

(1988) 08 P&H CK 0145

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1055 of 1987

Punjab Tourism Development Corporation Ltd. and another	APPELLANT
Vs	
Sh. Ved Parkash	RESPONDENT

Date of Decision : 18-08-1988

Acts Referred:

Citation : (1988) 08 P&H CK 0145

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : R.L. Chopra, for the Appellant; B.R. Mahajan, for the Respondent

Judgement

G.R. Majithia, J.—This appeal is directed against the judgment and decree of the learned Additional District Judge, Amritsar.

2. Unsuccessful defendants filed the appeal against the judgment of the learned trial Court whereby the suit of the plaintiff was decreed. A preliminary objection was taken as to the maintainability of the appeal on the ground that no resolution was passed by the Board of Directors of the Punjab Tourism Development Corporation Limited authorising the Managing Director by whom the appeal purports to have been filed to file the appeal. The preliminary objection prevailed and the appeal was dismissed and it was held that the appeal was not instituted by a duly authorised person.

3. The Punjab Tourism Development Corporation Limited is incorporated under the Companies Act, 1956 (Act No. 1 of 1956). Article 102(f) of the Memorandum of Articles of the Association of the Corporation reads as under:-

102. Subject to the provisions of the Act and to the terms of any Resolution of the Company in General meeting or any Resolution of the Board and to the terms of any contract with him, the Managing Director shall function under the General superintendence, control and direction of the Board of Directors and subject to such limitation thereon as may be placed by them. Without prejudice to the general powers conferred otherwise by these Articles, the Managing Director

shall have the following powers subject to the supervision and control of the Board:

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) xxx xxx xxx

(d) xxx xxx xxx

(e) xxx xxx xxx

(f) To institute, conduct, defend, compound or abandon any actions suits and legal proceedings by or against the Company or its officers or otherwise concerning the affairs of the Company and also to compound or compromise or submit to arbitration the said actions, suits and legal proceedings.

Thus, under clause (f) of the Articles of Association of the Corporation Power have been given to the Managing Director to institute any action or legal proceedings on behalf of the company or its officers. Appeal and revision are continuation of a suit. 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 revisions. 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. In the present case in pursuance of the powers conferred by Article 102 of the Articles of Association, the Managing Director had authorised the counsel to file the appeal. No resolution need be passed when specific powers have been given in the Articles of Association of the Corporation to a particular officer to institute legal actions. An indential matter came up for consideration before R.N. Mittal, J. in *National Fertilizers Ltd. Bhatinda v. Municipal Committee, Bhatinda and another* (1982) 84 P.L.R. 322. Article 77(6) of the Memorandum of Articles of Association of National Fertilizers Limited was almost identical to the one as in the present case and it was held that the Board of Directors was competent to delegate its powers to the Chairman or the Managing Director subject to such terms and conditions as it thinks fit to impose. The Managing Director was further authorised to delegate any of its power to a Subordinate Officer. On these premises, it was held that the revision was filed by an authorised agent and it was held thus:-

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 revisions. 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.

The view taken by the lower appellate Court cannot be sustained. I set aside the judgment and decree of the learned Additional District Judge, Amritsar and remit the case to the District Judge, Amritsar, who should either dispose of the appeal himself or entrust it to any other Additional District Judge for disposal. The

learned District Judge will ensure that the appeal is disposed of within one month from the date, the parties put in appearance before it. The parties through their counsel are directed to appear before the District Judge, Amritsar, on 16-9-1988. In the circumstances of the case, I leave the parties to bear their own costs.