

PINTO
v
TRELLEBORG LANKA (PVT) LTD AND ANOTHER

COURT OF APPEAL
AMARATUNGA, J.
CALA NO. 322/2003
SC GAMPAHA - 3828/SPL
SEPTEMBER 29, 2003

Civil Procedure Code – Amended by Act No. 14 of 1997 – Section 16, and 59(5) – Inconsistency between Sinhala and English texts – Constitution – Article 23 (1) – Company – Proxy – Validity – Who could sign? – Is there a requirement for any other person to sign – Authenticating the company seal? – Is the defect in a proxy curable?

It was contended that the proxies filed by the defendant-respondents were not in conformity with section 59 (5) of the Civil Procedure Code as -

- (a) proxies did not state the number of the identity card or the passport number of the person signing.
- (b) Attorney-at-Law who filed the proxy failed to make an endorsement on the proxy certifying the identity of the two dependents signing the proxy;
- (c) 1st and 2nd defendants have signed the proxies on 14.8.2003, and the defendant's Attorney has certified the proxies on 18.8. 2003.

The trial Judge rejected the objections.

Held:

- (i) In view of Article 23 (1) and section 16 the Civil Procedure Code Amendment Act 14 of 1997, in the event of an inconsistency the Sinhala text shall prevail.
- (ii) Requirement for a proxy of a company is that it shall be tendered under the seal of the Company. The object of section 59 (5) is to ensure that the correct defendant has signed or authenticated the proxy. The placing of the seal is sufficient, there is no requirement in the code for any other person to sign authenticating the Company seal.
- (iii) Though the 2nd defendant's proxy did not contain his passport number, a photocopy of his passport had been tendered and filed along with the proxy – there is substantial compliance.
- (iv) Discrepancy between the dates appearing below the signature of the 2nd defendant and in the memorandum appearing at the end of the proxy does not render the proxy invalid.
- (v) Defect in a proxy is curable, what matters is whether the Attorney-at-Law had the authority of the 2nd respondent to appear and act for him - which can be gathered from the signature appearing in the proxy and from the copy of the passport filed.

Per Ameratunga, J.

"There is an inconsistency, according to the sinhala provision between the words corresponding to the words defendant and where in the English version there is a full stop, instead of a comma – the Sinhala version consists of two sentences – these should be read separately....."

APPLICATION for leave to appeal from the order of the District Court of Gampaha.

Cases referred to:

1. *Seevali Ratwatte v Thilanga Sumathipala* – 2001 2 SRI LR 55
2. *Udeshi v Mather* – 1988 1 SRI LR 12
3. *Paul Coir Co. v Vaas* – 2000 2 SRI LR 166

M.H.B. Morais with Shantha Perera for plaintiff-appellant.

I.S. de Silva with Suren Peiris for defendant-respondents.

October 10, 2003

AMARATUNGA, J.

This is an application for leave to appeal against the decision 01 of the learned District Judge rejecting an objection raised by the learned counsel for the plaintiff to the validity of the proxies of the 1st and 2nd defendants. The plaintiff has filed action against the defendant company and its Managing Director seeking a declaration that he was entitled to function as a Director of the defendant company and to receive the benefits set out in paragraph 44 of the plaint. He has sought a permanent injunction restraining the defendants from removing him from the post of Director and an enjoining order and an interim injunction for the same purpose. The court having considered the pleadings and the submissions made by counsel has issued an enjoining order and notice of interim injunction.

On 18/8/2003 the defendants have filed their proxy and petition and affidavit praying for the dissolution of the enjoining order. The learned counsel for the plaintiff has then raised a preliminary objection that the proxies filed by the defendants were not in conformity with the provisions of section 59(5) of the Civil Procedure Code as amended by Act No 14 of 1997 and accordingly the said proxies were invalid. Section 59(5) of the Civil Procedure Code as 20 it appears in the English copy of the code reads as follows:

"Where a defendant is represented by a registered Attorney, the Attorney shall in the proxy tendered on behalf of the defendant, state the number of the identity card or the passport, as the case may be, of the defendant and shall also make an endorsement thereon certifying the identity of such defendant, where a proxy is tendered on behalf of a company or a corporate body it shall be under the seal of such company or the body corporate as the case may be." (underlining added)

The learned counsel for the plaintiff has submitted that 30

- (i) the proxies did not state the number of the identity card or the passport number of the person who signed the proxy
- (ii) the Attorney-at-Law who filed the proxy has failed to make an endorsement on the proxy certifying the identity of the two defendants signing the proxy.

(iii) the first and second defendants have signed the proxies on 14th August 2003 and the defendants' Attorney has certified the proxies on 18th August 2003.

The learned Judge by her order dated 28/8/2003, for the reasons stated therein, has rejected the objections. The plaintiff-petitioner now seeks leave to appeal against the said order.

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At the hearing before this court the learned counsel for the defendant-respondents invited the court's attention to the Sinhala provision of the said section 59(5). According to the Sinhala provision, between the words corresponding to the words defendant and were in the English version, (underlined by me in the English provision quoted above) there is a fullstop instead of a comma. In terms of Article 23(1) of the Constitution all laws are enacted in Sinhala and Tamil together with a translation thereof in English. At the stage of the enactment the Parliament shall determine which text shall prevail in the event of any inconsistency between the texts. In terms of section 16 of the Civil Procedure Code (Amendment) Act No 14 of 1997 in the event of an inconsistency, the Sinhala text shall prevail. Accordingly this court has to accept the sinhala provision of section 59(5).

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According to the sinhala provision section 59(2)consists of two sentences. The first sentence ends with the fullstop placed just before the reference to a company or a corporate body begins. Therefore the two sentences are to be read separately. The two sentences deal with two types of defendants; the first sentence with a defendant who is a natural person and the second sentence with a defendant who is a juristic person. Since the sentences are to be read disjunctively the requirements set out in the 1st sentence cannot be read into the 2nd sentence. Accordingly the requirement for a proxy of a company is that it shall be tendered under the seal of the company. There is no dispute that in the proxy filed on behalf of the company, the seal of the company was embossed on the proxy. This is the only requirement under section 59(5) of the Code for the validity of the company's proxy. In addition to the seal, there were two signatures appearing in the company's proxy and it was explained at the hearing that those were the signatures of two directors of the company. Usually Articles of Association of Companies contain provisions regarding the custody of the seal of the company and the manner in which the seal of the company

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shall be affixed to any instrument. In this instance Article 76 of the Articles of Association of the 1st defendant company provides for that and according the said section 76, the company seal shall be affixed to any instrument in the presence of two Directors or of one Director and the Secretary, who shall sign every instrument to which the seal is affixed. However it is noteworthy that section 59(5) only requires that the proxy shall be tendered under the seal of the company. It does not state that 'the proxy shall be tendered under the seal of the company affixed in the manner provided in the Articles of Association of the company.' The object of section 59 (5) of the Code is to ensure that the correct defendant has signed or authenticated the proxy. The placing of the seal of the company is sufficient for this purpose as the company can be made answerable when the proxy contains its seal. Since there is no requirement in the Code for any other person to sign authenticating the company seal, it is not necessary to show on the face of the proxy that the two signatures appearing on the proxy were the signatures of those who were empowered to authenticate the seal and to certify their identity by the Attorney-at-Law. I therefore hold that the 1st defendant company's proxy was in conformity with section 59(5) of the Code and was accordingly valid. 80

The 2nd defendant is the Managing Director of the 1st defendant company. Since he is a natural person his proxy shall conform to the requirements set out in the first sentence of section 59(5) of the Code. The 2nd defendant's proxy did not contain his passport number. However there is no dispute that a photocopy of his passport had been tendered and filed along with the proxy. Considering the object sought to be achieved by section 59(5) I am of the view that there was substantial compliance with the requirement of giving the passport number although there was no literal compliance. 100

The next requirement is the endorsement certifying the identity of the defendant to be made by the Attorney-at-Law on the proxy. In the proxy under the signature of the 2nd defendant, the authenticity of which was not challenged at the hearing before me the date is given as 14/8/2003. The printed legend appearing at the end of the printed form of the proxy states that the signature was placed on 18th August 2003 at Colombo. A point was made by the learned counsel for the plaintiff-petitioner that as shown by the proxy itself the signature of the 2nd defendant has not been placed in the proxy 110

on 18th August and therefore the certificate of the Attorney-at-Law was not a proper certificate necessary for the validity of the proxy. In support of his argument he cited the case of *Seevali Ratwatte v Thilanga Sumathipala*⁽¹⁾ where the court held that an affidavit signed by the deponent at one time and attested by the Justice of the Peace at a different time was invalid. In the case of an affidavit it is necessary that the deponent and the person attesting the affidavit shall both sign at the same time. In this case it is on record that the counsel who appeared in the District Court for the defendants has stated that the proxy was signed on 14/8/2003, at his office in Colombo and when the proxy was filed on 18.08.2003 the Attorney-at-Law has put 18th August in the proxy as the date. In the absence of anything to show that the explanation tendered by counsel was incorrect and untenable, it cannot be rejected. The object of the requirement that there should be an endorsement certifying the identity of the defendant is to ensure that the proxy has been signed by the defendant and no one else. In this case there was no allegation that the 2nd defendant's proxy was not a proxy signed by him. In the circumstances, this Court is unable to hold that the discrepancy between the dates appearing below the signature of the 2nd defendant and in the memorandum appearing at the end of the proxy is such as to render the whole proxy invalid.

In any event a defect in a proxy is curable. *Udeshi v Mather*⁽²⁾. What matters is whether the Attorney-at-Law had the authority of the 2nd defendant to appear and act for him and this authority can clearly be gathered from the signature appearing in the proxy and from the copy of the passport filed. The affidavit filed by the 2nd defendant in this Court clearly shows that he has ratified the acts of the Attorney-at-Law. Vide *Paul Coir Co v Vaas*.⁽³⁾

For the reasons set out above I hold that there were valid proxies before Court on behalf of the 1st and 2nd defendants. Accordingly leave to appeal is refused and the application is dismissed with costs in a sum of Rs. 5000/-.

Application dismissed.