necessary only on account of an objection having been raised by the claimants to the maintainability of the appeal. The objection, as already noticed, did not affect the merits of the appeal. These are thus the documents which are required to be filed while filing the appeal. Non-filing of these documents at that stage did not mean that they cannot be produced on a later date to show that the person who filed the appeal had the authority to file

the same. No official is required to be examined to prove these documents unless in a given situation, it becomes necessary so to do. It is the categorical stand of the Insurance Company that the documents sought to be produced on record clearly go to show that the Divisional Manager, Shri H.B. Puri had the authority to file the appeal and the clauses of the attorney also go to show that there was a power to take a decision, whether the appeal should or should not be filed. The power of attorney is nothing but a resolution of the Board of Directors duly attested and no formal proof of such a document is required. It is only for the administrative convenience and for the purpose of regulating the business of the company. If such a prayer is rejected, the public interest is bound to suffer. If the defect in filing the appeal can be cured on a later date by passing a resolution or otherwise, it is not understood as to why the resolution which already exists cannot be permitted to be produced on record to advance the cause of substantial justice. It is a matter of common knowledge that a corporate body or a statutory Corporation functions on the basis of resolution passed by the Board of Directors and at the same time even in terms of the provisions contained in the statute. An officer filing the appeal, if is ignorant of the procedure in the matter of filing the appeal, the public interest cannot be allowed to suffer on account of that ignorance especially when such ignorance causes no prejudice to the other side. In the present case, the Insurance Company was only a respondent in the arbitration application and there was no objection to the filing of the written statement by the officer who filed the appeal and in fact he did file the written statement. The matter may have been slightly different and the documents may have been required to be proved if the Company had filed the suit and the objection had been taken by the defendants that the suit had not been filed by a duly authorised person and was also not supported by the decision of the Board or the Company to file the suit. This is particularly so when learned Addl. District Judge himself came to the conclusion while considering the application for additional evidence that Clause 14 of the power of attorney, the attested copy of which was sought to be produced on record, showed that the Divisional Manager of the Company was not only authorised to file the appeal but he had also the power to take a decision as to whether the appeal is or is not to be filed. He also came to the conclusion that had the power of attorney been produced on record while filing the appeal, the objection raised on behalf of the claimant-respondents could not have been sustained. In the circumstances, I am of the clear opinion that learned Addl. District Judge acted illegally and with material irregularity in dismissing the application for producing on record the documents which would have shown that the appeal had been filed by a duly authorised person and after a decision had been taken in the matter to file the appeal. The revision petition is therefore, allowed and the order under revision is set aside but with no order as to costs.

12. For the foregoing reasons, the application moved by the petitioner is allowed and the lower appellate court is directed to take on record the documents sought to be produced by way of additional evidence and to dispose of the appeal

thereafter on its own merits after allowing the petitioner a reasonable opportunity to produce the documents on record and if need be after taking oral evidence in respect thereof.

13. Before putting with the order, it deserves to be highlighted that the application u/s 20 of the Arbitration Act was moved in this case in October, 1983 and the matter is still at that stage. In the circumstances, learned Addl. District Judge is directed to dispose of the matter pending before him at a very early date, preferably within three to four months. The parties through their counsel are directed to appear before the lower appellate court on 21.11.1997.