

THE HON'BLE SRI JUSTICE N.R.L. NAGESWARA RAO

CITY CIVIL COURT APPEAL No.127 OF 1996

JUDGMENT:

The defendant No.1 in O.S.No.448 of 1990 on the file of the V Additional Judge, City Civil Court, Hyderabad, is appellant herein. The suit was filed for recovery of a sum of Rs.1,54,300/- alleging that the plaintiff company is a public limited company manufacturing of several products including port land cement and the first defendant is a dealer. The second defendant is the son of the first defendant. The plaintiff supplied cement loads of 642 MTs on different dates from April to June, 1989 and even though there was no letter of credit, the bills were not paid properly and a sum of Rs.1,30,760/- was due and the interest is payable at 24% on the said amount. In spite of repeated demands, the defendants did not pay the amounts, consequently, the suit.

2. Defendants filed written statement stating that in the last week of April, 1989, the plaintiff agreed to supply 20,000 cement bags @ Rs.57/- per bag and in case of HDPE bags the discount at Rs.1/- per bag and in case of cement supplied in gunny bag further discount of Rs.1/- was to be given. The plaintiff has supplied only 13,040 bags and did not supply the balance on the ground that the rate has increased from Rs.57/- to 68/- per bag. The plaintiff, therefore, committed breach. As a result of non-supply, the defendant suffered loss of Rs.12/- per bag which comes to Rs.83,520/- and the defendants have pleaded for payment of the said amount. The suit was not properly instituted and the plaintiff has not a company registered under the Companies Act. The claim of interest was also not valid.

3. On the basis of the above pleadings, necessary issues have been framed for trial and on behalf of plaintiffs, PWs1 and 2 were

examined and marked Exs-A1 to A22 and on behalf of the defendants DW1 was examined and marked Ex-B.1 to B.30. After considering the evidence on record, the Court below has decreed the suit of the plaintiff and aggrieved by the said judgment, the present City Civil Court Appeal is filed.

4. Points that arise for consideration are:

1. Whether the plaintiff is entitled to the suit amount?

2. Whether the suit was properly instituted as and if not the suit is liable to be dismissed.

POINTS:

5. So far as the supply of cement to a quantity of 642 MTs is concerned, there is no dispute. In fact, the defendant has also not filed any account to show that the suit amount is incorrect. The only contention of the appellant is that there was a breach of non-supply of 20,000 bags and as the balance bags were not supplied, he suffered loss. Evidently, the defendant has not made any counter claim by paying court fee. Under the said circumstances, the above contention cannot be accepted and the Court below rightly rejected the said claim basing on the evidence of PWs.1 and 2. Therefore, it has to be held that the suit amount claimed by the plaintiff which is disclosed from various documents and evidence of PWs.1 and 2 is correct. On the other hand the defendant has not produced any evidence to dis-own the said liability.

6. The counsel for appellant contends that there is no proof that the company is a registered one and even it is presumed to be a registered one, there is no proof that PW1, who has filed the suit was authorised by the board of directors and who give evidence or to sign the plaint and in the absence of such authority, the suit is not validly instituted. According to him, the finding of the Court below that this plea is too technical and is not correct. Evidently, when a claim is

made on behalf of the incorporated Company under Section 34 of the Companies Act, when there is a certificate of incorporation under Sections 291 and 632 of the Companies Act, there should be a resolution of board of directors, delegating authority to file a suit on its behalf and in the absence of such resolution, the suit is bad. When a statute requires the necessity of particular resolution, then only recognises the competency to file a suit. In the absence of such resolution, it cannot be said that it is a technical objection raised by the defendant.

7. The learned counsel for the appellant relied upon the decision reported in ***State Bank of Travancore v. Kingston Computers India Private Limited***^[1]. According to him, even if it is to be considered as a technical one, the objections raised by the plaintiff are not taken care, to overcome the objection and therefore, the benefit cannot be given to the plaintiff. He also relied upon the decision of the Supreme Court in ***Uday Shankar Triya V. Ram Kalewar Prasad Singh and another***^[2]. Evidently PW1 is the Assistant Manager of the plaintiff company. Even, if it is to be accepted that he has got knowledge of the transaction and dealt with the supplies, but still in the absence of any authority to file the suit it cannot be said that the suit is validly instituted. It is a different thing about his competency to give evidence about the transaction but it is necessary that when the suit was instituted by him, the necessary resolution of board of directors has to be filed. In the first decision ***State Bank of Travancore v. Kingston Computers India Private Limited*** cited supra, in paragraph 14, the above principle has been reiterated and therefore, when a law requires the suit to be filed in a proper form and also prescribe the competency of the persons who have to file the suit. It cannot be stated that the violation of requirement is technical and there is no mandatoriness.

8. For the above reasons, in order to give an opportunity to the

plaintiff to prove the board of directors resolution or any authority to PW1 to file the suit and also to prove the incorporation of the company, the matter is remanded to the Court below, only for the purpose of consideration of this aspect and framing evidence to be adduced by both the parties. Therefore, the judgment of the Court below is set aside and the matter is remanded to the lower Court for consideration and for giving an opportunity to the parties to adduce evidence about the incorporation and also the competency of PW1 to institute the suit.

Accordingly , the City Civil Court Appeal is allowed. No order as to costs.

Consequently, miscellaneous petitions, if any, filed in this City Civil Court Appeal, shall also stand dismissed.

N.R.L. NAGESWARA RAO, J

Date:03.04.2013

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[\[1\]](#) (2011) 11 Supreme Court Cases 524

[\[2\]](#) (2006) 1 Supreme Court Cases 75