



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

Case Comment: Baker Oil Tools (India) Pvt. Ltd. vs Baker Hughes Ltd. & Anr.

Kumari Akriti^a

^aAmity University, Noida, India

Received 22 July 2021; *Accepted* 16 August 2021; *Published* 19 August 2021

INTRODUCTION

Coram: Hon'ble Mr. Justice Kailash Gambhir

Date of judgment: 03.06.2011

ISSUE

The case revolves around four issues, those four issues summarize the facts of the case. The following are the issues where the Appellants have challenged before the Hon'ble Delhi High Court:

1. Maintainability of the suite;
2. Execution and Authentication of documents under Section 85 of the Indian Evidence Act, 1872;
3. The dual capacity of an advocate i.e., can an advocate serve as an Attorney holder for a client and also as an Advocate;

4. On the grounds of the application of the principle of *Constructive Res Judicata*.

The case already came up before the Trial Court and the Learned Trial Court and the trial court decided in favour of the Respondents.

On the basis of the above four issues, the Judge has laid down certain directions for the Learned Trial Court and to the parties in dispute to the case, not only that the Lordships have thoroughly analyzed and clubbed the Issues 1 and 2 (*i.e.*,) Maintainability of the Suite and the Execution and Authentication of Documents under Section 85 of the Indian Evidence Act on the one hand and he has decided the dual capacity of the advocate by looking at Rule 13 of the bar council rules and by applying Section 11 (iv), Code of Civil Procedure with respect to the application of the principles of *Constructive Res Judicata* individually.

Before going into the judgment, it is apt to point the issues in exact terms as coined by the counsel appearing on behalf of the parties from the judgment:¹

1. *Whether the Respondents were successful in showing Mr. Sameer Oberoi's authority to sign, file, verify, and commence the complaint on their behalf based on the two Power of Attorneys he filed?*
2. *Whether the Respondents have sufficiently demonstrated the execution and authentication of two Powers of Attorney by a notary public in order to claim the establishment of a presumption in their favour under Section 85 of the Indian Evidence Act?*
3. *Whether is it permissible for the Appellants to enter a new plea in order to dispute the maintainability of the respondents' suit brought before the learned Trial Court on the basis of a dual capacity of an Advocate, i.e., one as an attorney for a client and the other as an Advocate?*
4. *Whether the Appellants be barred from challenging the suit's maintainability under the principle of constructive Res Judicata because they failed to raise the issue when the case went to the Supreme Court twice?*

¹ *Baker Oil Tools (India) Pvt Ltd v Baker Hughes Ltd & Anr* (2011) 47 PTC 296, (2011) SCC DEL 2567

JUDGEMENT

(1) ISSUES 1 & 2: *Maintainability of the Case and Section 85, Indian Evidence Act*

The Hon'ble Judge has clubbed the maintainability of the case and execution and authentication under Section 85 of the Indian Evidence Act, 1872. The lordships have laid importance on *Nibro Ltd vs National Insurance Co Ltd*² and on *Lucas Indian Services Ltd vs Sanjay Kumar*³, wherein the Hon'ble judge decided the issue in the light of Section 291, Companies Act, 1956; Order 29, Rule 1 and Order 3 Rule 1 of the Code of Civil Procedure.

“On the basis of Section 291 of the Companies Act, the Hon'ble Judge stated that the provision itself is clear that the Board of Directors, in the course of exercising any powers, is subject to the provisions of the Companies Act, the Memorandum and Articles of Association, and any regulations not inconsistent with them that are made by the company in the general body meeting.” Furthermore, the subject of authority to file a lawsuit is not a technical one; rather, it is entirely dependent on the terms, rules, and regulations that have been enunciated in the company's policy and finances. As a result, the Board of Directors may only provide the authority to file a lawsuit if they adopt a resolution specifically authorising it in that regard.

“Order 29, Rule 1 of the Code of Civil Procedure says that any pleading with respect to the company has to be signed by the secretary or by any director or any principal officer of the corporation who is able to convey the facts of the case.

Order 3 Rule 1 of the Code of Civil Procedure lays down that if the party to the case is a pleader or an agent who is authorized to a corporation can file the suit on behalf of the company only by an authorized representative.”

Thus, by applying the legal principles of the above provisions to the present case, the Respondent or the Plaintiff have filed the suit through Mr. Sameer Oberoi who is neither a principal officer nor a director nor the secretary of the recognized company and it is to be noted that the way he derives his authority not only to sign, file and verify the suites but to

² *Nibro Ltd v National Insurance Co Ltd* (1990) DLT 633

³ *Lucas Indian Services Ltd v Sanjay Kumar* 173(2010) DLT 438

institute the same by virtue of two separate power of attorneys as executed by the Respondent 1 and 2.

While viewing through the eyes of Section 85, Indian Evidence Act it is explicit that the Respondents did not provide any sufficient records, copy of Board of Resolution, or any official documents of such kind that he can dually act as an advocate as well as the client. Thus, on the basis of Section 85, it is clear that although the respondents have filed the original Power of Attorneys and no objection were taken either by the Appellants either before the Learned Trial Court or before the Learned High Court of Delhi, it can be presumed that the objection can be waived by the Appellant on the basis of Section 57 (6) of the Indian Evidence Act. The Hon'ble Judge analyzed there is series of chaos in the pieces of evidence produced by the Respondents which means the pieces of evidence are unclear and held that this present appeal is being remanded back to the learned Trial Court, thereby allowing the Respondents to rectify the technical deformities in the documents produced and the Hon'ble directing the trial court to grant permission to the Respondents to file any additional supporting documents to prove Issue No.1 so as to allow fresh opportunities. Thereby allowing the trial court to reconsider Issue No.1 if the situation demands⁴.

This is how the Hon'ble Judge clubbed Issues 1 and 2 because of the fact of interconnectivity to each other.

(2) ISSUE 3: *Dual Capacity of an Advocate*

Here the Hon'ble Judge laid on one among the Landmark decisions passed by the Bombay High court (i.e.,) *ONGC v Offshore Enterprises Inc.*,⁵ wherein it has been clearly decided that:

- (i) An Advocate should act only in a professional capacity as an Attorney, he cannot combine two roles;
- (ii) Even in the case of a Non-Resident Client, the Advocate cannot take a dual role;
- (iii) As per the legal provisions, the High Courts cannot entertain any filings from or in favour of firm of advocates where any one of the partners acts as a power of

⁴ *Baker Oil Tools* (n 1) [40]

⁵ *ONGC v Offshore Enterprises Inc* AIR 1993 Bom 217

attorney for Plaintiff or Defendant or any other party to the case before the court for the same cause of action;

The Lordships also referred to the verdict in *Janki Vashdeo Bhojwani and Anr. vs Indusind Bank Ltd. and Ors.*⁶ And also the stand of the Delhi High Court in *Columbia Pictures Industries Inc. vs Siti Cable Network Ltd.*,⁷ wherein it is explicitly decided that the dual capacity of and Advocate is not at all feasible. Even Rule 13, Bar Council of India Rules bars an advocate from accepting a brief or appear a case in which there is sufficient reason to believe that he will be a witness, and the rule clearly points out if the Advocate accepts any of the briefings or need to act as witness it would automatically lead to complete professional misconduct on the part of the Advocate. Thus, the Hon'ble Judge by applying the Legal principles makes it clear that an Advocate cannot act in Dual Capacity, thereby reminding the well-known proverb of, "No man can serve two masters at the same time".

(4) ISSUE 4: *Applicability of the Doctrine of Constructive Res Judicata*

The Respondents pointed out that the Appellants cannot challenge the maintainability of the suite by applying the Principles of **Constructive Res Judicata** under Section 11 of the code of Civil Procedure, because of the lack of competence of the two power of attorney holders. Here in the present case, the court held that the Appellants have the right to challenge the maintainability of the suite because of the lack of evidence produced by the Respondents in their favour. Thereby the Hon'ble Judge negatively answered the question of estopping to challenge the maintainability of the suite by the principle of constructive Res Judicata after having failed to raise the issue earlier by relying on the cases of *Amarendra Komalam & Anr. vs Usha Sinha & Anr.*⁸, *Konda Lakshmana Bapuji vs Govt. of Andhra Pradesh*⁹, *Kewal Singh vs Lajwanti*¹⁰.

⁶ *Janki Vashdeo Bhojwani and Anr v Indusind Bank Ltd and Ors* AIR 2005 SC 439

⁷ *Columbia Pictures Industries Inc v Siti Cable Network Ltd* 2001 PTC 319

⁸ *Amarendra Komalam & Anr v Usha Sinha & Anr* AIR 2005 SC 2758

⁹ *Konda Lakshmana Bapuji v Govt of Andhra Pradesh* AIR 2002 SC 1012

¹⁰ *Kewal Singh v Lajwanti* AIR 1980 SC 161

CONCLUSION

Thus, the court decided the 4 issues, and based on the guideline's issues in Para 40 of the present case, the court ordered the parties to appear before the learned Trial Court.