

***THE HON'BLE SRI JUSTICE P. NAVEEN RAO**

% Dated : 21.04.2015

+ CIVIL REVISION PETITION NOS.537 AND 555 OF 2015

Bhoodeva Reality & Development Pvt.Ltd., rep.by its

Authorized signatory, Y.V.H.Prasad, s/o. late Sri

Y.V.Sanjivaiah, aged about 62 years, having its

registered office at Sahara India Point, CTS 40 & 44,

S.V.Road, Goregaon (W), Mumbai-4 and others.

.... Petitioners

AND

\$ P.Veena W/o. Madhukesava Reddy, Aged about 27

years, House wife, D.M.K.Residency, Flat No.303,

Nehru Nagar, Khammam Town and District.

.. Respondent

! Counsel for Petitioners : Sri Karanam Ramesh

^Counsel for Respondent : K. Srinivas

<GIST :

>HEAD NOTE :

? Cases referred :

1. 2005 (2) ALT 57 (SC)

2. (1996) 6 SCC 660

HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.537 AND 555 OF 2015

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C.R.P.NO.537 OF 2015

Between:

Bhoodeva Reality & Development Pvt.Ltd., rep.by its
Authorized signatory, Y.V.H.Prasad, s/o. late Sri
Y.V.Sanjivaiah, aged about 62 years, having its
registered office at Sahara India Point, CTS 40 & 44,
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Nehru Nagar, Khammam Town and District.

.. Respondent

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

Heard Sri Karanam Ramesh counsel for the petitioners and Sri K.Srinivas for the respondent.

2. In C.R.P.No.555 of 2015 petitioners challenge the order passed by the I Additional District Judge, Ananthapuramu, dated 19.06.2014 in I.A.No.212 of 2014 in O.S.No.5 of 2012 allowing I.A., filed by the plaintiff in the suit holding that chief-affidavit filed by D.W.1 in lieu of chief-examination and the decision of D.W.1 to depose on behalf of the defendants' companies is not valid in law and, therefore, he cannot represent and thus chief-affidavit is not permissible.

3. In C.R.P.No.537 of 2015 petitioners challenge the order passed by the I Additional District Judge, Ananthapuramu dated 20.10.2014 in I.A.No.780 of 2014 in O.S.No.5 of 2012 in rejecting the application filed by the petitioners seeking permission of deponent to represent on behalf of the defendants' companies.

4. As the issue for consideration in both the revision petitions is same, both revision petitions are disposed of by this common order.

5. The Court below holds that D.W.1 as General Power of Attorney holder cannot depose for the principal for the acts done by the principal and in respect of matters of which the only principal has personal knowledge and in respect of which only the

principal is entitled to be cross-examined. It is further observed that in the chief-affidavit filed by D.W.1, he did not mention that he would depose on behalf of the defendants confining in respect of the acts done by him in exercise of power granted to him by the defendants and in the absence of it, the authorized person filing chief-affidavit on behalf of the defendants to give evidence as D.W.1 is not permissible. In support of the said decision, the Court below has relied upon the decision of the Supreme Court in the case of **Janki Vashdeo Bhojwani and another v. Indusind Bank Limited and others**. As a consequence and following the decision, I.A.No.780 of 2014 is also rejected. It is further held that the petitioners have not taken permission under Rule 32 of Civil Rules of Practice before filing vakalath and written statement through their authorized agent. It is further held that principal cannot be substituted by a power of attorney holder.

6. Learned counsel for the petitioners submits that the said decision of the Court below is erroneous and contrary to the provisions contained in Order XXIX Rule 1 read with Order VI Rule 14 of Civil Procedure Code, 1908. Learned counsel further submits that defendants are the juristic persons. Juristic persons cannot depose on their own nor they can stand in the witness box and give evidence. Therefore, some person has to represent such juristic person. Thus special provision is made in Order XXIX with reference to the suits by or against juristic persons. The juristic person can be represented by any person connected to such juristic person. In the instant case, each of the defendants' companies have given specific authorization in favour of Sri Y.V.H.Prasad to represent on behalf of the defendant companies and in pursuant to such authorisation only, Sri Y.V.H.Prasad has applied for deposing evidence as D.W.1 and also filed chief-affidavit on behalf of the defendants' companies. Learned counsel further submits that decision relied by the Court below is not applicable to the facts of this case. Learned counsel further submits that as held by the Supreme Court in the case of **United Bank of India v. Naresh Kumar and others**, any person authorized by a juristic person can represent on behalf of such person and it is not necessary that such person must have personal knowledge with reference to the issue in the suit.

7. Learned counsel for the respondent submits that in accordance with the provision contained in Order XXIX Rule 1 of C.P.C., the person who can be authorized to

depose on behalf of a juristic person should be either Secretary or Director or other principal Officer of the concerned company. In the instant case, the deponent has not disclosed as to in what capacity he is representing. The authorisations given do not disclose the status of the person and apparently he is not falling into three categories mentioned in Order XXIX Rule 1 of C.P.C., there is no error in the decision taken by the Court below.

8. On this issue, the principle of law is no more *res integra*. On detailed consideration of relevant provisions of the Civil Procedure Code, Supreme Court in **United Bank of India**, held that in addition there to and dehorse Order XXIX Rule 1 of the C.P.C., as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order VI Rule 14 of C.P.C. Supreme Court further held that a person may be expressly authorized to sign the pleadings on behalf of the company by way of resolution by the Board of Directors to that effect or by a power of attorney being executed in favour of any individual. It is also permissible to a company to ratify the action of its officer in signing the pleadings on its behalf. Court observed that sufficient power is vested in the Courts under the Code of Civil Procedure to ensure that injustice is not done to any person who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

9. In the instant case, there was authorization by all the ten defendant companies in favour of Sri Y.V.H.Prasad. The authorization was by way of resolution passed by the respective Board of Directors. The correctness or otherwise of this authorization is not doubted. The only contention urged on behalf of the plaintiff was that since the person in whose favour authorization is given, cannot have personal knowledge and thus, he cannot file chief-affidavit and stand as a witness to depose on various issues concerning the suit.

10. The Court below erred in not distinguishing the decision of the Supreme Court in **Janki Vashdeo Bhojwani**. In the said case, the concerned person sought to represent on behalf of two individuals. Those two individuals were defendants in addition to company. Supreme Court held that since power of attorney was given in

individual capacity, GPA holder cannot represent on behalf of such individual and cannot depose in respect of acts done by such individual. Therefore, the said decision has no application to the facts of this case. On the contrary the principle laid down by the Supreme Court in **United Bank of India** applies in all fours to the facts of this case. Sri Y.V.H Prasad is a person who is validly appointed to represent on behalf of the defendant companies and is entitled to file chief-affidavit and also to depose on behalf of the defendant companies.

11. Having regard to the same, Civil Revision Petitions are allowed. There shall be no order as to costs. Miscellaneous petitions if any pending in these revision petitions shall stand closed.

_____**JUSTICE P.NAVEEN RAO**

Date : 21.04.2015

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Note : Mark L R Copy.-- Yes

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