

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Kingston Computers (i) P. Ltd. Vs. State Bank of Travancore

Kingston Computers (i) P. Ltd. Vs. State Bank of Travancore

Overruled by : [State Bank of Travancore vs. Kingston Computers \(I\) P. Ltd.](#)

SooperKanoon Citation : sooperkanoon.com/709418

Court : Delhi

Decided On : Aug-12-2008

Reported in : (2009)153PLR18

Judge : Pradeep Nandrajog and; Sunil Gaur, JJ.

Acts : Companies Act; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 6, Rule 14 - Order 29, Rule 1

Appeal No. : Regular First Appeal No. 174 of 2007

Appellant : Kingston Computers (i) P. Ltd.

Respondent : State Bank of Travancore

Advocate for Pet/Ap. : D.K. Sharma, Adv. and; Abhishek Kumar, Adv. for Respondent No.

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. Vide order dated 21.5.2007 the appeal was admitted. Filing of the paper book was dispensed with. Trial Court Record was summoned.

2. Thereafter, from time to time/matter was adjourned for final hearing.
3. The matter has been heard for final disposal today.
4. Before noting the facts relevant for the disposal of the instant appeal it may be noted that the respondent was served with a notice of admission of the appeal somewhere prior to 3.10.2007. On said date counsel appeared for the respondent.
5. No cross objections have been filed. Period of limitation for filing cross objections has lapsed. No cross appeal has been filed.
6. Appellant company had opened an account with the first respondent, State Bank of Travancore. Being a company registered under the Companies Act, the appellant had to inform State Bank of Travancore as to who would operate the account on it's behalf. It is not in dispute that vide Ex.PW-1/C the necessary information was conveyed to the bank. The information was in the form of the Board Resolution at the meeting of the Board of Directors of the appellant which was held on 19.4.2001. Ex.PW-1/C was conveyed to the bank under the signatures of Raj Shukla, a Director of the appellant company.
7. Ex.PW-1/C reads as under:

EXTRACT OF MINUTES OF BOARD OF DIRECTORS MEETING HELD ON 19TH APRIL 2001 AT THE REGISTERED OFFICE OF THE COMPANY RESOLVED that the banking account No. 1217 of 'Kingston Computers India Pvt. Ltd.' with State Bank of Travancore, R.K. Puram, New Delhi, be operated by the following authorized persons, to sign or accept all cheques, bills of exchange, promissory notes and other orders, within the limits stated herein below:

That Mr. Raj Shukla, Director is authorized to sign all cheques, without any limits.

That Mr. Debashis Saraswati Director and either Mr. Sanjeev Gulati or Mr. Rohit Khanna are authorized to sign jointly all cheques.

That these signing instructions supercede all earlier instruction given by the company to the Bank.

FURTHER RESOLVED THAT the aforesaid bank be instructed to honour all cheques, promissory notes and other orders drawn by and all bills accepted on behalf of the Company whether such account be in credit or overdrawn and to accept and the credit to the account of the Company all money is deposited with or owing by the bank or any account at any time or time kept or to be kept in the name of the Company and the amount, cheques, promissory notes, bills and other negotiable instruments, orders or receipt provided they are endorsed/signed by the above signatories on behalf of the company and such signature(s) shall be sufficient authority to bind the company in all transactions between the bank and the Company, including those specifically referred to herein. Sd/-Raj Shukla
Director

8. A perusal of Ex.PW-1/C shows that the first respondent was clearly instructed that the account in the name of the appellant would be operated by Raj Shukla. It was made known that he could operate the account without any limit. As an alternative, it was informed to the bank that respondent No. 2, Mr. Debashis Saraswati, along with either Mr. Sanjeev Gulati or Mr. Rohit Khanna could also operate the account.

9. Meaning thereby, the account could be operated by either Raj Shukla acting alone or Debashis Saraswati jointly with Sanjeev Gulati or Debashis Saraswati acting jointly with Rohit Khanna.

10. To put it pithily, acting singly Debashis Saraswati could not operate the account.

11. It is not in dispute that the account bearing No. CA-1217 in the name of the appellant company was opened by the first respondent pursuant to receipt of the resolution Ex.PW-1/C, apart from other documents executed by the appellant as per the requirement of the bank.

12. It is not in dispute that 22 cheque leaves out of the cheque book issued by the respondent bank were utilized for making withdrawals in various sums and that these 22 cheques were signed only by Debashis Saraswati. Details of the said 22 cheques are as under:

Sl. Cheque No. Dated Drawn in favour of AmountNo.1. 18533 20.4.2001 Sharma Builders Rs. 20,000/-2. 18535 21.4.2001 Compatible Computers Rs. 2,000/-3. 18556 16.5.2001 Yourself Rs. 1,78,565/-4. 18557 18.5.2001 S.D. Mandal Rs. 2,000/-5. 18564 4.6.2001 Vivekananda Sarkar Rs. 8,500/-6. 18568 13.6.2001 Self Rs. 11,000/-7. 18571 19.6.2001 Admax Rs. 375/-8. 18574 20.6.2001 Self Rs. 3,000/-9. 18578 20.6.2001 S.K. Nabh Rs. 9,000/-10. 18578 20.6.2001 S.K. Nabh Rs. 6,000/-11. 18575 21.6.2001 Vivekananda Sarkar Rs. 5,000/-12. 18579 29.6.2001 Debashish Saraswati Rs. 4,000/-13. 18581 2.7.2001 Self Rs. 5,000/-14. 18583 2.7.2001 Vivekananda Sarkar Rs. 3,500/-15. 18585 6.7.2001 Debashish Saraswati Rs. 8,500/-16. 18586 6.7.2001 Self Rs. 10,000/-17. 18587 6.7.2001 Indo-German Chamber Rs. 4,100/-of Commerce18. 18589 7.7.2001 Self Rs. 6,875/-19. 18588 7.7.2001 Self Rs. 5,000/-20. 18593 18.7.2001 Yourself Rs. 3,85,255/-21. 18591 18.7.2001 Yourself Rs. 3,41,578/-22. 18592 18.7.2001 Self Rs. 10,000/-

13. On realizing that the bank had permitted Debashis Saraswati to so operate the account and that the money was not accounted for a suit was filed by the appellant for recovery of Rs. 8,50,952/- along with interest. It may be noted that the aforesaid conduct of the first respondent came to notice of the appellant when Debashis Saraswati absconded with the statutory record of the appellant company and amounts withdrawn remained unaccounted for.

14. The suit on behalf of the appellant was filed under the signatures of Ashok K. Shukla. He stated in the plaint that he was a Director of the company. He also stated that his brother, Raj Shukla, who was the CEO of the company had authorized him to file the suit. Authority letter purportedly executed by Raj Shukla as CEO of the appellant in favour of Ashok K. Shukla, being the letter dated 2.1.2003, was proved as Ex. PW-I/A. It reads as under:

AUTHORITY LETTER

I, Raj K. Shukla S/o Late Sh. M.N. Shukla, the CEO, Kinston Computers(India) Pvt. Ltd. presently residing at 122-A, Coombe Lane West, Kingston Upon Thames, Surrey KT2 7DD, Great Britain, do hereby authorize Sh. Ashok K. Shukla S/o Late Sh. M.N. Shukla, Director of M/s. Kinston Computers (India) Pvt. Ltd., having office

presently at No. 9, First Floor, Royal Palace, G-55, Laxmi Nagar, Main Vikas Marg, Delhi-110 092 to sign, verify and file a suit for recovery on behalf of Kinston Computers (India) Pvt. Ltd. against the State Bank of Travancore, R.K.Puram Branch, New Delhi. Said Sh. Ashok K. Shukla is further authorized to sign, verify and file any document, application, to lead evidence, make statement or compromise the matter before the Hon'ble Court, to appoint any Advocate or Pleader or Counsel and to sign. Vakalatnama, to represent the company or appear on its behalf before the concerned Court, any public authority or Tribunal and to represent for the purpose of representing the company. Said Sh. Ashok K. Shukla is authorized to do all other acts, deeds and things whatever is necessary for pursuing the case of recovery against State Bank of Travancore which are not specifically mentioned. Sd/-(RAJ K. SHUKLA)CEOKingston Computers (India) Pvt. Ltd.

15. The first respondent bank admitted having opened the account pursuant to Ex.PW-1/C. It admitted that the 22 disputed cheques were honoured and that the cheques bore only the signatures of Debashis Saraswati. Defence taken was that De-bashis Saraswati had cheated the appellant and that Debashis Saraswati was liable to make good the money payable to the appellant. Further defence was taken that the bank acted in good faith and in due course. Authority of Ashok K. Shukla to file the suit on behalf of the appellant was disputed.

16. 7 issues were settled on the pleadings of the parties.

17. Issue No. 1 was : Whether the suit has been signed, verified and filed by a duly authorized person.

18. Needless to state, issues pertaining to the entitlement of the appellant to a decree against the bank; the bank having acted in good faith; non impleadment of Debashis Saraswati were settled.

19. We need not note the facts relatable to other issues for the reason all other issues were decided in favour of the appellant who unfortunately lost the battle due to decision on issue No. 1 being against the appellant. Learned Trial Judge took the view that in the absence of any resolution, proved on record being passed

by the Board of Director of the appellant and in absence of any proof that the memorandum of association of the appellant company empowered Raj Shukla to authorize a person to file a suit on behalf of the company, the suit instituted on behalf of the appellant by Ashok K. Shukla could not be treated as filed and instituted by a duly authorized person.

20. The learned Trial Judge has reinforced the view taken with reference to a decision of this Court reported as A.I.R. 1999 Delhi 25 Lubro Ltd. v. National Insurance Co. and Ors.. Another decision of the Hon'ble Supreme Court reported as : AIR 2005 SC2506 Shubh Shanti Service Ltd. v. Manjulla S. Aggarwal and Ors. has also been relied upon.

21. It is urged by learned Counsel for the appellant that the learned Trial Judge ignored the language of Order 29 Rule 1 of the Code of Civil Procedure and lost track of the fact that Ashok K. Shukla, the person under whose signatures the suit was filed, was a Director of the appellant company and as per the law declared by the Hon'ble Supreme Court in the decision reported as : (1996)6SCC660 United Bank of India v. Naresh Kumar and Ors. he was authorized to institute the suit and verify the pleadings.

22. Per contra, learned Counsel for the respondent urges that there is no proof that Ashok K. Shukla was a Director of the appellant company.

23. This then is the short issue which needs to be considered by us exercising appellate jurisdiction.

24. Order 29 Rule 1 of the Code of Civil Procedure reads as under:

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.

25. Discussing Order 29 Rule 1 of the Code of Civil Procedure, in the decision in United Bank of India's case (supra), in para 10, Hon'ble Supreme Court held as under:

Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure.

26. Suffice would it be to state that in law, the Secretary, Director or a Principal Officer of a company would be treated as duly authorized to institute suit on behalf of a company. This flows out from a bare reading of Order 29 Rule 1 of the Code of Civil Procedure and as further explained in the decision in United Bank of India's case.

27. Thus, if Ashok K. Shukla is proved to be a Director of the appellant company, the suit instituted under his signatures would have to be treated as a properly instituted suit.

28. Taking note of the fact that the appellant did not summon any witness from the office of the Registrar of Companies to prove that Ashok K. Shukla was a Director of the Company as also taking note of the fact that the minute books of the appellant company were not produced to prove that Ashok K. Shukla was a Director of the appellant, we consider the issue in light of the available evidence. But before that we may note that the appellant gave a justification for not producing the minute books of the appellant company by stating that Sh. Debashis Saraswati had run away with the record of the appellant company.

29. To establish the authority of Ashok K. Shukla to institute the suit on behalf of the appellant the evidence relied upon by the appellant was none else, other than Ex.PW-1/C and Ex.PW-1/A. With reference to Ex.PW-1/C it was highlighted that admittedly the bank opened the account pursuant to receipt of the Board Resolution, Ex.PW-1/C. With reference thereto it was attempted to be brought home that the bank accepted Raj Shukla to be a Director on the Board of the

company. With reference to Ex.PW-1/A and linking the same to Ex.PW-1/C, contention urged was, and the same is repeated before us, that the document Ex.PW-1/A issued under the admitted signatures of Raj Shukla, while authorizing Ashok K. Shukla to institute the suit on behalf of the appellant, records that Ashok K. Shukla is a Director of the appellant. Elaboration made is that if Ex.PW-1/A was not to be treated as a valid authorization it could be Considered as proof of Ashok K. Shukla being a Director of the appellant.

30. Indeed, Ex.PW-1/A records that Ashok K. Shukla is a Director of the appellant.

31. Ashok K. Shukla deposed on behalf of the appellant as PW-1. He tendered his examination-in-chief by way of an affidavit. In said affidavit by way of evidence he proved Ex.PW-1/A.

32. We have gone through the cross examination of Ashok K. Shukla conducted by the respondent. Indeed, we do not find any challenge to the contents of said document i.e. Ex.PW-1/A.

33. Thus, the contents of Ex.PW-1/A recording that Ashok K. Shukla is a Director of the appellant has gone unchallenged.

34. Ex.PW-1/A may not be treated as an authorization in favour of Ashok K. Shukla to file the suit on behalf of the appellant. But, its contents recording Ashok K. Shukla to be a Director of the appellant having remained unchallenged. The authority of Ashok K. Shukla to institute the suit on behalf of the appellant flows from the provisions of Order 29 Rule 1 of the Code of Civil Procedure.

35. The appeal is allowed.

36. Decision of the learned Trial Judge on issue No. 1 is reversed.

37. Issue No. 1 is decided in favour of the appellant and against the respondent holding that the suit has been signed, verified and filed by a duly authorized person.

38. As noted hereinabove the respondent has not filed any cross objections nor has any cross appeal been filed in relation to other issues decided against the

respondent.

39. The appeal stands disposed of decreeing the suit filed by the appellant against the respondent No. 1. The decree would be in conformity with the decision of the learned Trial Judge on issue No. 5 and 6. The rate of interest would be as awarded by the learned Trial Judge while discussing issue No. 6 i.e. @ 9% p.a. The interest payable would be till realization.

40. Appellant would be entitled to cost all throughout.

41. TCR be returned.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com