

(1986) 06 OHC CK 0019

In the Orissa High Court

Case No : Civil Revision No. 510 of 1983

Umesh Chandra Misra

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 23-06-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 6 Rule 14
State Bank of India Act, 1955 — Section 43, 50

Citation : AIR 1987 Ori 67 : (1986) 62 CLT 137 : (1986) 2 OLR 89

Hon'ble Judges : Harilal Agarwal, C.J

Bench : Single Bench

Advocate : A.B. Misra and B.K. Nanda, for the Appellant; S.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Harilal Agarwal, C.J.—This application in revision u/s 115 of the Civil P.C., which is by the judgment-debtor whose objection to the executability of the decree in question has been overruled by the executing court, raises an interesting question as to whether a decree passed on the basis of a plaint signed, verified and filed by the Branch Manager of a bank, was a nullity and thus inexecutable.

2. The decree-holder Bank (opposite party No. 1) instituted a suit for recovery of a sum of Rs. 24,524.27 from the petitioner and another, being the outstanding balance in a loan account against them. The said suit was decreed on contest and after passing a preliminary decree for the said amount, the final decree for sale of the hypothecated goods was also passed by the trial court and ultimately the decree was put into execution.

3. The judgment-debtor filed a petition u/s 47 of the Code challenging the validity of the said decree, inter alia, on the ground that the plaintiff Bank being represented by the Branch Manager of Puri and the plaint having been signed by him, the suit was not properly instituted and, therefore, the decree was a nullity. It further appears that another point that the suit should have been filed in the

court of a Tribunal as provided u/s 11 of the Industrial Tribunal Act has, however, not been pressed before me.

4. The objections were refuted by the decree-holder Bank in the rejoinder and the learned Subordinate Judge by the impugned order has also overruled the contention of the petitioner.

5. It may be mentioned that in the trial Court no such objection either of the nature of lack of jurisdiction in the trial court or any infirmity in the institution of the suit or presentation of the plaint seems to have been raised. All that I find from the discussions in the order of the court below is that the decree was challenged as being a nullity on the ground of lack of jurisdiction in the trial court to pass the same.

6. It is a well known proposition that the executing court cannot go behind that decree and must execute the same as it stands and according to its terms. Apart from nullity for inherent lack of jurisdiction or having been passed against a dead person or obtained by fraud, an executing court cannot refuse to execute a decree on any other ground; except on account of any subsequent development, however, the decree ceases to be executed according to its terms (see *Jai Narain Ram Lundia Vs. Kedar Nath Khetan and Others*, .

Learned counsel for the petitioner has also referred to some authorities on the point that if the decree is a nullity, the same cannot be executed. As the proposition is well settled and beyond any controversy I need not refer to any of them to unnecessarily lengthen my judgment.

7. Coming to the question of jurisdictional defect of the court passing the decree, it must be made clear that the question of territorial or pecuniary jurisdiction of that court cannot be allowed to be raised in an execution proceeding for the first time unless it raises a question of inherent lack of jurisdiction. The propositions are so well settled that I do not think it necessary to refer to any citation and suffice it may to refer to only one case of the Supreme Court in *Chandrika Misir and Another Vs. Bhaiya Lal*, . If it is proved that the decree is a nullity it cannot be executed, but the want of jurisdiction must appear on the face of the record.

8. Neither from the discussion of the matter in the impugned order I find any question having been raised regarding inherent lack of jurisdiction of the trial court, nor any such argument as indicated above was raised before me by the learned counsel for the petitioner.

9. The main thrust of the argument of the learned counsel was based upon Rule 1 of Order XXIX of the Code that the decree-holder being a Bank, the Manager of the Puri Branch, although that was the branch concerned, has no right to sign and verify the pleading in order to present the same. Rule 1 of Order XXIX reads as follows :

"1. Subscription and verification of pleading.

In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case."

10. At the outset it must be clearly understood that this rule is only permissible and not mandatory. A plaint in a suit by a company may be signed by the Secretary, Director or other principal officer able to depose to the facts, but this does not exclude the right of the company to authorise any person to sign a plaint on its behalf as laid down under Order 6, Rule 14 of the Code.

11. A reference to some of the relevant provisions of the State Bank of India Act would make the matter all the more clear. Section 3 of this Act dealing with the establishment of the State Bank provides that the State Bank would be a body corporate with perpetual succession and common seal under the name of the State Bank of India and shall sue and be sued in that name.

I find that the suit was instituted in the name of the State Bank of India, but it was represented by "its Branch Manager, at and P.O. Nayagarh, District Puri" who signed and verified the plaint and filed the same in court. Section 43 of this Act authorises the State Bank to appoint officers and other employees as it considers necessary or desirable for the efficient performance of its functions. The Central Board has also been empowered to authorise such officers etc. to exercise such powers and perform such duties as may by general or special order be entrusted or delegated to them. Section 50 of the Act has empowered the Central Board to make regulations in the manner prescribed under Sub-section (1) thereof and in exercise of that power such regulations, inter alia, may be provided for "conduct and defence of legal proceedings and manner of signing the proceedings".

12. It is not disputed that the loan transaction in question was with the Nayagarh Branch of the State Bank of India. It is also evident that the Branch Manager is the "principal officer" of the Bank and by virtue of his position he is the most competent person who is "able to depose to the facts of the case". Apart from the powers of authorisation by the Central Board under the scheme of the aforesaid Act as indicated above, in my opinion, the Branch Manager by virtue of the scheme of Rule 1 of Order XXIX of the Code itself becomes a competent authority to sign and verify the pleadings.

It could, perhaps, be argued on behalf of the petitioner but it was not done, that Rule 1 of Order XXIX merely authorises the persons mentioned therein to sign and verify the pleadings on behalf of the Corporation company), but it did not authorise such persons to institute suits on behalf of the Corporation and I find that a learned single Judge of the Jammu and Kashmir High Court in the case of University of Kashmir v. Ghulam Nabi Mir AIR 1978 NOC 114 has taken such a view. In that event, perhaps, it was thought fit that the plaintiff-decree-holder might have produced the relevant document authorising the Branch Manager to institute a suit on behalf of the Bank. But in any view of the matter, this question cannot be permitted to be raised for the first time in the executing court

inasmuch as, in my view, such a defect would not make the decree a nullity. The institution of the suit means presentation of the plaint which is a clerical affair. The suit has been instituted in the name of the Body Corporate, namely, the State Bank of India, which personally cannot act and the plaint has to be presented by its agent and it could not find a more competent person to present the same in court than the Branch Manager.

In the case of *Turner Morrison and Co. Ltd. Vs. Hungerford Investment Trust Ltd.*, it was held by the Supreme Court that where under the Articles of Association of the company a suit on behalf of the company had to be filed with the consent of the Directors, there could be no objection to the maintainability of the suit signed by the Secretary of the company who held a general power of attorney from the Directors and whose action was approved by them. However, as already indicated above no objection of this nature was taken by the defendant in the written statement much less he joined issue on this question.

13. Learned counsel for the petitioner referred to several cases, namely, *Dr. Satya Charan Law v. Rameshwar Prosad Bajoria* AIR 1950 FC 133 , *Modi Vanaspati Manufacturing Company v. Katihar Jute Mills (Private) Limited* *Modi Vanaspati Manufacturing Company and Another Vs. Katihar Jute Mills (Private) Limited*, *V.N. Bhajekar Vs. K.M. Shinkar*, and *Dhakeswari Cotton Mills Ltd. and Others Vs. Nil Kamal Chakravorty and Others*, , in support of his main argument that, on the facts and in the circumstances of the case, the Manager had no authority to file the suit.

In the first case just referred to above, the Federal Court made the following observations :

"The correct position seems to us to be that ordinarily the directors of a company are the only persons who can conduct litigation in the name of the company, but when they are themselves the wrongdoers against the company and have acted mala fide or beyond their powers, and their personal interest is in conflict with their duty in such a way that they cannot or will not take steps to seek redress for the wrong done to the company, the majority of the shareholders must in such a case be entitled to take steps to redress the wrong. There is no provision in the articles of association to meet the contingency, and therefore the rule which has been laid down in a long line of cases that in such circumstances the majority of the share-holders can sue in the name of the company must apply....."

In the second case *Modi Vanaspati Manufacturing Company and Another Vs. Katihar Jute Mills (Private) Limited*, the plaintiff had chosen to bring the action against a company not in its corporate name but in its assumed name and an objection taken at the trial that the suit was not maintainable was upheld and the plea of the plaintiff that the written statement had been signed and verified by a constituted attorney of the company itself, was indicative of the appearance of the company in the suit, was not accepted.

The case of the Bombay High Court is also of a different nature where a suit was instituted by the shareholders.

In the last case *Dhakeswari Cotton Mills Ltd. and Others Vs. Nil Kamal Chakravorty and Others*, also the question was as to whether the shareholders themselves had the right to sue for redressal of the wrong done to the company, where it was observed that ordinarily the suit must be brought by the company itself.

14. In my opinion, none of the above discussed cases has got any bearing on the question raised for decision by this Court and, as already said earlier, the plaint apparently being in the name of the Bank and having been signed by the Branch Manager, does not per se attract any of the defects which are indicated under Order XXIX, R. 1 or the provisions of the State Bank of India Act, which the defendant would have raised as any specific issue, as stated earlier, and the plaintiff would have produced further material also regarding the special authorisation, if so required, in spite of the statutory authority under Order XXIX, Rule 1, of the Code itself in favour of the Branch Manager concerned.

15. On the other hand, there are direct decisions against the petitioner. First I would refer to the case of *United Bank of India Vs. Prabhas Ch. Deb and Others*, . That happened to be a suit by a Bank and the plaint was signed and verified by an authorised officer, namely, the Agent of the Branch in question -- a post equivalent to that of a Manager. On an objection being taken regarding the legality of the verification, the plaintiff had produced a registered power of attorney. The Lower Court had taken the view that the authority of the Agent was not in accordance with Order XXIX, Rule 1. The High Court overruled the view of the trial court. It was held that the Agent was a principal officer of the Bank and thus automatically became entitled to sign and verify the plaint.

16. A learned single Judge of the Punjab & Haryana High Court in the case of *State Bank of India v. Haryana Rubber Industries (P) Ltd.* 1986 BC 164 while considering such an objection, held that where a suit for recovery of loan was filed by the Branch Manager of the State Bank of India, the suit could not be said to be not maintainable on the ground that the Branch Manager was not competent to file the suit.

17. A reference to regulation 77 framed by the Reserve Bank of India was made by the learned counsel for the decree-holder-opposite party Before me, to show that the plaints, written statements, petitions and applications may be signed and verified on behalf of the State Bank by the Chairman or by any officer or employee empowered by or under regulation 76. Reference was also made in this connection to the notification issued on the 26th Sept. 1959 u/s 76 of the State Bank of India Act authorising the agents to sign the documents mentioned in the said regulation. In this context reference was made on behalf of the decree-holder to the case of *State Bank of India v. Haryana Rubber Industries (P) Ltd.* 1986 BC 164 where following an- earlier decision in the case of *State Bank of*

India Vs. Kashmir Art Printing Press, Sirsa and Others, , it has been held by a learned single Judge of the Punjab & Haryana High Court that where the Branch Manager had the authority to sign the pleadings and verify them and also the authority to sign vakalatnama, he had the further authority to file the same himself as the larger authority granted to a Branch Manager to sign complaints, written statements, petitions etc. connected with the legal proceeding should include the power to file a suit, written statement, petition etc.

18. I find myself in complete agreement with the above view and would thus hold that there was no defect in filing the suit by the Branch Manager and in any case even any such defect would not render the decree a nullity. Thus no error of jurisdiction has been committed by the executing court in passing the impugned order. The application has, therefore, no merit and must fail. It is accordingly dismissed with costs. Hearing fee is assessed at Rs. 100/- only.