

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

LPA No.335 of 2014 (O&M)
Date of decision: **April 24, 2015**

Smt. Sudarshan Gaur and another ...Appellants

Versus

Tarsem Kumar and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

--

Present: - Mr. Arvind Mittal, Advocate
for the appellants.

Mr. Raj Kaushik, Advocate
for respondents No. 1 and 2.

Mr. K.K. Gupta, Addl. A.G., Punjab.

-

HARINDER SINGH SIDHU,J.

This intra Court appeal under Clause X of the Letters Patent has been filed against the judgment and order dated 04.12.2013 passed by the learned Single Judge whereby the writ petition (CWP No.19742 of 2012) filed by respondents No. 1 and 2 was allowed and the order dated 13.10.2011 (Annexure P-6) passed by respondent No.4 accepting the joint application of the appellants and allowing the transfer of Mini Bus

No. PB-11-AC-9208 along with the rights of one regular Stage Carriage Permit No.975 for plying four return trips daily on Derra Bassi-Bhagsi route in the name of appellant No.1 was quashed. In the said writ petition, the revisional order dated 28.08.2012 (Annexure P-8) dismissing the revision filed by respondents Nos.1 and 2 against the order dated 13.10.2011 was also quashed.

Respondents No.1 and 2 had executed an irrevocable Power of Attorney dated 22.07.2010 (Annexure P-1) in favour of appellant No.2 constituting him as their true and lawful attorney with regard to a mini bus covered with route permit No.975/REG/MB/2003 from Derra Bassi to Bhagsi via Barwala (six) Trips. As per paragraph 6 of this deed appellant No.2 was authorized to sell or transfer the ownership of the vehicle as deemed proper, to apply for NOC to the concerned authority and receive NOC from the office. Paragraph 8 authorized him to do all other necessary things, which may be required to be done for its effective use on the road and selling and transferring to someone else. Paragraph 11 authorized him to apply for a new permit/ State/ National and renew the same.

The pleaded case in the writ petition was that appellant No.2 started to misuse the concession and was not operating the bus on the

sanctioned route resulting in it becoming an illegal operation. Hence, respondents No. 1 and 2 served a legal notice dated 09.06.2011 on appellant No.2 cancelling the notarized Power of Attorney executed in his favour. Through this legal notice, appellant No.2 was requested to return the bus in question along with the original papers within 15 days. A copy of the legal notice was got published in the 'Transport Times' in its issue dated 15.07.2011.

Appellants No. 1 and 2 submitted a joint application before respondent No.4 for transfer of mini bus along with the right of the permit in favour of appellant No.2. When notice of the said transfer was published in the Motor Transport Gazette (Weekly) dated 01.08.2011, respondents No.1 and 2 submitted an application dated 25.08.2011 before respondent No.4 stating that the Power of Attorney issued in favour of appellant No.2 has been cancelled and that the permit be not transferred in the name of appellant No.1 as requested in the joint application of appellants No.1 and 2. Despite this, respondent No.4 accepted the joint application of the appellants and allowed the transfer of the bus along with rights of the regular Stage Carriage Permit in the name of appellant No.1. The revision petition filed by respondents No.1 and 2 against the said order was dismissed vide order dated 28.02.2012.

Thereafter respondents No.1 and 2 filed the writ petition, which was allowed.

Learned Single Judge held that the Power of Attorney only authorized appellant No.2 to sell or transfer the ownership of the vehicle and not the route permit as the two are different and distinct properties. It was held that if it were the intention to authorize the transfer of route permit as well, a specific mention thereof would have been made in the deed. Furthermore, the said Power of Attorney was cancelled by respondents No.1 and 2 by serving a legal notice on appellant No.2 and also getting it published in the 'Transport Times' dated 15.07.2011 which was before the impugned orders were passed by the respondent No. 4. Hence the impugned orders dated 13.10.2011 and 28.8.2012 were quashed.

Learned counsel for the appellants has argued that the Power of Attorney was irrevocable and that before the execution of this power of attorney full consideration has been accepted by the respondents and they were not authorized to revoke the Power of Attorney. He further states that the Ld. Single Judge has erred in holding that the power of attorney did not authorise the transfer of permit.

We are unable to agree with the aforesaid submissions of the

Ld. Counsel.

We agree with the Ld. Single Judge that the power of attorney does not specifically authorise the appellant No. 2 to sell or transfer the permit. Paragraph No. 6 authorized the appellant No. 1 to sell or transfer the ownership of the vehicle, to apply for NOC to the concerned authority and receive NOC from the office.

Ld. Counsel for appellant referred to Paragraph 8 and the last unnumbered para as containing the necessary general authorization to do all acts in relation to the vehicle including transfer of the permit. Para 8 reads thus:

“To do all other necessary things which may be required to be done for effective it on the road and selling and transferring to some one else.”

The last unnumbered para reads thus:

“To do all kinds of function in respect of the said vehicle whichever owned and possessed by me. To appoint Special Power of Attorney.”

We cannot read these paragraphs as containing the authorization to transfer the permit. The general words of these paragraphs cannot be construed as giving a general power to do all kinds of acts, but have to be read as restricted to what is necessary for the proper performance of the particular acts enumerated in the power of

attorney. (Atma Ram Sahni Vs. Chitra Production Co. AIR 1952 Punj. 99). Clearly transfer of permit is not one of them.

Paragraph 11 authorized him *"To apply for a new permit/ State/ National and renew the same."* It is significant that there is no specific authorization to transfer the permit. Ld. Counsel for the appellants has not been able to refer to any other paragraph whereby specific power to transfer the permit has been given.

Further, the mere recording in the power of attorney that it is irrevocable, is not conclusive of the fact that it is in fact so. Whether it was indeed irrevocable or not could only be determined by a civil court. Pending such determination, the cancelled power of attorney could not have been acted upon.

Moreover, as per section 202 of the Indian Contract Act, 1872, a contract would be irrevocable only if the terms thereof disclose that it created or recognized an agency coupled with interest in favour of the agent. Section 82 of the Motor Vehicles Act, 1988 provides that a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that

vehicle in the manner authorized by the permit. In the face of this statutory provision prohibiting transfer of a permit except with the permission of the transport authority, it is extremely doubtful whether an irrevocable power of attorney can be given in respect of transfer of permit which implies that interest in the permit was transferred to the agent without the permission of the authorities, something which is prohibited by Section 82 above.

Accordingly, there is no merit in the appeal and the same is dismissed.

(SATISH KUMAR MITTAL) (HARINDER SINGH SIDHU)
JUDGE JUDGE

April 24, 2015

Atul