(2011) 02 DEL CK 0365

In the Delhi High Court

Case No : Regular First Appeal No. 318 of 2001

Relaxo Footwears Ltd. APPELLANT

Vs

Rohitas Lal and Brothers and Others RESPONDENT

Date of Decision : 18-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, 96

Citation : (2011) 02 DEL CK 0365

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Judgement

Valmiki J Mehta, J.—This case is on the Regular Board of this Court since 3.1.2011. Today this case is effective item No. 5 on the Regular Board. No one appears on behalf of the parties, although it is 2:40 p.m. I have therefore perused the record and am proceeding to dispose of the matter.

2. The challenge by means of this Regular First Appeal u/s 96 of the Code of Civil Procedure, 1908 is to the impugned judgment and decree dated 31.5.2001 whereby the suit of the Appellant/Plaintiff for recovery of Rs. 1,56,121.95 was dismissed. I may note that the suit was dismissed although the Appellant/ Plaintiff had duly proved its case and also though the Respondents/Defendants failed to lead any evidence, inasmuch as the Trial Court held the suit was not validly instituted. The challenge before this Court therefore is only with respect to findings on issue No. 3 and which issue and findings read as under:

Issue No. 3:

Whether the plaint has been signed and verified and suit instituted by a duly authorised and competent person? OPP

9. Onus to prove this issue was on the Plaintiff. As per the pleadings Sh. Sushil Kohli was the Asstt. Manager and Sh. Dinesh Shukla, Accountant of the company

and were authorized to file the suit and also to peruse the same vide resolution dated 23.1.99 and they were also the principal officers in terms of Order 29 CPC. Testimonies of the only two Plaintiff''s witnesses viz. PW.1 & PW.2 are, however, totally silent on the issue in hand. There is not even on iota of whisper in the testimonies of any of the two witnesses PW.1 & PW.2 that the plaint has been signed and verified and suit instituted by a duly authorised and competent person. PW.1 in his testimony has only deposed to the extent that he had been authorized by the company to depose before the court. He did not utter even a single word if at all he had signed and verified the plaint and instituted the suit. Perusal of the plaint shows that the plaint has been signed by two persons. Resolution Ex.PW1/1 of the company taken as such also authorises two of the persons to take the necessary actions. Who are those two authorised persons, I do not find any evidence to such an extent and what have they done is equally unknown. PW.1 by himself has also not deposed that he, at all was one of those persons who was so authorised. In the circumstances, in the absence of any evidence, much less sufficient evidence, to prove the issue in hand that the plaint has been signed and verified and suit instituted by a duly authorised and competent person, I have no hesitation in holding that the Plaintiff has failed to discharge its burden to prove the issue No. 3. The issue No. 3, therefore, decided against the Plaintiff and in favour of the Defendants.

3. The aforesaid findings of the Trial court are wholly illegal and perverse. A reference to para 1 of the plaint shows that Sh. Sushil Kohli and Sh. Dinesh Shukla were authorized to file the suit. The resolution was proved on record as Ex.PW1/1. It is therefore not understood as to what the Trial Court means when it arrives at a finding that it is not known that who are the two authorized persons. Surely, the two authorized persons are those mentioned in resolution, Ex.PW1/1 namely Sh. Sushil Kumar and Sh. Dinesh Shukla and of which Sh. Sushil Kumar appeared as PW1 and had exhibited this resolution. Further, the only defence of the Respondents/Defendants with respect to competence to file the suit was contained in para 7 of the preliminary objections of the written statement and para 1 of the reply on merits which read as under:

"7. That the suit is not filed by the authorised person as the person who has filed the suit is not competent or empowering under the law. Mere resolution passed by the Director of the company does not mean that the person in whose favour resolution is passed becoming competent to file the suit until and unless the same attorney is executed in his favour whereby those powers should be specifically mentioned therein in his favour empowering him to institute the suit before the court of law the same does not that mentioned in the plaint. ....

1. That the contents of para 1 as stated are wrong and denied. It is denied that the principal officer named in the para under reply are authorised to institute the case, rest of the para in so far as it pertains to the status of Plaintiff company, is not denied as Plaintiff informed the Defendants that it is a limited company.

4. A reference to the aforesaid paras show that the authority to file the suit was

not on the ground that resolution was not passed but what was contended was that a power of attorney should also have been executed. The defence was therefore a legal defence and not a factual defence. In law, if on behalf of a company a suit is filed it is not required that there must be an attorney in favour of the person who files the suit as long as a resolution of the Board of Directors authorizes the filing of the suit. In the present case, the resolution of the Board of Directors has been proved as PW-1/1. Also, in reply to para 1 on merits, it was not disputed that the authorized signatory of the suit/plaint was a principal officer but the defence was that he was not authorized to institute the case, i.e. the person who filed the suit was admitted to be the principal officer of the Appellant/Plaintiff. In terms of Order 29 Rule 1 of the CPC and the decision of the Supreme Court in the case of United Bank of India v. Naresh Kumar AIR 1996 6 SCC 660 It has been held that a suit should be held to be validly instituted and it ought not to be thrown out on technical grounds of lack of authorization, once, the suit has been pursued for a long period of time. In the present case, the subject suit was pursued right till the disposal and therefore the decision in the case of United Bank of India (supra) squarely applies more so it was not specifically denied that the person who instituted the suit was not the principal officer of the company.

5. In view of the above, I set aside the order with respect to issue No. 3 and hold that the suit was properly instituted and filed on behalf of the Appellant/Plaintiff. The suit of the Appellant/Plaintiff is therefore decreed for a sum of Rs. 1,56,121.95 along with pendente lite and future interest till realization of the decree amount @ 9% per annum simple. Decree sheet be prepared. Trial Court record be sent back.

