

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.1276 of 2016

and

C.M.P.No.7381 of 2016

K.Kolandasamy

... Petitioner

Vs

P.Manoharan

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the petition and orders dated 19.02.2016 made in I.A.No.834 of 2015 in O.S.No.47 of 2015 on the file of the learned Subordinate Judge, Perundurai.

For Petitioner : Mr.C.Ramkumar for
Mr.N.Manokaran

ORDER

The present Civil Revision Petition has been filed against the order of the learned Subordinate Judge, Perundurai dated 19.02.2016 made in I.A.No.834 of 2015 in O.S.No.47 of 2015. By the said order, the learned trial Judge permitted the defendant in the said suit to make appearance and contest the case through an agent holding power of attorney. The said order is sought to be challenged on the ground that a person, who does not know the transaction between the

parties personally, cannot be permitted to act as a power of agent in defending a suit when dispute has arisen in respect of the transaction.

3. The matter stands listed today for admission. The arguments advanced by Mr.C.Ramkumar, learned counsel appearing on behalf of Mr.N.Manokaran, learned counsel for the petitioner are heard. The materials produced are also perused.

4. A mere perusal of the certified copy of the impugned order and grounds of revision will make it clear that the present Civil Revision Petition has been filed with ulterior motive challenging an order, which is un-assailable. Order III Rule 1 C.P.C permits appearance of a party either in person or by a recognised agent or by a pleader. Order III Rule 2 deals with the right of the parties to make appearances, file applications and do acts through a recognised agent.

5. Rule 1 and 2 of Order III of C.P.C are extracted hereunder for the sake of convenience.

"1. Appearances, etc. may be in person, by recognized agent or by pleader:- Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court may, except where otherwise

expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader on his behalf;

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. *Recognized agents: The recognized agents of parties by whom such appearances, applications and acts may be made or done are-*

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

A reading of the same will make it clear that the contention of the petitioner that the respondent /defendant cannot make appearance through a duly constituted power agent is not only unsustainable but also ridiculous.

6. Rule 16 of the Civil Rules of Practice describes the

procedure to be followed by a party appearing by an agent, which reads as follows:-

16. Party appearing by agent:- (1) When a party appears by an agent other than a pleader or advocate, the agent shall before making or doing any appearance, application, or act, in or to the Court, file in Court the power of attorney, or written authority, thereunto authorising him, or a properly authenticated copy thereof/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 authorised 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.

7. Here is a case in which the defendant has authorised Ambrish Kumar by executing a general power of attorney dated 06.09.2015, which authorises him to appear on his behalf and defend the suit on his behalf and his name. It is not the case of the petitioner that the conditions stipulated in Rule 16 of the Civil Rules of Practice has not been complied with. The annexure to the fair order shows that the original deed of power of attorney itself has been produced

and marked as Ex.P-1. Hence, there could have been no impediment to pass such an order permitting the defendant to appear through a power of attorney. The challenge made to the order of the trial Court is frivolous and also has to be construed to be a gambling with an attempt to prolong the case. Hence, this Court comes to the conclusion that the revision petition deserves dismissal at the threshold.

8. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2016

Index: Yes/No

Internet: yes/No

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To

The Subordinate Judge,
Perundurai.

P.R.SHIVAKUMAR, J

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