

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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CRP No.1338 of 2011

ORDER ::

This civil revision petition is filed by the defendant in the suit OS No.2506 of 2006 against the order dated 08-12-2010 passed in IA No.99 of 2010 by the VI Addl. Senior Civil Judge-cum-Fast Track Court at Medchal, Ranga Reddy District, in allowing the said IA filed under Order 3, Rule 2, r/w. Section 118 of the Evidence Act, to eschew the evidence of DW-1 *i.e.* General Power of Attorney holder of the defendant, who filed vakalat, written statement and affidavit in lieu of chief examination on behalf of the defendant.

2. Plaintiff-respondent in this revision filed the above suit for specific performance. The instant IA was filed by the plaintiff-respondent on the ground that the GPA holder of the defendant, who is none other than the husband of the defendant, did not file any petition seeking prior permission of the Court to represent his principal *i.e.* the defendant in the case. The Court below allowed the IA having regard to the fact that the GPA holder of the defendant has not obtained prior permission from the Court as required under Rule 32 of the Civil Rules of Practice and unless such permission is obtained, the application or act of the agent of the principal shall be recognized by the Court.

3. In the instant case, it is observed that the vakalat, written statement and affidavit in lieu of chief examination on behalf of the defendant were filed at the inception of the suit but not during the adjudication proceedings. The application filed to mark the GPA executed by the defendant was allowed and the matter is posted for cross examination of defendant. Rule 32 of Civil Rules of Practice reads thus:

"(1) When a party appears by any agent, other than an advocate, the agent shall, before making of or doing any appearance, application, or act, in or to the Court, file in Court the power of attorney, or written authority, thereunto authorizing him or a properly authenticated copy thereof together with an affidavit that the said authority still subsisting, or, in the case of an agent carrying on a trade or business on behalf of 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 authorized to make or do such appearance, application, or act."

4. The vakalat, written statement and affidavit in lieu of chief examination are filed by the GPA holder and as per the terms of GPA, he is authorized to depose on behalf of defendant. The only objection is defendant has not obtained permission as contemplated under Rule 32 of Civil Rules of Practice. It is a settled proposition of law that it is always legal and competent to the GPA-holder to speak to the facts of the case in place of his principal *i.e.* defendant and that cannot be a ground to reject the deposition of the GPA-holder. When

once a person files a plaint/written statement on behalf of the party, as a GPA holder, he enters into the shoes of that party and except to the extent of personal knowledge, he is entitled to depose on other facts.

5. Learned counsel for the revision petitioner-defendant contended that the Court below erred in allowing the application as the defect of not taking permission is a curable defect and non compliance of Rule 32 of Civil Rules of Practice not being mandatory and only directory, substantive right of the defendant ought not to have been curtailed on account of procedural irregularity. In support of his contention, learned counsel relied on the Division Bench decision of this Court in ***NATUBHAI CHOTABHAI PATEL vs. PATNAM SHAKUNTALA (2012 (4) ALD 553 (DB).***

6. Division Bench of this Court, in the said decision, having framed a question whether the procedure contemplated under Rules 32 and 33 of the Civil Rules of Practice is mandatory or it is curable which can be cured by moving an appropriate application and whether the Court depending upon the fact and circumstances can rectify the same, answered the point in the affirmative and held that compliance of Rule 32 of Civil Rules of Practice is not mandatory, but it is directory. In this case, the GPA dated 06-10-2006 executed by the defendant duly appointing her husband as her GPA holder has been allowed

by the Court and the document marked as Ex.B-3. Under those circumstances, non filing of an affidavit as required under Rule 32 of Civil Rules of Practice does not vitiate or nullify the cause advanced by the agent of the principal in the capacity as GPA holder. In light of decision of the Division Bench of this Court in ***Natubhai Chotabhai Patel's case*** (supra) the issue is no longer *res-integra*. In the circumstances, the impugned order is set aside and IA No.99 of 2010 is dismissed. Suit being of the year 2006, in the interest of justice, it is to be disposed of expeditiously, in accordance with law, in any case not later than three months from the date receipt of a copy of this order.

7. In the result, the civil revision petition is allowed.

Miscellaneous petitions, if any pending in this case shall stand closed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 12-02-2016

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