

PUNJAB AND HARYANA HIGH COURT

*Before : Justice K. Kannan.*

UNION BANK OF INDIA — Appellant

*versus*

VEE JAY ENTERPRISES — Respondent

Regular Second Appeal No. 2259 of 1986 (O and M)

**(i) Power of Attorney - An attestation by a Notary Public is merely a manner of securing an authentication but the power of attorney itself does not require even to be attested - If the plaintiff-Branch Manager was producing the document in original and he was stating that he had the authority to represent the Bank, it ought to have been taken as sufficient proof for upholding the authority for institution of the suit.**

**(ii) Suit - Institution of - When the validity of institution of the suit hung on a technical objection that there had been no proof that one of the Directors had authority to make a further delegation to a Branch Manager to institute the suit and at the appellate Court, the Bank was filing a notarized copy of the resolution of the Board of Directors made the Court ought to have accepted the document and found that the so-called defect in the institution of the suit was adequately explained and that the institution of the suit by the Branch Manager was fully competent - The Banking Companies Acquisition and Transfer of Undertakings Act, 1970 (5 of 1970) Section 15.**

**(iii) Suit — The Banking Companies Acquisition and Transfer of Undertakings Act, 1970 (5 of 1970) Section 15 - Suit - Institution of - When the validity of institution of the suit hung on a technical objection that there had been no proof that one of the Directors had authority to make a further delegation to a Branch Manager to institute the suit and at the appellate Court, the Bank was filing a notarized copy of the resolution of the Board of Directors made the Court ought to have accepted the document and found that the so-called defect in the institution of the suit was adequately explained and that the institution of the suit by the Branch Manager was fully competent.**

## JUDGMENT

**K. Kannan, J.—** (23.07.2013) - The following substantial questions of law arise for consideration in this second appeal:-

i) Whether the appellate Court was not in error in finding that execution of documents-P12 to P16 which were in the nature of promissory note, declaration of liability, letter of continuity, hypothecation agreement of machineries and goods constituted a novation of [contract](#), as wrongly assumed, to discharge the liability of the guarantor as being not a party to the documents?

ii) Whether the courts below did not err in finding that the Branch Manager was not duly authorized to institute the suit and prosecute the appeal?

iii) Whether the lower appellate Court failed to apply the discretion to allow for a reception of additional evidence in proof of the authority given by the Board of Directors to one of the Directors to authorize any officer of the Bank to institute the suit?

2. There had been no representation on either side and I have proceeded to examine the case on the basis of the documents filed on behalf of the appellant-Union Bank. The suit for recovery of money against the defendants for the realization of amounts under cash credit limit to the tune of Rs. 10,000/- and a term loan of Rs. 7,500/- granted to the defendants 1 and 2 and guaranteed by the 3rd defendant was dismissed by the trial Court finding that the suit was barred by limitation. It also found that the Branch Manager had not been duly authorized to institute the suit and the document-a power of attorney, executed by the Director of the Bank was not sufficient proof of such authority, there being no proof that the Director himself was competent to give such a power without the other Directors joining in giving the power of attorney. The appellate Court reversed the finding regarding the limitation against the defendants 1 and 2 and found that the suit against the 3rd defendant was in any event barred by limitation since the fresh document of promissory note and acknowledgment of liability constituted a novation of contract that discharged the guarantor and, therefore, the suit filed beyond the period of 3 years from the date when the original promissory note and the guarantee letter had expired was barred by time against the guarantor. At the appellate Court, the plaintiff-Bank had filed the letter of authority to the Director passed by the Board of Directors empowering him to institute a suit through Branch Manager and allow for an authority to institute the suit. The additional evidence was rejected by the appellate Court, finding that there was no justification offered for not filing the same at the trial Court itself.

3. In this case, I find that the appellate Court had actually held that the liability of the defendants 1 and 2, who were the principal debtors, had been clearly established by die documents. However, the suit against the 3rd defendant came to be dismissed on the issue of limitation by observing that the renewal of liability made through fresh promissory note and the letter of continuity and hypothecation documents constituted novation of contract and, therefore, there was no basis for making the guarantor liable. From the examination of the documents, it is clear that cash credit hypothecation limit and the term loan had been granted to the 2nd defendant-Shri Surinder Maini, Proprietor of M/s. Vee Jay Enterprises, on 25.08.1975. The 2nd defendant had executed a letter of confirmation of the outstanding balance on 30.12.1977 and again on 04.01.1978. He had executed a fresh document on 07.04.1979 which was the letter of renewal (Ex. P 12); Ex. P13 which was the promissory note; Ex. P14 which was the letter of declaration; the letter of continuity was Ex. P15; and Ex. P16 was an agreement regarding hypothecation of machinery and goods. The suit had been filed on 31.01.1981. The Court had found that fresh promissory note was a novation and the other documents also constituted a fresh liability and this document did not avail against the guarantor-the 3rd defendant. The plaintiff relied on a letter of confirmation given by the 3rd defendant on 11.01.1979 (Ex. P17). The Court rejected this document is of no avail to the extend of period of limitation since the 3rd defendant had not acknowledged the original liability and since he was not himself a party to the promissory note and other documents executed as Exs. P12 to P16, the letter of acknowledgment of liability dated 11.01.1979 (Ex. P17) could not extend the period of limitation. The finding of the appellate

Court was clearly wrong. The document that bound the 3rd defendant to constitute the liability was Ex. P10 which was a document of continuing guarantee in consideration of the Bank opening the credit limits to defendants 1 and 2 and the 3rd defendant has treated himself as bound for all the demands on the basis of subsisting liability through bills, promissory notes, etc. The suit filed against the 3rd defendant was also therefore in time. The finding of the lower appellate Court that the suit was barred by limitation against the 3rd defendant was erroneous. The suit has been instituted by a Nationalized Bank through the Branch Manager. The plaintiff-Bank had filed the power of attorney executed by the Director of the Bank at the belated stage. The authorization given to one of the Directors of the Board of Directors to institute suits by a supplementary power of attorney (Annexure A 1) and a Board resolution had been brought at the appellate Court and filed as Annexure A2. When the validity of institution of the suit hung on a technical objection that there had been no proof that one of the Directors had authority to make a further delegation to a Branch Manager to institute the suit and at the appellate Court, the Bank was filing a notarized copy of the resolution of the Board of Directors made on 13.03.1985, the Court ought to have accepted the document and found that the so-called defect in the institution of the suit was adequately explained and that the institution of the suit by the Branch Manager was fully competent. The Banking Companies Acquisition and Transfer of Undertakings Act, 1970 cures any defect in the constitution of the composition of the Board by Section 15 for action taken on behalf of the Bank by any of the Directors. The appellate court ought to have condoned the delay, admitted the documents and found that the power of attorney already filed and proved as Ex. P 1 showed adequate authority for the Manager of the Bank to institute the suit. The trial Court was in error in finding that the power of attorney had not been attested by Notary Public for its validity. An attestation by a Notary Public is merely a manner of securing an authentication but the power of attorney itself does not require even to be attested. If the plaintiff-Branch Manager was producing the document in original and he was stating that he had the authority to represent the Bank, it ought to have been taken as sufficient proof for upholding the authority for institution of the suit. The dismissal of the suit by the courts below that the Branch Manager did not have the competency to institute the suit was erroneous. All the documents regarding the competence of the Branch Manager to institute the suit and the findings of the appellate Court that the suit against the 3rd defendant had been barred by limitation are set aside. All the issues are held in favour of the plaintiff-Bank and there shall be a decree as prayed, for with costs throughout. The questions of law are answered in favour of the appellant and the second appeal is allowed with costs.

RMS