

HON'BLE SRI JUSTICE A.V. SETHA SAI

CIVIL REVISION PETITION No.835 of 2014

AND

CIVIL REVISION PETITION No.836 of 2014

Date: March 18, 2015

CIVIL REVISION PETITION No.835 of 2014

Between:

1. Gurram Srinivas & another

Petitioners

And

1. Mirza Usman Bag & 3 others.

Respondents

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CIVIL REVISION PETITION No.836 of 2014

Between:

1. Gurram Srinivas

Petitioner

And

1. Mirza Usman Bag & 2 others.

Respondents

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HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.835 of 2014

AND

CIVIL REVISION PETITION No.836 of 2014

COMMON ORDER:

Since these two revisions are identical and the question of law involved in these two revisions is one and the same, this Court deems it appropriate to dispose of these revisions by way of this common order.

2. Heard Sri B. Narasimha Sarma, learned counsel for the petitioners and M/s.Indus Law Firm, for the respondents apart from perusing the material available before this Court.

3. Petitioners in C.R.P.No.835 of 2014 are the son of defendant No.1 and defendant No.2 respectively in O.S.No.167 of 2010 filed by the respondents for perpetual injunction and the petitioner in C.R.P.No.836 of 2014 is son of the plaintiff in O.S.No.82 of 2012. The father of the petitioner in C.R.P.No.836 of 2014 viz., Sri G. Ilaiah filed the said O.S.No.82 of 2012 for permanent injunction. In the above said suits, the present applications namely I.A.No.1023 of 2013 and I.A.No.1024 of 2013 were filed under the provisions of Rule 32 of the Civil Rules of Practice and Order III Rule 2 and Section 151 of the Code of Civil Procedure (CPC), seeking permission of the Court to appear and depose on behalf of defendant No.1

in O.S.No.167 of 2010 and plaintiff in O.S.No.82 of 2012. The said applications were resisted by the respondents herein by filing counter. The learned Principal Junior Civil Judge, Huzurabad, by way of orders dated 04.12.2013, dismissed the said applications. Calling in question the validity and legal sustainability of the said orders passed by the learned Principal Junior Civil Judge, Huzurabad, the present revisions have been filed.

4. It is contended by the learned counsel for the petitioners that the orders passed by the Court below are erroneous, contrary to law and are opposed to very spirit of object of the provisions of Rule 32 of the Civil Rules of Practice and Order III Rule 2 of CPC. It is further contended by the learned counsel that the Court below did not properly consider the clauses in the General Power of Attorney given by Sri G. Ilaiah. It is nextly contended that the Judgment of the Hon'ble Supreme Court on which the learned Principal Junior Civil Judge, Huzurabad, placed reliance in the impugned order has absolutely no relevance to the facts and circumstances of the case. It is further contended that as Sri G. Ilaiah is an old aged

man of 88 years, the Court below ought to have considered the applications filed by the petitioners herein.

5. On the contrary, it is submitted by the learned counsel for the respondents that the orders passed by the Court below are strictly in conformity with law and there is no illegality nor any material infirmity in the orders, as such the present revisions are not maintainable under Article 227 of the Constitution of India. It is also submitted that neither the General Power of Attorney issued by Sri G. Ilaiah nor the plaint filed in O.S.No.82 of 2012 does disclose any involvement of the General Power of Attorney holder. It is also submitted by the learned counsel that absolutely there is no evidence placed on record to show that Sri G. Ilaiah is suffering from illness and is not in a position to come to Court. It is also contended by the learned counsel that the existence of a clause in the General Power of Attorney does not automatically enable the General Power of Attorney holder to depose in a Court of law on behalf of the principal. In support of his submissions and contentions, the learned counsel for the respondents places reliance on the judgment

i n **Janki Vashdeo Bhojwani V . Indusind Bank**
Ltd.^[1]

6. In the above background now the issues which this Court is called upon to answer in the present revisions are:

- (1) Whether the orders passed by the Court below are in accordance with Rule 32 of the Civil Rules of Practice and Order III Rule 2 of CPC?
- (2) Whether the orders impugned warrant any interference of this Court under Article 227 of the Constitution of India?

7. According to the information available in this Court both the suits i.e., O.S.No.167 of 2010 and O.S.No.82 of 2012 are the suits for the relief of perpetual injunction. In both the suits identical applications, vide I.A.No.1023 of 2013 and I.A.No.1024 of 2013, were filed under Rule 37 of the Civil Rules of Practice read with Order III Rule 2 CPC, seeking permission of the Court to depose on behalf of the plaintiff in O.S.No.82 of 2012 and the first defendant in O.S.No.167 of 2010. In the affidavits filed in support of the above applications it is stated that the petitioner's father is aged about 88

years and is suffering from old age ailments like deaf, sight, back pain, sugar, joint pains etc., and is not in a position to move from bed. It is further stated that as per the registered General Power of Attorney deed bearing Document No.16/2013 dated 26.08.2013 the General Power of Attorney holder is authorized to act, depose and to do all things which are necessary on behalf of the principal.

8. In the counter-affidavit, opposing the said application, it is categorically stated that Sri G. Ilaiah is hale and healthy and is not suffering from any diseases as alleged and no medical certificate is filed with regard to the diseases mentioned in the affidavit and the General Power of Attorney is executed only to evade, deposing before the Court. It is further stated that if the principal is examined, all the real facts would come to light. It is also stated that if the principal cannot appear as a witness, it is open for him to seek examination by getting a commission issued under Order XXVI.

9. From perusal of the orders passed by the Court below which are impugned in the present revisions, it would be very much clear that the Court below considered thoroughly the entire material

available on record and the effect of Rule 32 of the Civil Rules of Practice and Order III Rule 2 of CPC. The Court below also took into consideration the judgment of the Hon'ble Apex Court in **Janki Vashdeo Bhojwani V . Indusind Bank Ltd.** (1 supra). At this juncture, it would be appropriate to refer to the principle laid down by the Hon'ble Apex Court in the above referred judgment. Paragraph 13 of the said judgment reads as under:

“Order III. Rules 1 and 2 CPC, empowers the holder of power of attorney to “act’ on behalf of the principal. In our view the word “acts” employed in Order III, Rules 1 and 2 CPC, confines only in respect of “acts” done by the power of attorney holder in exercise of power granted by the instrument. The term “acts” would not include deposing in place and instead of the principal. In other words, if the power of attorney holder has rendered some “acts” in pursuance to power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for the acts done by the principal and not by him. Similarly, he cannot depose for the principal in respect of the matter which only the principal can have a personal knowledge and in respect of which the principal is entitled to be cross-examined.”

10. In the orders under revision the learned Principal Junior Civil Judge, Huzurabad, categorically recorded a finding that the power of attorney can speak about the facts which are within his personal knowledge and the power of attorney is

not a substitute for a party and the power of attorney cannot speak about the facts which are exclusively within the knowledge of the party concerned, who is the “principal”. It is also observed by the learned Judge that a GPA holder cannot become a substitute to the principal and he can appear only as a witness in his personal capacity. The learned Judge also observed that there is no material brought on record that the “principal” is suffering from the ailments as mentioned in the petition. Eventually, the learned Judge also observed that the “principal” is at liberty to file a petition for appointment of a commissioner for recording his evidence.

11. In the considered opinion of this Court, the reasons assigned by the Court below are perfectly valid, cogent and convincing and this Court does not find any jurisdictional error or perversity in the said orders, as such this Court is not inclined to meddle with the orders impugned. It is settled and well established proposition of law that unless the orders impugned suffer from patent perversity and jurisdictional error, the invocation of jurisdiction of this Court under Article 227 of the Constitution of

India is impermissible.

12. For the aforesaid reasons and having regard to the reasons recorded by the learned Principal Junior Civil Judge, Huzurabad, and the ratio laid down by the Hon’ble Apex Court in **Janki Vashdeo Bhojwani V. Indusind Bank Ltd.** (1 supra), the civil revision petitions are dismissed.

13. Pending miscellaneous petitions, if any, shall stand dismissed in consequence. No order as to costs.

A.V.SESHA SAI, J

Date: March 18, 2015.
BSB

HON’BLE SRI JUSTICE A.V. SESHA SAI

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BSB

[1] 2005 (2) ALT 57 (SC)