

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1959 OF 2015

IN

SUIT NO. 57 OF 2016

Mr. Naminath Shreepad Realty LLP and Ors. ... Applicants / Plaintiffs

Versus

Mr. Kantilalji Voridasji Ranka and Ors. ... Defendants

Mr. Kharawala for the Applicants / Plaintiffs.

Mr. Anand Charanbir for Defendant No. 1.

Ms. Vaishali Thorat i/b. Pratibha D. Shelake for Defendant Nos. 2 to 5.

CORAM : S.J. KATHAWALLA, J.

DATED : 27TH JANUARY, 2016

P.C.:

1. On 13th January, 2016 this Court passed the following order :

1. Heard the learned Advocates for the parties. Perused the Notice of Motion and the Affidavit in support thereto. For reasons set out in the Affidavit in support of the Notice of Motion, the Notice of Motion is allowed in terms of prayer clause (a), which is reproduced hereunder :

“(a) that this Hon'ble Court be pleased to set aside the order dated 15-09-2015 passed by Ld. Prothonotary and Senior Master of this Hon'ble Court and be please to restore the above said suit from the stage where it was dismissed;

2. The Plaintiffs shall remove Office objections within a period of one week from today and get the Suit numbered.

3. The Notice of Motion is accordingly disposed of.”

2. After the above order was passed, Mr. Anand Charanbir, Advocate for

Defendant No. 1 raised an objection that the General Power of Attorney based on which the Plaint has been affirmed is not produced by the Plaintiff. This Court therefore orally directed the Advocate for the Plaintiff to provide inspection of the General Power of Attorney and also a copy of the same to the Advocates for Defendant Nos. 1, 2 to 5. Pursuant to the said order, office has numbered the Suit on 18th January, 2016. The Advocates for the Defendants thereafter pointed out to this Court that a copy of the General Power of Attorney was not forwarded to them by the Advocate for the Plaintiff on 13th January, 2016 and the General Power of Attorney now produced by them is not notarised and appears to be fabricated. In view thereof, the order passed by this Court dated 13th January, 2016 was recalled by this Court and parties were allowed to make their submissions qua the said Power of Attorney.

3. I have therefore, once again heard the learned Advocates appearing for the parties and have considered the decision relied upon by the Advocate for the Plaintiff including the decisions of the Hon'ble Supreme Court in United Bank of India V/s. Naresh Kumar and others reported in (1996) 6 Supreme Court Cases 660 (paragraph 9 and 10) and the decision of the Delhi High Court in Grafitek International V/s. Mr. K.K. Kaura & Ors. reported in LL.R. (2002) 1 DELHI. In my view, it is well established that even if the Power of Attorney issued by a party in favour of a person is not valid for any reason, since the same would amount to a procedural lapse the proceedings cannot be dismissed / rejected but the party can be allowed to rectify / correct its mistake and even a fresh Power of Attorney can be obtained and produced. In view thereof, the following order is passed :

- i. The order of the Prothonotary and Senior Master dated 15th September, 2015 is set aside and the Suit is restored to file.
- ii. Office shall once again consider all the office objections and also allow the Plaintiffs to produce a fresh Power of Attorney, if required, and thereafter re-number the Suit.
- iii. The objections shall be removed within a period of two weeks from today.
- iv. In the event of the Plaintiffs using the General Power of Attorney dated 5th April, 2000 in any proceedings, this order shall not preclude the parties from raising objections qua the said Power of Attorney, including the objection that the same is a fabricated document.
- v. Since the Defendant No. 4 has passed away on 1st October, 2015, the Advocate for the Plaintiffs is allowed to delete the name of Defendant No. 4 within a period of two weeks from the date of this order.
- vi. The Notice of Motion is accordingly disposed of.

(S.J.KATHAWALLA, J.)