(2007) 06 MP CK 0006

In the Madhya Pradesh High Court

Case No : First Appeal No. 410 of 2001

Power Grid Corporation of India APPELLANT

Vs

Patel Roadways Ltd. and another RESPONDENT

Date of Decision : 26-06-2007

Acts Referred:

Citation : (2007) 4 MPLJ 201

Hon'ble Judges : K.S. Chauhan, J;Arun Mishra, J

Bench : Division Bench

Advocate : Pranay Verma, for the Appellant; K.N. Agrawal, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

This appeal has been filed by the plaintiff aggrieved by judgment and decree dated 19-5-2001, passed by 6th Additional District Judge, Jabalpur in Civil Suit No. 7-B/2000.

The plaintiff, Power Grid Corporation of India, instituted a suit for recovery of Rs. 7,99,000/- against the defendants M/s Patel Roadways Limited, a Public Limited Company, Bombay involved in the business of transportation and having its Branch Office at Jabalpur. The plaintiff is a Government of India Undertaking having its Registered Office at New Delhi, its Divisional Office is located at Jabalpur.

As per plaint, Shri C.M. Sharma was one of the main officers competent to sign the plaint, verify and file it. He was specifically authorised by Shri B. Gopal Rao, Assistant General Director, to file the suit on behalf of the plaintiff Corporation for recovery of the aforesaid sum. Certain goods were to be transported to Katra (Jammu Kashmir) as per the agreement entered into between the parties on 12-10-1993, signed on 23-11-1993. Goods were loaded in the trucks on 13-10-1993 and 14-10-1993 for transportation to Kishanpur (Katra). The said consignments were to reach the destination at the most in 10 days. When the goods did not reach the destination, the plaintiff made enquiries, whereupon it was informed on 29-10-1993, that goods were still lying in the godown. Demand of transportation fare of Rs. 15,520/- per truck was made instead of Rs. 12,744/-. Defendant No. 2 did not transport the goods as per the agreement. There were several letters written by the plaintiff. Thereafter, vide letter dated 23-2-1995, defendants intimated them that two drums booked with them were auctioned, in spite of objections raised, the two drums were auctioned and the remaining four drums were agreed to be returned, which were without outer packing. Joint inspection was decided. However, in the joint inspection, several damages were found on the remaining four drums. Ultimately, they were also not returned. The plaintiff thus incurred a loss of Rs. 7,99,000/-.

The defendants in their written statement inter alia contended that C.M. Sharma was not legally authorised to file the plaint or to sign it. There was only a proposal not a contract, the proposal was not accepted by the defendant. No agreement was entered into for transportation for a sum of Rs. 12,744/-. Fare of Rs. 15,520/- per truck was demanded. Communication dated 23-11-1993 was manufactured. There were earlier dues against the plaintiff which were not paid, that is why the defendants has sold the drums and realized the amount. The suit was barred by limitation. Whatever deficiency was found in the remaining four drums was removed, and that no illegality was committed by them.

The trial Court has found that the suit was not instituted properly. Shri C.M. Sharma was not authorised to institute the suit. Issues Nos. (1) and (2) have been decided against the plaintiff. On remaining Issues, findings have been given in favour of the plaintiff. Trial Court has found that on 12-10-1993, an oral agreement was entered into for transportation of goods from Jabalpur to Kishanpur (Katra) Jammu Kashmir and agreement was confirmed as per letter-dated 23-11-1993. Demand of fare of Rs. 15,520/- was illegally made by defendant No. 2. Goods were not supplied to the destination and thereby defendants had violated the terms and conditions of the agreement and sold the drums in an illegal manner. Plaintiff wanted to obtain them back. There was violation of the agreement by defendant No. 2. Plaintiff was thus held entitled for recovery of the amount of Rs. 7,99,000/-, along with cost of Rs. 962/-. Suit was held to be within limitation. However, it was dismissed in view of the findings recorded on Issue Nos. (1) and (2).

Consequently, this appeal has been preferred by the plaintiff assailing the findings given in Issues Nos. (1) and (2). No cross-objections have been preferred.

Shri Pranay Verma, learned counsel appearing on behalf of the plaintiff, has submitted that Shri C.M. Sharma was duly authorised to institute the suit. In view of documents Ex.P/16 and Ex.P/17, trial Court has erred in dismissing the suit. The trial Court has erred in law in holding Shri C.M. Sharma was only representing officer not authorised to institute the suit. A power of attorney was also executed in favour of Shri C.M. Sharma, though it may have been received at Jabalpur subsequently in point of time, but the fact remains that authority was given to institute the suit on 14-8-1995. Suit was filed on 7-9-1995. Thus, it was instituted by duly authorised person. He has also relied on a decision of the Apex Court, in United Bank of India Vs. Naresh Kumar and others, .

It was submitted by Shri K.N. Agrawal, learned counsel appearing for the respondents/defendants, that document Ex.P/17 was suspicious. It has been prepared subsequently. There was no legal authority with Shri C.M. Sharma to institute the suit. Thus, suit has been rightly dismissed by the trial Court. He has placed reliance on decisions in M/s Nibro Limited vs. National Insurance Company Limtied, AIR 1991 Del 25 and M/s Rajgharia Paper Mills Limited vs. General Manager, Security Press and another, AIR 2000 Del 239.

We find that dismissal of the suit by trial Court on the basis of findings recorded on Issue Nos. (1) and (2) was not proper. The aforesaid issues were not properly decided. It was clearly stated that Shri C.M. Sharma had been authorised to sign and verify the plaint by Shri Gopala Rao, who was given power of attorney by the Corporation through the Chairman, on the basis of the Resolution of the Board of Director on 9-11-1990. In the said power of attorney, Shri Gopala Rao was given the power to delegate his powers to the employee not below the level of Manager except with respect to subject-matter mentioned in paras 10 and 11 of the Power of attorney. He has delegated the power to Shri C.M. Sharma as apparent from note - P/17 executed on 14-8-1995, and specifically authorised him to verify the plaint and file it before the Civil Court. Shri C.M. Sharma was also authorised to represent the Corporation and power to verify, sign the plaint in question. Power of Attorney executed in favour of Shri Gopala Rao authorised him to delegate the powers given except for Sr. Nos. 10 and 11. Thus, he could have delegated the powers to constitute and defend legal cases, sign and verify plaints, written statements, objections and cross-objections, compromise, compound, withdraw cases etc., as per clauses of the power of attorney.

Shri C.M. Sharma (PW-1) has staged that power of attorney was given to him to file the case. The fact remains that power of attorney was executed though it may have been received after his transfer from Jabalpur. There is nothing to disbelieve the statement of Shri C.M. Sharma. He was thus competent to institute the suit on behalf of the Corporation. Shri S.K. Shrivastava (PW-2) had also stated that Shri C.M. Sharma was authorised by Shri Gopala Rao to file the suit.

In view of the aforesaid, we find that dismissal of the suit by the trial Court and the findings recorded on Issue Nos. (i) and (ii) were not correct. It could not be said that suit was presented by an incompetent person, in view of the specific authorization in the instant case.

The Apex Court in the case of Naresh Kumar (supra) has laid down that Court can render its finding about the ratification on the basis of evidence and circumstances on record especially conduct of trial, even if trial Court finds that the plaint was not signed and verified by a competent person. Appellate Court in exercise of its power can require a power of attorney to be produced or can order a competent person of the company to be examined as witness to prove the ratification. It was held in the said case that plaint had been signed and verified by a competent person. In the instant case, it could not be said that plaint was presented by an unauthorized person on behalf of the Corporation. We are satisfied that it was filed by duly authorised person on behalf of the Corporation.

Thus, we set aside the finding recorded by the trial Court on Issue Nos. (i) and (ii), the decision relied by Shri K.N. Agrawal in M/s Nitro Limited (supra) is quite distinguishable. There is no dispute as to the proposition laid down in the aforesaid case, that unless a power to institute a suit is specifically conferred on a particular director, he has no authority to institute a suit on behalf of the company. Needless to say that such a power can be conferred by the Board of Directors only by passing a resolution in that regard. In the instant case, as apparent from the averments made in the plaint, Board of Directors had passed a resolution in favour of Shri V. Gopala Rao and Shri V. Gopala Rao has authorised Shri C. M. Sharma to file the suit. He had power to delegate as apparent from the power of attorney (P/16). The trial Court in the instant case, has recorded a finding that Shri C.M. Sharma was authorised to sign the plaint, but was not authorisd to institute it, the trial Court has confused itself, power to sign and verify the plaint was with the purpose to institute the suit. The suit was not filed in individual capacity, but by the Corporation and it was signed and verified by a duly authorised person.

To similar effect is the decision of M/s Rajgharia Paper Mills Limited (supra). Hence, we need not dilate much on the aforesaid proposition, same is distinguishable due to the aforesaid reasons.

No other point was raised by counsel for the parties. Resultantly, we allow the appeal. In view of the findings recorded by the trial Court on other issues, in favour of the plaintiff, the suit is decreed as prayed. Decree be drawn accordingly. Pendente lite interest is assessed at the rate of 8% per annum from the date of filing of the suit till realization. Parties to bear their respective costs.

