

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION Nos.3369 and 4215 of 2015

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COMMON ORDER:

The 7th defendant in O.S. No.1381 of 2007 on the file of the Court of the learned II Additional Junior Civil Judge, Kakinada, East Godavari District, filed the present Civil Revision Petitions against the common order dated 02.07.2015 in I.A. Nos.590 and 591 of 2015 passed by the aforesaid learned II Additional Junior Civil Judge.

The first respondent herein filed the above suit for declaration of title over the encroached portion in the plaint plan, which is part of the plaint schedule property. The petitioner herein filed vakalat, written statement and chief affidavit as a G.P.A. holder of 7th defendant without filing the application seeking permission of the Court under Rule 32 of the A.P. Civil Rules of Practice (for short, 'the Rules'). The same was noticed at the time of cross-examination of 7th defendant. The petitioner filed the above two applications seeking permission of the Court to accept the petition under Rule 32 of the Rules and ratify the actions taken by him earlier as G.P.A. holder. Those two applications were dismissed on the ground that clear permission of the Court is mandatory when a party represents as a G.P.A. holder. For coming to the said conclusion, the trial Court relied on a decision of the Supreme Court of India between **Harishankar Rastogi v. Girdhari Sharma**.

In the instant case, it is clear from the record that the G.P.A. holder already filed vakalat, written statement and the chief affidavit, and the office did not take any objection for filing those documents without a petition being filed under Rule 32 of the Rules. Now, when the petitioner realised the mistake before standing for cross-examination, he filed the present two applications. The lower Court without properly exercising its discretion dismissed the applications.

Rule 32 of the A.P. Civil Rules of Practice reads as follows:

"32. Party appearing by Agent:--

1. When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the Court, file in Court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of a party, without a written authority, an affidavit stating the residence of his principal, the trade or business carried on by the agent on his behalf and the connection of the same with the subject-matter of the suit, and that no other agent is expressly authorized to make or do such appearance, application or act.
2. The Judge may thereupon record in writing that the agent is permitted to appear and act on behalf of the party; and unless and until the said permission is granted, no appearance, application, or act, of the agent shall be recognised by the Court.

In the case of **Harishankar Rastogi** (supra), the person, who is not a party to the criminal proceedings and who is not an advocate, filed an application to argue on behalf of a party. When the petitioner therein justified his stand by citing a number of decisions to show that private persons may be permitted by the Court to appear, act and plead, it was held that he must get prior permission of the Court, for which the motion must come from the party himself. It was further held that it was open to the Court to grant or withhold permission in its discretion, and ultimately the Court exercised its discretion and granted permission. The said case arose under the provisions of Section 32 of the Advocates Act, 1961.

In a Division Bench decision of this Court in **M/s. Kamal Silk Mills v. Kuncham Mohana Rao**, the Executing Court dismissed the execution petition, filed by Power of Attorney holder of decree holder, for non-compliance with the procedure contemplated under Rule 32 of the Rules. When an objection was taken by the judgment debtor, which was not taken during pendency of the suit, this Court permitted the original decree holder to file an affidavit affirming the appointment of Power of Attorney to represent the Firm, and that Power of Attorney is still in force and such affidavit was filed before this Court. Taking that affidavit into consideration, this Court held that the dismissal of E.P. by the

Executing Court was incorrect. The said matter came up before the Division Bench, on a reference made by a learned Single Judge in the same case when the learned Single Judge noticed that there was no specific provision under Order XXI C.P.C relating to filing of affidavit of GPA holder and observing that the Court below should not have dismissed the execution petition on procedural technicality. Later on in **Ms. Ismath Ahmedizade Mahmoodi Abidi v. Mrs. Kurshidunnisa Begum**, the learned Single Judge of this Court held that a GPA holder cannot be permitted to depose on behalf of the party, but he/she can appear as a witness in his/her personal capacity to speak about facts of the case in his/her personal knowledge. For arriving to that conclusion, the learned Single Judge took into consideration the decision of this Court in **K.Bharathi v. Labour Officer**.

In the case of **Surender Raj Jaiswal and others v. Vijaya Jaiswal**, another learned Single Judge of this Court considered the case of representation of the husband of the plaintiff as Power of Attorney holder to appear and prosecute by tendering evidence; this Court considered the provisions of Section 32 of the Advocates Act, 1961, and also the case of **Harishankar Rastogi** (supra).

The said issue came up for consideration before the Division Bench in **Secretary to Government of India, Ministry of Defence v. Indira Devi and another** and it was held that when a GPA holder enters into the shoes of the party and except to the extent of personal knowledge, he is entitled to depose on other facts.

Another learned Single Judge of this Court in the case of **Nethra Chits (P) Ltd. v. B.Ramachandra Reddy (died)** considered Rule 32 of the Rules and held that obtaining of permission to present the plaint at best can be said to be curable irregularity.

The two Judge Bench of the Supreme Court in **T.C. Mathai v. District and Sessions Judge, Thiruvananthapuram** considered the case of a person claiming to be a Power of Attorney holder seeking permission to appear and plead on behalf of respondents in criminal case. After considering the case of **Harishankar Rastogi** (supra), the Supreme Court held as follows:

“11. Appellant submitted that he is the duly appointed attorney of the respondent-couple by virtue of an instrument of power of attorney executed by them and on its

strength he contended that his right to represent the respondent-couple in the court would be governed by the said authority in the instrument.

12. In Stroud's Judicial Dictionary, power of attorney is described as "an authority whereby one is set in the turne, stead, or place of another to act for him". In Black's Law Dictionary it is described as the instrument by which a person is authorised to act as an agent of the person granting it. Section 2 of the Power of Attorney Act, 1882 empowers the donee of a power of attorney to do anything "in and with his own name and signature" by the authority of the donor of the power. Once such authority is granted the said Act recognises that everything done by the donee "shall be as effectual in law as if it had been done by the donee of the power in the name and with the signature of the donor thereof.

13. Under the English Law, "every person who is sui juris has a right to appoint an agent for any purpose whatsoever, and he can do so when he is exercising statutory right no less than when he is exercising any other right", [vide *Jackson & Co. v. Napper*]. But this Court has pointed out that the aforesaid common law principle does not apply where the act to be performed is personal in character, or when it is annexed to a public office or to an office involving and fiduciary obligation, (vide *Ravulu Subba Rao and Ors. v. Commissioner of Income-tax, Madras*).

14. Section 2 of the Power of Attorney Act cannot override the specific provision of a statute which requires that a particular act should be done by a party in person. When the Code requires the appearance of an accused in a court it is no compliance with it if a power of attorney holder appears for him. It is a different thing that a party can be permitted to appear through counsel. Chapter XVI of the Code empowers the Magistrate to issue summons or warrant for the appearance of the accused. Section 205 of the Code empowers the Magistrate to dispense with "the personal attendance of accused, and permit him to appear by his pleader" if he sees reasons to do so. Section 273 of the Code speaks of the powers of the court to record evidence in the presence of the pleader of the accused, in cases when personal attendance of the accused is dispensed with. But in no case can the appearance of the accused be made through a power of attorney holder. So the contention of the appellant based on the instrument of power of attorney is of no avail in this case.

15. In this context reference can be made to a decision rendered by a Full Bench of the Madras High Court in *M. Krishnammal v. T. Balasubramania Pillai*, when a person, who was the power of attorney holder of another, claimed right of audience in the High Court on behalf of his principal. A Single Judge referred three questions to be considered by the Full Bench, of which the one which is relevant here was whether an agent with the power of attorney to appear and conduct judicial proceedings has the right of audience in court. Beasley, C.J., who delivered the judgment on behalf of the Full Bench stated the legal position thus:

"An agent with a power of attorney to appear and conduct judicial proceedings, but who has not been so authorised by the High Court, has no right of audience on behalf of principal, either in the appellate or original side of the High Court.... There is no warrant whatever for putting a power of attorney given to a recognized agent to conduct proceedings in court in the same category as a vakalat given to a legal practitioner, though latter may be described as a power of attorney which is confined only to pleaders, i.e. those who have a right to plead in courts."

16. The aforesaid observations, though stated sixty years ago, would represent the correct legal position even now. Be that as it may, an agent cannot become a “pleader” for the party in criminal proceedings, unless the party secures permission from the court to appoint him to act in such proceedings. The respondent-couple have not even moved for such permission and hence no occasion has arisen so far to consider that aspect.

17. The appeal is accordingly dismissed.”

However, the above case was considered under the provisions of Section 303 of the Code of Criminal Procedure and Section 32 of the Advocates Act, 1961.

In the circumstances, the discretion exercised by the Court below in dismissing I.A. No.590 and 591 of 2015, filed by the petitioner/7th defendant, by common order dated 02.07.2015 is not proper, and the same is set aside and the applications are accordingly allowed.

Accordingly, these Civil Revision Petitions are allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed.

A.RAMALINGESWARA RAO, J

30.11.2015

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THE HON’BLE SRI JUSTICE A.RAMALINGESWARA RAO

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Date: 30.11.2015

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