

Mukand Singh and others *v.* Shadi and others
 Gurdev Singh, J.

clause (5) of Article 182 of the Limitation Act is that the application for step-in-aid of the execution was made to the proper Court, and an application made to the Collector for declaration of the decree-holder's mortgage lien under the decree was not an application which could constitute a step-in-aid of the execution. In *Khushi Ram v. Ram Sumer* (7), King C.J., ruled that the filing of a suit for declaration in a Munsif's Court that the judgment-debtor's property was liable to attachment cannot be step-in-aid of the execution of a decree which is sought to be executed in the Court of Judge, Small Causes as it is not the proper Court within the meaning of Explanation 2 of Article 182 of the Limitation Act.

Even under the Limitation Act XV of 1877 in which the corresponding provision, was contained in Schedule II of Article 179, it was held by a Division Bench of the Calcutta High Court in *Sahu and others v. Kamta Pershad* (8), that to constitute a step-in-aid of execution, an application must be made to the Court whose duty it is to execute the decree, and it must be for a relief which that Court is competent to grant.

I thus find that the appellants' application for execution has been rightly dismissed as barred by time, and there being no merit in this appeal, it is dismissed with costs.

K. S. K.

REVISIONAL CIVIL

Before S. K. Kapur, J.

MOHD. ISLAM,—*Petitioner.*

versus

DELHI WAKF BOARD AND ANOTHER,—*Respondents.*

Civil Revision No. 109 1965

1965

July, 26th

Code of Civil Procedure (Act V of 1908)—Order 6 Rules 14, 15 and 17—Plaint signed and verified by agent not duly authorized—Whether can be got signed and verified by the plaintiff or his duly authorised agent after the Court holds that it was signed and verified by an unauthorised agent.

(7) A.I.R. 1935 Oudh. 430,

(8) 2 I.C. 941.

Held, that a suit instituted without a proper authority of a purported plaintiff can be allowed to be amended after the Court has decided the question of the agent's authority. No doubt an action commenced at the instance of someone not properly authorised cannot be termed as a suit properly constituted. In that limited sense it may even be termed as a nullity but on general principle of law relating to principal and agent it should be open to the purported plaintiff to rectify the defect by signing the plaint and adopting the proceedings. On that being done the defect in the proceedings as originally constituted would, stand cured. The passing of the order by the Court holding that the suit had not been filed by a duly authorised person will make no difference as it does not affect the jurisdiction of the Court to allow time to the plaintiff to amend the plaint by appending the signatures of a properly authorised person. There is no objection to a composite order being made holding that the suit has not been filed by a properly authorised person and allowing the same to be amended.

Petition for revision under Section 115 of the Code of Civil Procedure against the order of Shri M. L. Jain, Sub-Judge, 1st Class, Delhi, dated 22nd February, 1965 directing the plaintiff to get the plaint signed by a person competent under order 29 C.P.C. by 26th February, 1965 on payment of Rs. 32 as costs.

D. K. KAPUR, AND PARTAP KISHAN JATIL, ADVOCATES, for the Petitioners.

SABBIR HUSSAIN, ADVOCATE, for the Respondents.

ORDER

KAPUR, J.—This civil revision is directed against the order of Shri M. L. Jain, Subordinate Judge, 1st Class, Delhi; dated February, 22, 1965. By the said order the trial Court disposed of only issue No. 2 which was as under:—

“Whether the suit has been filed by a duly authorised person as provided in Act No. 29 of 1954. If not what is the effect ?”

The trial Court held that Mir Mushtaq Ahmad, who signed and verified the plaint and filed the suit on behalf of Delhi Wakf Board, plaintiff, was not duly constituted Secretary of the Board and, therefore, the plaint was not signed and filed by a properly authorised person. The trial Court, however, granted the request made on behalf of the plaintiff that they be permitted to get it signed by a competent person. The grievance of the petitioner is against the

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last part of the order allowing the plaintiff to get the plaint signed by a duly authorised person. Mr. Kapur, the learned counsel for the petitioner, has drawn my attention to section 9 of the Muslim Wakf Act, 1954, and submits that the said Board is a body corporate and, therefore, could institute the plaint only through a duly authorised person. He, however, does not dispute that, in view of section 22 of the Act, the Board could delegate the powers of instituting the suit, or signing and verifying the plaint. His contention, in short, is that the plaint not having been instituted or signed by a duly authorised person it could be permitted to be signed by a competent person only before the passing of the impugned order by the trial Court holding that Mir Mushtaq Ahmad was not competent to institute the suit or sign the plaint. He submits that a principal could not ratify an act of an agent in such matters after the Court had decided that the purported agent had no authority to institute the suit or sign the plaint. He, in the alternative, submits that even if the Court was justified in granting the request, the limitation would start from the day the plaint is signed by a duly authorised agent. He relies for this proposition on *Punjab Zamindara Bank Ltd., Lyallpur v. Madan Mohan Singh and others* (1). He also refers to *Kirpal Chand v. The Traders Bank Ltd.* (2), and points out that in that case the Court allowed the plaint to be amended and signed by a properly authorised person but that was done during the pendency of the suit and not after the Court had decided the issue as in this case. The learned counsel for the respondents, on the other hand, submits that the impugned order is correct in law and relies on *Goswami Sri Raman Lalji v. Goswami Sri Gokul Nathji* (3), *Calico Printers' Association v. Karim and Bros.* (4), *All-India Reporters Ltd. v. Ramchandra* (5), *Bundi Portland Cement, Ltd., v. A. H. Essaji* (6), and *W. Johnston v. Rameshwar Singh* (7). In *All India Reporters' case* the suit was filed on behalf of two plaintiffs, namely, (1) All Indian Reporter Limited, Bombay, and (2) Shri V. V. Chitaley. On an objection

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- (1) A.I.R. 1936 Lah. 321.
 - (2) A.I.R. 1954 J. & K. 45.
 - (3) 39 Ind. Cas. 462.
 - (4) A.I.R. 1930 Bom. 566.
 - (5) A.I.R. 1961 Bom. 292.
 - (6) A.I.R. 1936 Bom. 418.
 - (7) 104 Ind. Cas. 747

being taken by the defendant on the ground that the plaint was not properly signed or verified, the trial Court upheld the objection but ordered that the plaint should be properly signed and verified by someone authorised on behalf of All-India Reporter Limited. The matter was taken to the High Court in revision and the said order of the trial Court was challenged but the revision was dismissed on the ground that no question of jurisdiction was involved. It was also held that if a plaint was not properly signed or verified, it was open to the Court at any subsequent stage either on its own initiative or upon an objection by the defendant to require the plaintiff to sign and verify the plaint and merely because the Court directed the plaintiff to sign the plaint subsequently, the original plaint, which was not properly signed, did not cease to be a suit.

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I am unable to agree with Mr. Kapur's contention that a suit instituted without a proper authority of a purported plaintiff cannot be allowed to be amended after the Court had decided the question of the agent's authority. No doubt an action commenced at the instance of someone not properly authorised cannot be termed as a suit properly constituted. In that limited sense it may even be termed as a nullity but on general principle of law relating to principal and agent it should be open to the purported plaintiff to rectify the defect by signing the plaint and adopting the proceedings. On that being done the defect in the proceedings as originally constituted would, in my view, stand cured. As a matter of fact, Mr. Kapur also does not dispute that the plaintiff could sign the plaint and adopt the proceedings before the impugned order was passed. I am unable to see what difference does the passing of the order make. By such an order the Court merely decides whether the suit has been initiated or the plaint signed by a duly authorised person. That does not affect the jurisdiction of the Court to allow time to the plaintiff to amend the plaint by appending the signatures of a properly authorised person. I see no objection to a composite order being made holding that the suit has not been filed by a properly authorised person and allowing the same to be amended. In *Danish Mercantile Co. Ltd. and others v. Beaumont and another* (8), certain proceedings were initiated in the name of the company by a

(8) (1951) I All. E.R. 925.

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 solicitor without verifying whether he had proper authority to do so. It was observed by Jenkins L.J.—

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“I think the true position is simply that a solicitor who starts proceedings in the name of a company without verifying whether he has proper authority to do so, or under an erroneous assumption as to the authority, does so at his own peril, and, so long as the matter rests there, the action is not properly constituted. In that sense it is a nullity and can be stayed at any time, provided the aggrieved defendant does not unduly delay his application, but it is open at any time to the purported plaintiff to ratify the act of the solicitor who started the action, to adopt the proceedings, and to say : ‘I approve of all that has been done in the past and I instruct you to continue the action’. When that has been done, then, in accordance with the ordinary law of principal and agent and the ordinary doctrine of ratification, the defect in the proceedings as originally constituted is cured, and it is no longer open to the defendant to object on the ground that the proceedings thus ratified and adopted were in the first instance brought without proper authority.”

Mr. Kapur also refers to *Notified Area Committee, Okara v. Kidar Nath and others* (9), and submits that an illegal act cannot be legalised subsequently and ratification is of no avail in cases where the original act is void *ab initio*. That judgment is of no avail to him because it turns on the provisions of the Punjab Municipal Act. In that case the Court held that the Municipal Committee had no power to delegate its functions of deciding whether a suit should be instituted or not. It was held in these circumstances that an action brought in disregard of the provisions of the Municipal Act could not be ratified. In cases of this type however the matter has to be looked at purely from the view-point of principal and agent. Moreover, as I have said earlier, Mr. Kapur does not dispute that the plaint could be signed before the impugned order was passed. Regarding the contention of Mr. Kapur that

the ratification will not have the effect of saving the limitation it is not necessary for me to decide the question at this stage as the same will be decided by the trial Court after a proper plea is raised and facts determined.

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In the circumstances, the revision petition must fail and is dismissed but having regard to the circumstances of the case there will be no order as to costs. Parties will appear before the trial Court on 9th August, 1965.

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B. R. T.

REVISIONAL CIVIL

Before S. K. Kapur, J.

M/S HIMALAYA FINANCE & CONSTRUCTION CO.,—
Petitioner.

versus

LAKHA SINGH, AND OTHERS,—Respondents.

Civil Revision No. 551-D of 1964.

Arbitration Act (X of 1940)—Ss. 30 and 41—Code of Civil Procedure (Act V of 1908)—Order 6 Rule 17—Limitation Act (IX of 1908)—Art. 158—Objections to the award—Whether can be added to after the expiry of 30 days prescribed under Article 158.

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Held, that, no doubt, section 41 of the Arbitration Act, 1940, provides that the provisions of the Code of Civil Procedure, 1908, shall apply to all proceedings before the Court, and to all appeals, under the Act, subject to the provisions thereof, but there is no provision in the Arbitration Act prescribing a period of limitation for filing of objections to an award. The period of limitation is prescribed by Article 158 of the First Schedule of the Indian Limitation Act, 1908. It, therefore, follows that order 6 Rule 17 of the Code of Civil Procedure are applicable and can be rightly invoked by the petitioner for amending the grounds of attack to the validity of the award. The rules applicable to amendment of pleadings in a suit are fully applicable to amendment of the objections against an award. The fact that a party has acquired a valuable right by lapse of time may be a relevant consideration for allowing or disallowing the amendment but that is again a matter affecting the discretion of the Court rather than its jurisdiction.

Petition for revision under section 115 of Act V of 1908 against the order of Shri V. P. Bhatnagar, Sub-Judge, 1st Class, Delhi, dated 15th