(1985) 08 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 965

Punjab National Bank APPELLANT

Vs

Parmesh Knitting Works and Others RESPONDENT

Date of Decision : 13-08-1985

Acts Referred:
Evidence Act, 1872 — Section 85

Citation : AIR 1986 P&H 214 : (1987) 62 CompCas 192

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Judgement

1. The Punjab National Bank, the appellant (hereinafter referred to as the plaintiff-Bank) filed a suit for the recovery of Rs. 1. 12.390.65 against M/s Parmesh Knitting Works--the firm--and its partners as also the guarantors of the defendant-respondents. The suit was decreed by the learned Sub Judge 1st Class, Ludhiana, vide judgment and decree dt. 12-2-1982. On an appeal filed by the defendants-respondents 1 to 4, the learned District Judge, Ludhiana, vide judgment and decree dt. 21-2-1985 set aside the judgment and decree of the learned trial Court and dismissed the suit of the plaintiff-Bank. The parties were left to bear their own costs throughout. It is from the judgment and decreed dt. 21-2-1985 of the learned District Judge. Ludhiana, that the present second appeal has been preferred by the plaintiff-Bank.

2. In the suit before the trial Court, the following issues were framed:--

(I) Whether the plaintiff Bank is a body corporate and the suit has been properly brought by the Bank through Prem Chand? OPP

(2) To what amount the plaintiff is entitled to recover from the defendant ? OPP

(3) Whether the defendants 5 and 6 are not liable in view of the plea taken in para 2 of the written statment ? OPD.

(4) Whether the defendants had signed blanks forms only and had not executed

the documents from free will ? OPD

(5) Whether the plaintiff is entitled to any interest ? If so, at what rate and to what amount ? OPP.

(6) Relief.

3. However, before the learned District Judge, the only issue which was pressed by the defendant-respondents Nos. 1 to 4 was issue No. (1) and it is by reversing the finding of the trial Court on this issue that the learned District Judge has held that the suit was not instituted by a duly authorised person and consequently dismissed the same.

4. Shri R. N. Narula, the learned counsel for the plaintiff-Bank, has contended that the approach of the learned District Judge while deciding issue No. (1) was erroneous. The suit has been instituted by Shri Puran Chand Kalia who was duly authorised to do so by virtue of a general power of attorney, a Photostat copy of which is Ex. P. 2/1 on the record. Shri Puran Chand Kalia, who appeard in the witness-box as P.W. 2, brought in the Court the original power of attorney and thus proved its Photostat copy Ex. P.2/1. A perusal of the power of attorney Ex. P. 2/1 shows that the Special Committee of the Board of Directors consisting of Shri Parkash Lal Tandon constituted under the Board Resolution No. 32 dt. 17-8-1972, by its Resolution No. 2 dt. 24-10-1972 appointed on behalf of the plaintiff-Bank, and delegated to him the powers enumerated in the said power of attorney. By virtue of the said authority, Shri Parkash Lal Tandon, Director of the plaintiff-Bank, executed the power of attorney Ex. P. 2/1 on 8-2-1973 in the presence of two witnesses and the same was duly attested U. T. Delhi, Shri Narula, therefore, contends that this power of attorney fully satisfies the requirements of S. 85 of the Evidence Act as the same has been executed before and authenticated by a Notary Public and thus the Court shall presume that the same was so executed and authenticated. He further submits that the presumption as to power of attorney under S. 85 of the Evidence Act is no doubt rebuttable but the defendants-respondents have led no evidence whatsoever in this behalf.

5. The learned District Judge has relied on Electric Construction and Equipment Company Ltd. Vs. Jagjit Electric Works, , to hold that the attestation of a power of attorney by a Notary Public did not amount to execution of the same before and authentication thereof by a Notary Public. Mr. Narula has distinguished this judgment of the Delhi High Court by pointing out that in that case the power of attorney purported to have been executed on 29-6-1973 was attested by a Notary Public of Delhi on 13-12-1973. It was, therefore, clear in that case that the first requirement of S. 85, Evidence Act, to the effect that a power of attorney should be executed before a Notary Public was lacking. There is also an observation in the said judgment that Banks, public institutions like Insurance Companies and other Corporations which may have several branches, so as to save the expense of producing its principal officers before the Court, execution of

such a power of attorney satisfying the test laid down in S. 85, Evidence Act, can be proved without undue expense on the basis of the execution and authentication.

6. Mr. Narula has then relied on Bank of India v. M/s. Ajaib Singh Pritam Singh AIR 1979 NOC 199 (Delhi), wherein it is laid down that a power of attorney duly authenticated by a Notary Public raise legal presumption that the same had been duly executed and the person who had executed had the authority to do so. The presumption is, however, rebuttable but since in the present case no rebuttal has been produced, the presumption under S. 85, Evidence, Act, must stand and the authority of Sh. Puran Chand Kalia to institute the suit must be presumed.

7. Shri Vijay Jhanji appearing for the defendants-respondents on the other hand has contended that although he power of attorney had been executed on 8-2-1973 on which date the same was attested by a Notary Public, it cannot be deduced that the power of attorney was executed before the Notary Public. He further submitted that the mere word "attested" does not amount to authentication of the power of attorney by a Notary Public. In this respect, he had placed reliance on Citibank N.A. Vs. Juggilal Kamlapat Jute Mills Co. Ltd., , wherein it is held that there was a lot of difference between "authentication" and "attestation". "Authentication" was step forward than "attestation". The former meant that the power of attorney was in proper form of law which would mean that the officers executing it on behalf of the Bank were duly authorised to do so. In this very judgment, reference is made to ''Law Lexicon'' by T. P. Mukherjee and K. K. Singh wherein it is mentioned that ''authentication connotes an attestation made by an officer by which he certifies that a record is in due form of law. Under S. 85, Evidence Act, a presumption would arise that the officer who executed the power of attorney on behalf of the plaintiff-Bank was competent to do so.

8. It is not disputed that there is no prescribed or established form of nature and manner of authentication by a Notary Public. The same has to be gathered from the tenor, facts and Circumstances of the power of attorney and its authentication by a Notary Public. The fact that the power of attorney was executed by a Director of the plaintiff-Bank duly authorised by a resolution of the Board of Directors to execute the same and this execution was made on 8-2-1973 and its attestation by a Notary Public was also done on the same day clearly indicates that the power of attorney was executed before the Notary Public. Para 4 of the power of attorney further bears out that Shri Parkash Lal Tandon, a Director of the plaintiff-Bank, was duly authorised by a resolution of the Board of Directors of the plaintiff-Bank, was duly authorised by a reslution of the Board of Directors of the plaintiff-Bank to execute the power of attorney delegating to Shri Puran Chand Kalia the powers mentioned in the said power of attorney. This amply bears out that Shri Parkash Lal Tandon, Director of the Plaintiff-Bank who executed the power of attorney was a person competent to execute the same. Thus, its attestation by the Notary Public on the same date

and time fulfils the requirement of its due authentication. It is worth mentioning that a specific averment was made by the plaintiff-Bank in the plaint to the efftect that Shri Puran Chand Kalia was a duly constituted attorney by virtue of a power of attorney executed in his favour by the Director of the plaintiff-Bank, who had authorised to execute the same by a resolution of the plaintiff-Bank''s Board of Directors. This averment was not countered by the defendant-respondents in their written statment. Rather they chose to make a vague denial for want of knowledge. Likewise, when Shri Puran Chand Kalia appeared in the witness-box as P.W. 2 and brought the original power of attorney and proved on record its photostat copy Ex. P. 2/1, no question was addressed to him in cross-examination on any aspect touching the execution before and authentication thereof by the Notary Public. The authority of Sh. Parkash Lal Tandon to execute the power of attorney, or the factum of its execution by him, was not questioned. The vital aspect of the execution of the power of attorney before the Notary Public was not even touched in cross-examination although the document Ex. P. 2/1 made it manifest that the same was executed before the Notary Public. I, therefore, find that the learned District Judtge erred in holding that the suit was not instituted by a duly authorised person. The institution of the suit by Shri Puran Chand Kalia, who was a duly constituted attorney by virtue of the general power of a attorney Ex. P. 2/1, was valid in law.

9. The indings on other issues which were returned in favour of the plaintiff-Bank and against the defendant-respondents by the trial Court were not agitated by the trial Court were not agitated by the defendant-respondents before the learned District Judge. I, therefore, affirm the findings on the remaining issues.

10. As a result of the foregoing discussion, the appeal of the plaintiff-Bank is allowed with costs throughout, the judgment and decree dt. 21-2-1985 of the learned District Judge, Ludhiana, are set aside and those of the trial Court decreeing the suit of the plainjtiff-Bank for the recovery of Rs. 1, 12, 390.65 with costs besides future interest at the rate of 6% per annum were affirmed.

11. Appeal allowed.