



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.12.2013

CORAM:

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.R.P. (PD) (MD) No.1918 of 2013 & M.P (MD) No.1 of 2013

Thamarai Selvam
through his brother
power agent N.Paneer Selvam ...Petitioner/Respondent/
Plaintiff

- Vs -

1.Selvi
2.Dhanalakshmi ..Respondents/Petitioners
Defendants

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records of in I.A.No.250 of 2012 in O.S.No.120 of 2011 on the file of the sub-Court, Uthamapalayam, dated 29.04.2013 and set aside the same and dismiss the above application filed by the respondent.

For Petitioner :Mr.K.P.S.Palanivel Rajan
For Respondents :No appearance

ORDER

The plaintiff is before this Court challenging the order passed by the trial Court by which the application filed by the respondents to eschew the petitioner, was allowed.

2. The petitioner through the power of attorney filed O.S.No.120 of 2011 for specific performance. The respondents filed a written statement. The power holder filed a proof affidavit as PW.1. Objecting the power holder being examined as PW.1, the respondents/defendants filed I.A.No.250 of 2012 to eschew the evidence of PW.1. The said petition was allowed.

3. Mr.K.P.S.Palanivel Rajan, learned Counsel appearing for the petitioner would contend that the petitioner is none other than the elder brother of the principal and the principal is out of India and therefore, he is unable to appear before this Court. Moreover, PW.1, namely, power holder knows the facts of the case and the transaction between the plaintiff and the defendants and therefore, there is no bar for the power holder to adduce the



evidence on behalf of the Principal. He relied upon the decision of the Full Bench of Honourable Supreme Court in *A.C.Narayanan -vs- State of Maharashtra and another* reported in (2013) 4 MLJ (Cr1) 213 (SC) and contended that the power holder can adduce the evidence.

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4. Though notice was ordered and served upon the respondents and their names are printed in the cause list, neither the respondents nor the Counsel are present and therefore, this Court proceeds to decide the matter on merits.

5. The records would reflect that the suit itself has been filed by the power holder on behalf of the principal. The suit is for specific performance. _As rightly pointed out by the learned Counsel for the petitioner, the principal's elder brother is the power holder. Moreover, a perusal of the proof affidavit filed by PW.1 would show that the power holder has got personal knowledge about the execution of the sale agreement and about the case. When a person comes before the Court and deposes that he has got personal knowledge about the case, the said evidence cannot be eschewed merely on the ground that PW.1 is a power holder. No doubt, the learned sub-Judge relied upon the judgments of the Honourable Supreme Court in *Janki Vashdeo Bhojwani and another -vs- Indusind Bank Ltd and others* reported in (2005) 3 MLJ 109 (SC) and in the matter of *Ram Prasad -vs- Hari Narain and others* reported in AIR 1998 Rajasthan 185 and allowed the petition and eschewed the evidence of PW.1. However, a Full Bench of the Honourable Supreme Court in *A.C.Narayanan -vs- State of Maharashtra and another* reported in (2013) 4 MLJ (Cr1) 213 (SC) held in paragraph '19' as follows:

"19) As noticed hereinabove, though *Janki Vashdeo Bhojwani* (supra), relates to powers of Power of Attorney holder under CPC but it was concluded therein that a plaint by a Power of Attorney holder on behalf of the original plaintiff is maintainable provided he has personal knowledge of the transaction in question. In a way, it is an exception to a well settled position that criminal law can be put in motion by anyone [vide *Vishwa Mitter* (supra)] and under the Statute, one stranger to transaction in question, namely, legal heir etc., can also carry forward the pending criminal complaint or initiate the criminal action if the original complainant dies [Vide *Ashwin Nanubhai Vyas vs. State of Maharashtra* (1967) 1 SCR 807]. Keeping in mind various situations like inability as a result of sickness, old age or death or ~~etc~~ ~~road~~ of the payee or holder in due course to appear and depose before the Court in order to prove the complaint, it is permissible for the



Power of Attorney holder or for the legal representative(s) to file a complaint and/or continue with the pending criminal complaint for and on behalf of payee or holder in due course. However, it is expected that such power of attorney holder or legal representative(s) should have knowledge about the transaction in question so as to be able to bring on record the truth of the grievance/offence, otherwise, no criminal justice could be achieved in case payee or holder in due course, is unable to sign, appear or depose as complainant due to above quoted reasons. Keeping these aspects in mind, in MMTC (supra), this Court had taken the view that if complaint is filed for and on behalf of payee or holder in due course, that is good enough compliance with Section 142 of N.I. Act."

6. From the above, the Honourable Supreme Court made it clear that if the power of attorney holder has knowledge about the transaction in question, he can bring on record the truth about the facts. In view of the categorical declaration made by the Honourable Supreme Court, there may not be any bar for PW.1, in this case, who has deposed in his proof affidavit that he has got personal knowledge about the transaction and hence the same cannot be eschewed and therefore, the order of the trial Court is liable to be set aside.

7. Accordingly, the order of the trial Court is set aside and the Civil Revision Petition is allowed. The trial Court is directed to proceed with the matter from the stage of cross-examination of PW.1 based on the proof affidavit already filed by the PW.1 and the trial Court is further directed to expedite the trial and dispose of the same on or before 30.04.2014. Consequently, the connected Miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub-Assistant Registrar

To
The Subordinate Judge, Uthamapalayam
+One cc to Mr.K.P.S.Palanivel Rajan, Advocate, SR.No.63837
gsr
RL/3c - 6/1/2014