

**HIGH COURT OF TRIPURA
AGARTALA**

RFA 17 of 2022

1. Sri Jiban Kumar Rakshit,
Son of late Sudhir Ranjan Rakshit,
Resident of Kalibari Road, Nayapara,
P.S. Dharmanagar, District- North Tripura.

.....*Appellant(s).*

VERSUS

1. Smt. Swapna Sharma,
Wife of Sri Asish Sharma,
Resident of Pragati Road,
P.S. Dharmanagar, District- North Tripura.

2. Sri Radhakanta Nath,
Son of late Sonachand Nath,
Resident of Kalibari Road, Nayapara,
P.S. Dharmanagar, District- North Tripura.

..... *Respondent(s).*

For Appellant(s)	:	Mr. Kohinoor N Bhattacharyya, Advocate.
For Respondent(s)	:	Mr. Samarjit Bhattacharjee, Advocate. Mr. Kawsik Nath, Advocate.
Date of hearing and delivery of Judgment & Order	:	01.09.2023.
Whether fit for reporting	:	No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard Mr. Kohinoor N Bhattacharyya, learned counsel appearing for the appellant.
Also heard Mr. Samarjit Bhattacharjee, learned counsel appearing on behalf of respondent
No.1 and Mr. Kawsik Nath, learned counsel representing respondent No.2.

[2] The instant appeal is filed by the appellant under Section 96 read with Order 41 of the C.P.C. against the judgment and decree dated 17.05.2022 passed by the learned Civil Judge, Senior Division, North Tripura, Dharmanagar in Money Suit No.05 of 2016.

[3] The facts of the case in brief are that Smt. Swapna Sharma had filed Money Suit No.05 of 2016 in the Court of the Civil Judge, (Senior Division), Dharmanagar, North Tripura against the defendant No.1 (appellant herein) and defendant No.2 (respondent No.2 herein) for recovery of Rs.6,97,000/- stating inter alia that the defendant No.1 is the proprietor of a firm namely, 'Trishna Mineral Water' and the defendant No.2 was his employee who on behalf of the said firm had signed a distributorship agreement on 30.09.2013 with the plaintiff (respondent No.1 herein) alleging that he was empowered by the terms of his appointment letter. The plaintiff also stated that the defendant No.1 appointed the defendant No.2 as his attorney by a registered Power of Attorney dated 16.01.2014. The plaintiff further alleged in the plaint that in terms of letter of appointment, the defendant No.2 received Rs.3,00,000/- (three lakhs) from her from time to time by installments from 20.01.2014 to 26.02.2014. Thereafter, the defendant No.2 received another amount of Rs.3,97,000/- from 03.03.2014 to 30.04.2014. It is further alleged that the plaintiff claimed Rs.6,97,000/- (six lakhs ninety seven thousand) only through advocate notice from both the defendants i.e. defendants No.1 & 2 but, they did not pay the same and thereafter, the plaintiff (respondent No.1 herein) preferred the money suit before the Court below.

[4] In his written statement submitted before the Court below, the defendant No.1 (appellant herein), at first questioned the maintainability of the suit and denied the allegations brought against him by the plaintiff (respondent No.1 herein). He stated that he had no connection with the business of the plaintiff. Husband of the plaintiff named Sri Asish Sarma had a good relation with defendant no. 1 and in the year 2013, Sri Asish Sarma took loan of Rs. 3,07,900/- from defendant no. 1 by cheques. Sri Asish Sarma told defendant no. 1 that he was one partner of M/S Sarma Enterprise along with his wife Smt. Swapna Sarma (plaintiff-respondent) and another person named Sri Amar Deb. It was also stated that

the said Amar Deb had also taken loan of Rs. 1 lakh from the defendant no. 1 by cheque. Sri Asish Sarma and Sri Amar Deb assured repayment of the loans to the defendant no. 1. Sri Asish Sarma on and from 11.10.2013 was purchasing water jars from the defendant no. 1 in cash and he assured that out of profit of sale of the said water jars, he would repay the loan of the defendant no. 1. Defendant no. 1 (appellant herein) submitted that separate suits would be filed against Sri Asish Sarma and Sri Amar Deb for realization of loans taken by them. Defendant no. 1 added that the present suit was filed by the plaintiff in collusion with defendant no. 2 and there was no agreement of distributorship between Trishna Mineral Water and M/S Sarma Enterprise on 30.09.2013. It was alleged that if any such agreement was made by defendant no. 2 and M/S Sarma Enterprise, it was illegal, fraudulent and beyond authority. The defendant no. 1 appointed the defendant no.2 his attorney vide deed no. 00086 dated 16.01.2014 and before the said date, the defendant no. 2 had no connection with Trishna Mineral Water. Defendant no. 2, who was appointed as the attorney by the defendant no. 1, was operating the bank account of Trishna Mineral Water maintained in United Bank of India, Dharmanagar Branch and he was in possession of all the documents including pre-signed non-judicial blank stamp papers, pre-signed blank writing pads and pre-signed blank cheques of defendant no. 1. It was further alleged by the defendant No.1 (appellant herein) that defendant no. 2 misused those documents against defendant no.1. Despite requests by defendant no. 1, defendant no. 2 did not return those documents to him. On that matter, settlement meetings were held on 02.08.2015 and 09.08.2015, but those yielded no result. Defendant no. 1 filed a GD entry against defendant no. 2 at Dharmanagar PS on 22.08.2015. Defendant no. 1 received demand notices from various persons including the plaintiff and so he filed a complaint against defendant no. 2 and Sri Subrata Bikash Datta at Dharmanagar PS and it was registered as DMN PS case no. 098 of 2015 under sections 406/468/471/109/120B of the Indian Penal Code, 1860. The defendant No.1 (appellant herein) submitted in his written statement that Sri Subrata Bikash Datta and the plaintiff of suit before the Court below in collusion with defendant no. 2 used blank cheques and blank writing pads bearing the signatures of defendant no. 1 which were in the custody of the

defendant no. 2. With that written submission, defendant no. 1 prayed for dismissal of the suit.

[5] In his written statement, defendant no.2 at first questioned the maintainability of the suit and denied the allegations brought against him by the plaintiff. He then described his own set of facts. He stated that distributorship was given to M/S Sarma Enterprise on 10.10.2013 by Trishna Mineral Water observing all the formalities. Defendant no. 2 was an employee of defendant no. 1 and as such he is not under the obligation to return any money to the plaintiff in connection with her transaction with Trishna Mineral Water. The plaintiff served an Advocate's notice upon both the defendants on 30.12.2015 and defendant no. 2 gave reply to it on 08.01.2016. Defendant no. 2 added that defendant no. 1 is the proprietor of M/S Trishna Mineral Water situated at Nayapara Kalibari Road, Dharmanagar and vide letter dated 01.08.2012, defendant no. 2 was appointed as a Technical and Business Executive in M/S Trishna Mineral Water. Later on, a general power of attorney was executed by defendant no. 1 in favour of defendant no. 2 on 16.01.2014 for managing, maintaining and doing all the necessary things in respect of M/S Trishna Mineral Water. It was submitted through the written statement of Defendant no. 2 that he worked his best for development of M/S Trishna Mineral Water. But, due to rough behavior of defendant no.1, he had to resign from the said business organization on 12.08.2015. In the meantime, defendant no. 2 received a letter from defendant no.1 stating that the power of attorney executed in his favour was revoked by revocation deed no. 02041 dated 01.08.2015. Accordingly, defendant no. 2 handed over the charge of his office to defendant no. 1 on 13.08.2015. It was alleged that defendant no. 1 filed false cases against defendant no. 2 only to harass him. Defendant no. 1 also did not pay salary to defendant no. 2 for which the latter filed a money suit against the former that was registered as case no. MS 04 of 2016. During the period of service of defendant no. 2 in M/S Trishna Mineral Water, distributorship of water was given by the said business establishment to M/S Sarma Enterprise. With this submission before the Court below, defendant no.2 also prayed for dismissal of the suit.

[6] Issues were framed accordingly and the plaintiff and defendants side examined the witnesses. Learned Court below on observing all the facts and circumstances of the case, has passed the following order:

“ORDER

9. As a result, I hold that even though the plaintiff failed to prove that the defendant no.2 entered into a distributorship agreement with her as his (defendant no. 2) capacity as an employee/ agent of defendant no. 1, she successfully proved to have paid Rs. 6,97,000/- to defendant no.1 through defendant no. 2.

Hence, it is hereby ordered that defendant no. 1 shall make payment of Rs.6,97,000/- (Rupees Six Lakhs Ninety Seven Thousand only) to the plaintiff immediately. In addition, defendant no. 1 shall also pay to the plaintiff interest at the rate of 06 (six) per cent per annum on the said amount w.e.f. 29.07.2016 till payment.

10. With these observations, the instant suit stands decreed on contest with costs.

11. Prepare decree accordingly as per law and put up for signature within 14 days from today, latest by 31.05.2022.”

[7] Mr. Kohinoor N Bhattacharyya, learned counsel appearing for the appellant submits that as attorney of the defendant No.1 (appellant herein), all valuable documents, non-judicial blank stamp with signature of defendant No.1, some blank writing pads with signature of defendant No.1, blank cheques with signature of defendant No.1, accounts book etc were in the custody of the defendant No.2 (respondent No.2 herein) for smooth running of the business transaction but, the defendant No.2 misused the trust and faith of the appellant herein. It is admitted fact that payments were made during 2014-15 when the power of attorney was invoked in favour of Radha Kanta Nath i.e. the respondent No.2. It is alleged that the plaintiff-respondent No.1 and one Subrata Bikash Datta in collusion with defendant No.2 (respondent No.2 herein) already used blank cheques and blank writing pads both bearing signature of the defendant No.1 which were in custody of the defendant No.2 for the purpose of illegal gains. Learned counsel therefore, urges this Court to set aside the judgment and decree dated 17.05.2022 passed by the Court below.

[8] Mr. Samarjit Bhattacharjee, learned counsel appearing for the plaintiff-respondent No.1 submits that the plaintiff has successfully proved to have paid Rs.6,97,000/- to the

defendant No.1 (appellant herein) through the defendant No.2 (respondent No.2 herein) in the Court below. Learned Court below after examining all the witnesses and on perusal of all the relevant facts, decided the case in favour of the plaintiff which should not be interfered with by this Court for the fair ends of justice.

[9] Mr. Kawsik Nath, learned counsel representing respondent No.2 (defendant No.2 in the suit filed before the Court below) submits that as a power of attorney holder, defendant No.2 who was an employee of the firm of defendant No.1 (appellant herein) cannot be fastened with the liabilities for making payment to the plaintiff-respondent No.1 and thus, the judgment and decree passed by the Court below needs no interference and prayed to uphold the same dismissing the instant appeal preferred by the appellant. [

[10] For the purpose of reference let us see what has been observed in the provisions of Section 85 of the Indian Evidence Act, 1872 regarding presumption as to power of attorney:

***"85. Presumption as to powers-of-attorney.—**The Court shall presume that every document purporting to be a power of attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice- Consul, or representative of the Central Government, was so executed and authenticated."*

[11] The defendant No.1 in his cross-examination has volunteered submitting that defendant No.2 has returned some cheque books, statements etc and the cheque book returned by the defendant No.2 (Radha Kanta Nath) contained the cheque-leaves bearing nos. 002376-002400. It was alleged that some cheque-leaves were missing from the cheque-book but, the appellant herein has not categorically stated about the missing cheque numbers and it has not been mentioned that cheque in question issued for 6,97,000/- bearing no.003496 was one of those missing cheque-leaves. The appellant (defendant No.1) has not raised any question in specific with regard to the amounts received by the respondent No.2 (defendant No.2) under the capacity of his power of attorney as to where the funds have been utilized, whether they have been deposited to the account or elsewhere. The appellant has not proved his case in his defence.

[12] The arguments advanced by the counsel for the appellant are beyond the scope of the cross-examination and the evidence, in which, at the stage of appeal, this Court is not inclined to appreciate the same.

In view of the above observation, this Court is of the opinion that there is no infirmity in the order passed by the Court below and thus, there is no need for any interference. Accordingly, the order dated 17.05.2022 passed by the learned Civil Judge, Sr. Division, North Tripura, Dharmanagar in Money Suit No.05 of 2016 is upheld and the instant appeal is rejected and accordingly, the same is dismissed.

Pending application(s), if any, shall also stand vacated.

JUDGE



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Sabyasachi G.

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