
(1990) 09 DEL CK 0009
In the Delhi High Court
Case No : Suit No. 61 of 1986

Syndicate Bank

APPELLANT

Vs

S.A. Trading Corporation and Others

RESPONDENT

Date of Decision : 03-09-1990

Acts Referred:

Citation : (1991) ILR Delhi 643 : (1990) RLR 447

Hon'ble Judges : Mahinder Narain, J

Bench : Single Bench

Advocate : M.S. Dewan, for the Appellant;

Judgement

Mahinder Narain, J.

(1) This suit has been filed by Syndicate Bank against three defendants. Be spite service being effected on the defendants, none of them appeared, and this Court directed ex parte proceedings against the defendants on 21-7-1986. It was further directed that the plaintiff will file affidavit by way of ex parte evidence.

(2) Today the suit has come up before me for final disposal.

(3) I find that affidavit by way of ex parte evidence has been filed by one Mr. Y. K. Pai who is stated to be the Manager of the Rani Jhansi Road, branch of the plaintiff bank. Mr. Pai has staled in the affidavit that the plaint has been signed and verified by him, and that he holds power of attorney from the bank to file institute this suit in terms of a power of attorney, a photo stat copy of which is marked as Ex. P. 1.

(4) The only power of attorney which has, been filed on record of this case, is a photo copy of a power of attorney, which is purported to have been executed in favor of Mr. Y. Keshav Pai, son of Shri Y. Baburaya Pai. The original of this power of attorney has not been produced before me, as a result of which it is not possible for" me to come to the conclusion, whether tho original power of attorney is entitled to presumption which is raised in law in accordance with

section 85 of the Evidence Act.

(5) It is stated by counsel for the plaintiff that the reason why the original power of attorney was not produced in court, was because the original power of attorney is needed by the recipient thereof, the power of attorney holder, in connection with various matters.

(6) I do not agree with the aforesaid submission, which has been made by counsel for the plaintiff. I invited the attention of the counsel to the provisions of the Powers-of-Attorney Act, 1882, specifically section 4 thereof. Section 4 of the said Act deals with the proof of Power of Attorney, and reads as under:-

"4. Deposit of original instruments creating powers-of- attorney:- (a) An instrument creating a power-of-attorney, is execution being verified by affidavit, statutory declaration or other sufficient evidence may, with the affidavit or declaration, if any, be deposited in the High Court (or District Court) within the local limits of whose jurisdiction the instrument may be. (b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request. (c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy. (d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court (or District Court). (e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the state Government, the fees to be taken under clauses (a), (b) and (c). (f) * * * * * (g) This section applies to instruments creating powers-of-atomic executed either before or after this Act comes into force-

(7) A perusal of the said provision, which is over 100 years old now would make it abundantly clear that once a power of attorney is proved in the High Court or District Court, the High Court or the District Court can issue certified copies thereof.

(8) As stated in the aforesaid provisions, further proof of the contents of the power of attorney is not required in any Court, or before any authority in India.

(9) It seems that the provisions of section 4 of the Powers-of- Attorney Act, 1882 are far stronger than the provisions of section 85 of the Evidence Act, which deal with the "presumption" as to Power-of-Attorney. Whereas in case of Power-of-Attorney executed in accordance with section 85 of the Evidence Act, Court is entitled to "presume" its due execution, section 4 of the Powers-of-Attorney Act, 1882, mandates that no further proof of the contents of instrument (as also the fact of deposit) shall be required.

(10) In this view of the matter, it is not open to counsel for the plaintiff to contend that the original power-of-attorney is not made available to court to

support the suits which are filed. Apparently the plaintiff bank has chosen not to act upon, or take the benefit of powers-of-attorney Act, 1882. It has not proved the power of attorney, nor obtained certified copy of proved power of attorney.

(11) In view of what is stated in section 4 of the Powers-of-Attorney Act, 1882, it is open to any person to obtain as many certified copies from the High Court or the District Court concerned, as he thinks he is in need of. In any case, such copies can be had as and when the same are required from the High Court or the District Court concerned.

(12) In case the persons who have conferred Power-of-Attorney on any individual, are not desirous of availing of the benefit of section 4 of the Powers-of-Attorney Act, 1882, then they have to establish conferral of power to institute suits in accordance with the law, namely, either rely upon a presumption which is available u/s 85 of the Evidence Act, or to actually prove the power-of-attorney, as any other document is proved.

(13) As to how the powers-of-attorney are to be proved, is a subject matter of judicial pronouncement, inter alia, National and Grindlays Bank Ltd. Vs. World Science News and Others, which dealt with the presumption of due execution of a power of attorney in accordance with section 85 of the Evidence Act.

(14) In case the person who has conferred the power-of-attorney has not got it executed, so as to enable him to raise the presumption which may be raised in terms of section 85 of the Evidence Act, then he is left with no option, but to prove the same in accordance with law. This is done by proving the resolution of the Board of Directors of the company, which gives its officers power to grant power-of-attorney to persons the company considers worthy of it, and also prove the factual execution of the power of attorney by the empowered officer or officers. This proof has to be tendered in court by proving the passing of the resolution by the company in accordance with sections 193 and 194 of the Companies Act, 1956.

(15) Mr. M. S. Dewan, counsel, for the plaintiff, wants an opportunity to produce the original power of attorney, and to prove the original power of attorney with reference to the resolution which was passed by the Board of Directors of plaintiff. He says that he may be allowed opportunity to lead oral evidence in this connection. Opportunity granted.

(16) List the case in the category of "Short Cause" on 25-10-1990 for recording ex parte evidence on behalf of the plaintiff.