

In the High Court of Judicature at Madras

Reserved on : 12.10.2015

Delivered on : 5.11.2015

Coram:

The Honourable Mr. Justice SATISH K. AGNIHOTRI
AND
The Honourable Mr. Justice K.K. SASIDHARAN

W.P.No.21015 of 2015

K. Anand
rep. By Power Agent
Mr.T.Ashok Surana ...Petitioner

vs.

1. The Hon'ble Chairperson
The Debts Recovery Appellate Tribunal
4th Floor, 55, Ethiraj Salai
Egmore, Chennai-600 008.
2. The Authorised Officer
Indian Overseas Bank
Mysore Main Branch
529/530 Prithvi Arcade-I Floor
Ashoka Road
Mysore -570 001. ...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration declaring that the petitioner is eligible as per the SARFAESI Act itself to argue on behalf of the borrower based on his power of attorney in AIR (SA) NO.181 of 2015 dated 15/04/2015 and allowing to argue in the matter before Hon'ble Debts Recovery Appellate Tribunal, Chennai would not be in violation of the Advocates Act which does not apply to proceedings under RDBB or SARFAESI Act.

For Petitioner : Mr.T.Ashok Surana
Power Agent of the petitioner

For Respondents : Mr.F.B. Benjamin George
for R.2

O R D E R

Introductory:-

Whether the right to appear in Court and plead for a principal as provided under Rule 1 of Order III of Code of Civil Procedure would include the right to address the Court on the strength of the power of attorney is the preliminary issue that arises for consideration in this writ petition filed at the

instance of a power agent for a direction to permit him to argue the case of his principal before the Debts Recovery Appellate Tribunal, Chennai.

Background facts:-

2. The petitioner filed an appeal before the Debts Recovery Appellate Tribunal (hereinafter referred to as "DRAT"), challenging the order dated 27 January 2015 on the file of Debts Recovery Tribunal (hereinafter referred to as "DRT") at Bangalore. The appeal was filed on the strength of the power of attorney executed by Sri.K.Anand, the appellant who lost the original application before the DRT, Bangalore.

3. The DRAT, Chennai by its order dated 15 April 2015 rejected the plea made by the petitioner to argue the appeal on behalf of his principal. Feeling aggrieved, the petitioner has come up with this writ petition.

4. The power agent, who is not a legal practitioner wanted to argue the writ petition on the strength of the power of attorney. The learned counsel for the Bank opposed the prayer and made a request to decide his objection at the first instance. We therefore heard the power agent in person for the limited purpose of deciding the preliminary objection. We have also heard the learned counsel for the Bank, the second respondent in the writ petition.

The Legal Framework:-

5. The Advocates Act 1961 (hereinafter referred to as "the Act") is a comprehensive legislation consolidating the law relating to legal practitioners.

(a) Section 2(a) of the Act defines the term "Advocates". As per the definition, Advocate means an Advocate entered in any roll under the provisions of the Act.

(b) Section 29 provides that Advocates alone are the recognised class of persons entitled to practice the profession of law.

(c) Section 33 provides that no person shall be entitled to practice in any Court, or before any authority unless he is enrolled as an Advocate under the Act.

(d) Section 32 is an exception to Sections 29 and 33 of the Act, as it empowered the Court, authority or person to permit any person not enrolled as an Advocate under the Act to appear before it or him in any particular case.

6. The claim of the petitioner that he is having every right to address the Court on the strength of the power of attorney is based on Rules 1 and 2 of order III of the Code of Civil Procedure. The relevant provisions of order III Rule 1 and 2 read as under:

"RECOGNIZED AGENTS AND PLEADERS

1. Appearances, etc., may be in person, by recognized agent or by pleader-

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader (appearing, applying or acting, as the case may be), on his behalf:

Provide that any such appearance shall, if the Court so directs, be made by the party in person.

2. Recognized agent

The recognized agent of parties by whom such appearances, applications and acts may be made or done are-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

Discussion:-

7. The provisions of Order III Rules 1 and 2 would show that the appearance by recognised agents and applications or acting in any Court are subject to the provisions of any other law. Since the Advocates Act is a self contained Code dealing with the law relating to legal practitioners, the provisions of the said Act and more particularly Sections 29 and 33 would prevail over Rules 1 and 2 of Order III of the Code of Civil Procedure.

8. The right conferred under Rules 1 and 2 of Order III on a person holding a power of attorney to appear before the Court and plead on behalf of his principal in a representative capacity has nothing to do with the right to practice in Court. There is a clear distinction between "appear" and "practice". The legislature while permitting non advocates to appear with the permission of Court consciously used the word "appear" in Section 32 of the Act. Section 33 of the Act used the word "practice" which would include acting and pleading.

9. Section 2(15) of the Code of Civil Procedure defines a pleader as a person entitled to appear and plead for another in

Courts, and includes an Advocate, a vakil and an attorney of a High Court. There is a vital difference between a recognised agent and a pleader. Sections 29, 32 and 33 of the Act if considered in the light of Rules 1 and 2 of Order III of Code of Civil Procedure would make the legal position clear that only an advocate enrolled under the Advocates Act and having his name on the rolls of a Bar Council alone is entitled to practice the profession of law.

10. Section 2 of the Power of Attorney Act empowering the agent to perform acts on behalf of principal cannot override the specific provisions of the Advocates Act which requires that only an Advocate enrolled under the Act is entitled to practice before any Court or Authority.

11. The legislature while incorporating a provision like Rules 1 and 2 of Order III of the Code of Civil Procedure appears to have not contemplated a situation wherein even a person having no knowledge in law would be permitted to address the Court on behalf of another. The lawyer engaged by a party would present the case with clarity and in a professional and responsible manner, keeping in view the glory of the noble profession. However, there would not be any such ethics of advocacy in case a non advocate is permitted to address the Court for another. The legal position is therefore clear that a power of attorney holder is entitled only to act and appear on behalf of his principal and this would not include the right to practice.

12. Section 32 of the Act permitting even a person not enrolled as an Advocate, to appear before the Court is an exception to Section 33 of the Act. Exception cannot be the Rule. The Court should take into account several factors before permitting a non advocate to appear before it in a particular case. Such permission cannot be given in a routine manner.

13. The petitioner represented third parties in several litigations. The learned counsel for the Bank has produced a list of cases in which concerned parties were represented by the petitioner. In case he is permitted to represent and plead before Courts for others regularly, it would amount to grant of permission to practice the profession of law. The prohibition contained under Section 33 of the Act cannot be whittled down by giving permission under Section 32 of the Act to represent the principal and plead on behalf of him in a very routine manner. The legislature appears to have not contemplated such an extreme situation.

The Authorities:-

14. In Bar Council of Maharashtra v. M.V. Dabholkar¹, the Supreme Court observed that canons of conduct cannot be crystallised into rigid rules.

"15. Now to the legal issue bearing on canons of professional conduct. The rule of law cannot be built on the ruins of democracy, for where law ends tyranny begins.

If such be the keynote thought for the very survival of our Republic, the integral bond between the lawyer and the public is unbreakable. And the vital role of the lawyer depends upon his probity and professional lifestyle. Be it remembered that the central function of the legal profession is to promote the administration of justice. If the practice of law is thus a public utility of great implications and a monopoly is statutorily granted by the nation, it obligates the lawyer to observe scrupulously those norms which make him worthy of the confidence of the community in him as a vehicle of justice – social justice. The Bar cannot behave with doubtful scruples or strive to thrive on litigation. Canons of conduct cannot be crystallised into rigid rules but felt by the collective conscience of the practitioners as right."

15. The question whether an agent with a power of attorney to appear and conduct judicial proceeding has the right of audience in Court came up for consideration before a Full Bench of this Court in *Thayarammal v. Pitty Kuppasamy Naidu* (1937) 2 MLJ 552. The Full Bench considered the earlier decisions on the point and held that Rule 1 and 2 of Order III of the Code of Civil Procedure do not give the recognised agent any right to plead in Court on behalf of his principal either in the appellate or original side of the High Court.

16. A Full Bench of this Court considered the right of audience claimed by a power of attorney holder of another in *M.Krishnammal vs. T.Balasubramania Pillai*.⁵

The Full Bench explained the legal position thus :-

"But as an agent under a power of attorney has no right of audience in court, it follows that the power of attorney authorizing him to plead is of no force whatsoever and upon that ground alone his contention must fail. But quite apart from that difficulty, there is no warrant whatever for putting a power of attorney given to a recognised agent to conduct proceedings in Court in the same category as a vakalat given to a legal practitioner, though probably the latter may also be described as a power of attorney.

17. The issue once again came up for consideration before a Division Bench in *D. Sornam, by Power of Attorney D.A.S.Swami v. State of Madras* (1968) MLJ 207. The Division Bench followed the earlier decision of Bombay High Court in *A.S.Patel v. National Rayon Corporation* (AIR 1955 Bom. 262) and held that right of audience in Court, the right to address the Court, the right to

examine and cross examine witnesses are all parts of pleadings and that is not included in the expression "appearance, application or act in or to any Court". The Division Bench with reference to Order III Rule 1 observed that the expression "act" is used in a technical sense and not in a comprehensive sense of any action by a party and its meaning is limited by its being placed in juxtaposition with the words "appearance" and "application". The Division Bench further held that appearance, application or act which the recognised agent may make or do for a party, does not include the right to plead.

18. The Supreme Court in *Harishankar Rastogi v. Girdhari Sharma* (1978) 2 SCC 165 held that a private person, who is not an advocate, has no right to barge into court and claim to argue for a party. The Supreme Court observed that the party must get prior permission of the Court for which the motion must come from the party himself and that it is open to the Court to grant or withhold permission in its discretion. It was held that even after grant of such permission, it is open to the Court to withdraw it half way through if the representative proves himself reprehensible. The Supreme Court sounded a word of caution that the antecedents, the relationship, the reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission. The Supreme Court further said:

2. Advocates are entitled, as of right, to practise in this Court [Section 30(i) of the Advocates Act, 1961]. But, this privilege cannot be claimed, as of right, by anyone else. While it is true that Article 19 of the Constitution guarantees the freedom to practise any profession, it is open to the State to make a law imposing, in the interest of the general public, reasonable restrictions on the exercise of the right. The Advocates Act, by Section 29, provides for such a reasonable restriction, namely, that the only class of persons entitled to practise the profession of law shall be advocates. Even so, is it not open to a party who is unable for some reason or other to present his case adequately to seek the help of another person in this behalf? To negative such a plea may be to deny justice altogether in certain cases, especially in a land of illiteracy and indigence and judicial processes of a sophisticated nature. That is precisely why legislative policy has taken care to provide for such contingencies. Sections 302, 303 and 304 of the Criminal Procedure Code are indicative of the policy of the legislature. I do not think that in this Court we should totally shut out representation by any person other than the party himself in situations where an advocate is not appearing for the party. A

comprehensive programme of free legal services is, in a sense, a serious obligation of the State if the rule of law were to receive vitality in its observance. Until then, parties may appear through advocates, and where they are not represented by one such, through some chosen friend. Such other person cannot practise the profession of habitually representing parties in court. If a non-advocate specialises in practising in court, professionally he will be violating the text of the interdict in the Advocates Act. I cannot allow him to do so. Nevertheless, it is open to a person, who is party to a proceeding, to get himself represented by a non-advocate in a particular instance or case. Practising a profession means something very different from representing some friend or relation on one occasion or in one case or on a few occasions or in a few cases. In the present instance, permission is sought for representation through a non-advocate. It is absolutely clear that anyone who is not an advocate, cannot, as of right, force himself into this Court and claim to plead for another. Permission may, however, be granted by this Court taking the justice of the situation and several other factors into consideration for such non-professional representation. This approach accords with the policy of the Criminal Procedure Code (I am concerned with a criminal proceeding here) as spelt out in Section 2(q). A pleader, by definition, includes any person other than one authorised by law to practise in a court if he is appointed with the permission of the court, to act in a particular proceeding. This Court's power may well be exercised in regulating audience before it in tune with the spirit of Section 2(q) of the Code.

3. If the man who seeks to represent has poor antecedents or irresponsible behaviour or dubious character, the court may receive counter productive service from him. Justice may fail if a knave were to represent a party. Judges may suffer if quarrelsome, ill-informed or blackguardly or blockheadly private representatives fling arguments at the court. Likewise, the party himself may suffer if his private representative deceives him or destroys his case by mendacious or meaningless submissions and with no responsibility or respect for the court. Other situations, settings and disqualifications may be conceived of where

grant of permission for a private person to represent another may be obstructive, even destructive of justice. Indeed, the Bar is an extension of the system of justice; an advocate is an officer of court. He is master of an expertise but more than that, accountable to the court and governed by a high ethic. The success of the judicial process often depends on the services of the legal profession."

19. The Supreme Court in *T.C.Mathai v. District and Sessions Judge* (1999) 3 SCC 614 in the context of Section 2(q) of the Criminal Procedure Code held that in the adversarial system which is now being followed in India, both in Civil and Criminal litigation, it is very necessary that the Court gets proper assistance from both sides.

The Court observed :

9. ... The Bar is one of the main wings of the system of justice. An advocate is the officer of the court and is hence accountable to the court. Efficacious discharge of judicial process very often depends upon the valuable services rendered by the legal profession.

10. But if the person proposed to be appointed by the party is not such a qualified person, the court has first to satisfy itself whether the expected assistance would be rendered by that person. The reason for Parliament for fixing such a filter in the definition clause [Section 2 (q) of the Code] that prior permission must be secured before a non-advocate is appointed by the party to plead his cause in the court, is to enable the court to verify the level of equipment of such a person for pleading on behalf of the party concerned.

20. The Supreme Court in *R.K. Anand v. Registrar, Delhi High Court*, (2009) 8 SCC 106, observed that no judicial system in a democratic society can work satisfactorily unless it is supported by a Bar, that enjoys the unqualified trust and confidence of the people, that shares the aspirations, hopes and the ideals of the people and whose members are monetarily accessible and affordable to the people.

21. The Supreme Court in *Goa Antibiotics & Pharmaceuticals Ltd. v. R.K. Chawla*³, considered Sections 29 and 33 of the Advocates Act and observed that only a person who is enrolled as an advocate can practice in a Court, except where otherwise provided by law. The Supreme Court opined that a natural person

can appear in person and argue his own case personally but he cannot give a power of attorney to anyone other than a person who is enrolled as an advocate.

The Supreme Court further said :-

7. There is a distinction between the right to appear on behalf of someone, which is only given to enrolled lawyers, and the discretion in the court to permit a non-lawyer to appear before it. Under Sections 29 and 33 of the Act only those persons have a right to appear and argue before the court who are enrolled as an advocate while under Section 32 of the Act, a power is vested in the court to permit, in a particular case, a person other than an advocate to appear before it and argue the case. A power-of-attorney holder cannot, unless he is an enrolled lawyer, appear in court on behalf of anyone, unless, permitted by the court under Section 32 of the Act, though of course he may sign sale deeds, agreements, etc. and do other acts on behalf of someone else, unless prohibited by law.

22 (a) The petitioner placed reliance on the decision of Supreme Court in C.Venkatachalam vs. Ajithkumar C.Shah and others⁴, in support of his contention that non advocates are permitted to appear before the Tribunals.

(b) In C.Venkatachalam, the Supreme Court considered the provisions of the Consumer Protection Act and held that when the legislature has permitted the authorized agents to appear on behalf of the complainant, then the Courts cannot compel the consumer to engage the services of an advocate. The said judgment was with reference to the Consumer Protection Act. The legislature has given an option to the parties before the consumer forums to either personally appear or be represented by an "authorized agent" or by an advocate.

(c) We are not presently dealing with the issue as to whether a person is entitled to appear before the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal on the basis of power of attorney. Here the issue is whether the petitioner, in his capacity as power agent, is entitled to address this Court on behalf of his principal. The decision in C.Venkatachalam therefore has no bearing on the preliminary issue to be decided in this Writ Petition.

23. A lawyer is an Officer of Court. While discharging the professional assignment as a legal practitioner, the lawyer owes a duty not only to his client, but also to the Court, his opposite party and to the Society in general. In fact he owes a duty to himself.

<https://hcservices.ecourts.gov.in/hcservices/>

24. A non advocate is not subjected to any of the

restrictions prescribed under the Advocates Act. He is not bound by any of the rules of professional misconduct or etiquette. He is not amenable to the disciplinary jurisdiction. He is not accountable to the people and does not owe a duty to his opponent. He is not concerned with professional ethics. He is not even concerned with the Court or administration of justice. As observed by the Supreme Court in Harishankar², if a non advocate specializes in practicing in Court, professionally, he will be violating the text of the interdict in the Advocates Act. The Supreme Court in Harishankar observed that practicing a profession means something very different from representing some friends or relation on one occasion or in one case or on a few occasions, or in a few cases. Therefore there is a clear embargo in pleading before the Courts by a person not enrolled as an Advocate on the roll of a Bar Council. To put it otherwise, as observed by the Supreme Court in Harishankar any one who is not an Advocate, cannot, as of right, barge himself into the Court and claim to plead for another.

Rules framed by High Court:-

25. By virtue of Article 225 of the Constitution of India, the High Court made rules to regulate the proceedings under Article 226 of the Constitution of India. Rule (1) provides that petition for direction, order or writ, shall be filed in the office of the Registrar by the petitioner or his duly authorized advocate or attorney. The Writ Petition shall be signed by the petitioner or his advocate or attorney. Rule 21 deals with hearing as to admission. As per the said rule, the petition filed under Article 226 of the Constitution of India, after it is numbered, would be posted before the Court for hearing as to admission. The Court may, on hearing the petitioner, or advocate, either admit the Writ Petition or reject it. Such being the rule position, the petitioner has no right to insist that he should be permitted to address the Court on behalf of his principal.

26. The question as to whether the petitioner being the power agent of the appellant is entitled to represent the principal before DRAT is a separate issue to be decided in the writ petition. We are now concerned only with the question as to whether even to decide the said issue, the petitioner could be permitted to address the Court.

Conclusion:-

27. In view of the reasons aforesaid, we hold that the petitioner being a third party, is not entitled to address this Court on behalf of his principal. We therefore decide the preliminary issue against the petitioner. It is open to the writ petitioner to argue the matter in person or engage a counsel of his choice.

28. The preliminary issue is decided accordingly.

Sd/-
Asst.Registrar (CS V)

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Sub Asst. Registrar

Tr/tar

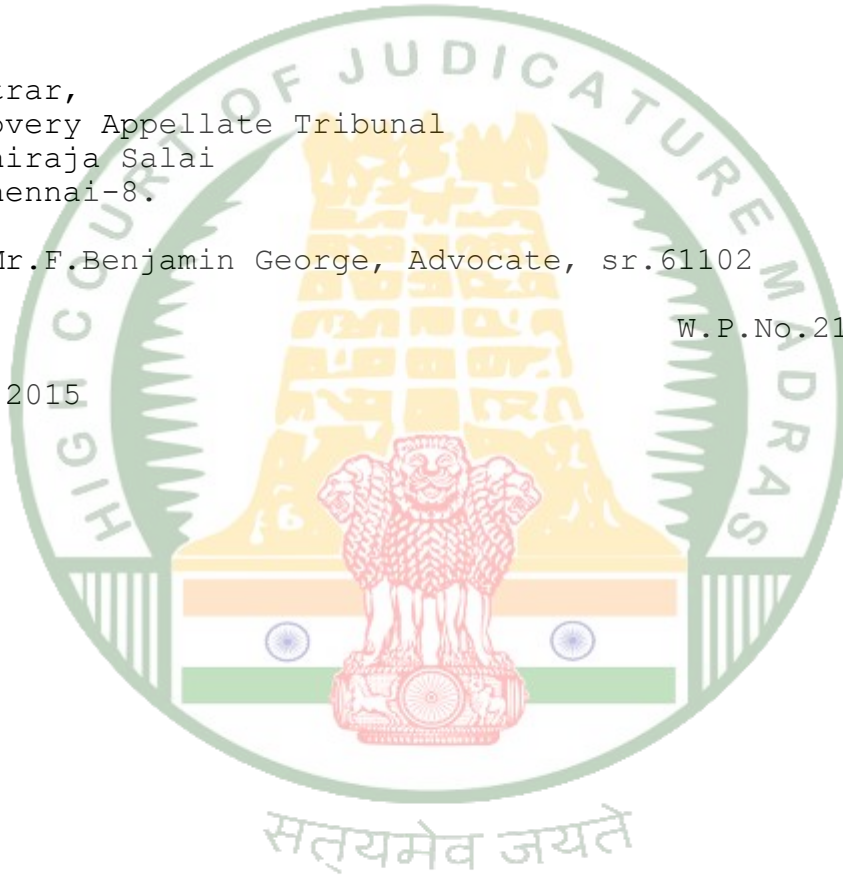
To

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+1 cc to Mr.F.Benjamin George, Advocate, sr.61102

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