

Each party to bear his own costs.

Attorneys for appellant : Messrs. *Lam & Co.*

Attorneys for respondent : Messrs. *J. S. Rutnagar & Co.*

Order accordingly.

B. K. D.

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JALBHAI
CURSETJI
v.
JERBAI
HORMUSJI

Madgavkar J.

ORIGINAL CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice, and
Mr. Justice Baker.*

THE CALICO PRINTERS' ASSOCIATION LTD. (ORIGINAL PLAINTIFFS),
APPELLANTS *v.* A. A. KARIM & BROS. (ORIGINAL DEFENDANTS), RESPONDENTS.*
*Civil Procedure Code (Act V of 1908), Order VI, rule 14, Order XXIX, rule 1—
Plaint—Joint Stock Company—Power of Attorney—Plaint signed by Attorney—
Practice and Procedure.*

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August 5.

Under Order VI, rule 14 of the Civil Procedure Code, 1908, a pleading must be signed by a party. In cases where the party is a company, it can authorise some person to sign a pleading on its behalf.

Where a company does not so authorise any person, it can sign a pleading through its Secretary, Director or other Principal Officer under Order XXIX, rule 1, of the Code.

APPEAL from the order of Blackwell J. on a Chamber Summons.

The plaintiffs were a company incorporated in England and registered in India under section 277 of the Indian Companies Act, 1913.

On March 29, 1928, the plaintiff company executed a power of attorney in favour of Mr. C. M. Eastley, a partner in the firm of Messrs. Little & Co., Solicitors, Bombay.

The said Power of Attorney, *inter alia*, contained the following provision :—

"To commence, prosecute, enforce, defend, answer or oppose all actions and other legal proceedings and demands in the Bombay Presidency concerning the infringement of any designs registered in India and if thought fit to adjust, settle or compromise any such proceedings. . . To sign pleading and to execute and do all such other deeds, instruments, acts and things whatsoever which may be necessary or proper in relation to the matters aforesaid."

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The company filed a suit against the defendants on April 25, 1929, *inter alia* for an injunction to restrain them from infringing the plaintiffs' trade mark.

The plaint was signed as follows :—

" Calico Printers Association Ltd. by its constituted attorney. (Sd.) C. M. EASTLEY."

The defendants contended *inter alia* that the plaint was not signed according to law and that therefore the suit should be dismissed with costs.

On August 15, 1929, the defendants took out a chamber summons for an order that the suit be set down on board for dismissal, or that, in the alternative, the plaint be taken off the file and returned to the plaintiffs.

On August 19, 1929, Blackwell J. ordered that the plaint in the suit be taken off the file and returned to the plaintiffs with liberty to put a proper plaint on the file duly signed and verified.

The plaintiffs appealed against this order.

Bahadurji, for the appellants.

Coltman, with *Sir Jamshed Kanga*, Advocate General, for the respondents.

BEAUMONT, C. J. :—This is an appeal from an order, made by Mr. Justice Blackwell in chambers, in which he directed the plaintiffs' plaint to be taken off the file. The point raises a rather troublesome question of practice on which Mr. Justice K. Kemp in chambers came to a conclusion different from that at which Mr. Justice Blackwell arrived in the present case and although Mr. Justice Blackwell in a later case followed the decision of Mr. Justice K. Kemp, he still thought his original point of view was right.

Now, the point is this. The plaintiffs are a company registered in England and also registered under section 277 of the Indian Companies Act, and they

commenced this action to obtain an injunction to restrain the defendants from importing and/or selling certain articles under a trade-mark similar to that of the plaintiffs, and the plaint was signed by Mr. C. M. Eastley, described as a partner in the firm of Messrs. Little & Co., attorneys for and duly constituted attorneys of the plaintiffs. There is a power of attorney, which is on the record, given by the plaintiffs to Mr. Eastley, under which he was empowered to commence an action in the Bombay Presidency concerning the infringement of any designs registered in India and to sign pleadings and to execute and do all such other deeds, instruments, acts and things whatsoever which might be necessary or proper in relation to the matters aforesaid. The power, although by no means a general power, is a power authorising him expressly to sign the plaint in an action such as this.

Now, the question is whether that plaint was well signed or not, and I think that question turns on the meaning to be attributed to Order XXIX, rule 1, and Order VI, rule 14. Order XXIX, rule 1, provides:—

“ 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.”

Now, in terms, that is a permissive order and directs that suits by or against a corporation may be signed and verified on behalf of the corporation by the person therein mentioned, i.e., secretary, director or other principal officer.

Well, then you get Order VI, rule 14, which provides:—

“ Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.”

It has been argued in the first place that Order VI, rule 14, does not apply to a company and the decision of

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the Privy Council in *Delhi and London Bank v. Oldham*⁽¹⁾ is cited as an authority on that behalf. The passage particularly relied on is at p. 142, where their Lordships say that :—

“ Their Lordships are of opinion that section 51 of the Code, [to which rule 14 of Order VI now corresponds] which regulates proceedings taken by or on behalf of ordinary plaintiffs, does not apply to such a case as the present, but that this case must be decided with reference only to section 435, which expressly applies to corporations. . . . ”

Section 435 is now replaced by Order XXIX, rule 1. I think that, when the facts in that case are looked at, the Privy Council did not mean to say that section 51 of the Code.—now Order VI, rule 14—does not apply to companies. They only held that it did not apply in that particular case, because the power of attorney relied on in that case to bring the case within section 51 did not contain any power to bring the action in question.

It seems to me that the plain terms of rule 14 of Order VI do apply to a company which is a party to an action. The rule provides that every pleading shall be signed by the party and his pleader. Mr. Coltman suggests that inasmuch as the company cannot, of course, sign a document by itself, we must read into Order VI, rule 14, the effect of Order XXIX, rule 1, and say that the pleading shall be signed by the party or in the case of a company by one of the persons mentioned in Order XXIX, rule 1, and then the proviso which follows to the effect that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, means, in the case of a company, where a person, authorised under Order XXIX, rule 1, to sign is by reason of absence or for other good cause unable to sign. I think that construction would create too many difficulties, and it seems to me that the proper construction to put upon the two rules taken together is this,

⁽¹⁾ (1893) L. R. 20 J. A. 139.

that under Order VI, rule 14, the pleading must be signed by the party, but where the party is a company and therefore unable to sign, it necessarily follows, having regard to the words "or for other good cause," that the last part of the section always applies in the case of a company, and that the company therefore can always authorise some person to sign on behalf of the company. If the company does not choose to do that, it can act under Order XXIX, rule 1, i.e., it can rely on that order as in fact constituting an agent to sign without the necessity of giving any express authority. In that way Order XXIX is read as merely permissive and not mandatory. In point of form it is clearly permissive and not mandatory.

I think, therefore, that the order of Mr. Justice Blackwell was wrong technically and the plaint was correct. But as this point does not seem to have been taken in the Court below, I think the appeal should be allowed without costs either here or in the Court below.

BAKER, J. :—I agree and have nothing to add.

Attorneys for appellants : Messrs. *Little & Co.*

Attorneys for respondents : Messrs. *Payne & Co.*

Appeal allowed.

B. K. D.

APPELLATE CRIMINAL.

Before Mr. Justice Madgavkar and Mr. Justice Barlee.

EMPEROR v. GARBAD YADAV VANI.*

Criminal Procedure Code (Act V of 1898), section 522—Forcible dispossession of immoveable property—Complaint against several accused—Conviction of some accused—Power of Court to restore possession to complainant.

Where several accused persons are charged with forcibly dispossessing the complainant of his immoveable property and the Court convicts some of the accused and acquits some of them it is competent to the Court to restore to the complainant the possession of the property under section 522 of the Criminal Procedure Code.

*Criminal Application for Revision No. 239 of 1930.

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