

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2566 OF 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the Order dated 13.04.2016 in I.A. No.254 of 2015 in O.S. No.314 of 2011 whereby permission to represent the revision petitioner/defendant No.12 in O.S. No.314 of 2011 by the Power of Attorney Holder was denied.

02. It is the case of the revision petitioner that she filed a petition in I.A. No.254 of 2015 under Rule 32 of Andhra Pradesh Civil Rules of Practice seeking permission to represent her in O.S. No.314 of 2011 by the power of attorney holder-Mohammed Shameem, while annexing a copy of notarized power of attorney. But the trial court rejected the permission on the ground that in the absence of original party, an effective trial could not be conducted.

03. Sri.P.Panduranga Rao, learned counsel for the revision petitioner, contended that Rule 32 does not mandate the appearance of party before the Court for effective adjudication of the Suit. Therefore, the Order under challenge is erroneous and is in violation of Rule 32 of Civil Rules of Practice and prayed for set aside.

04. Though, Sri B.Rajeswara Rao filed Vakalath for respondents, neither he appeared nor made any representation for the respondents.

05. The petition filed under Rule 32 of Civil Rules of Practice permits a party to appear by an agent subject to compliance of requirements under sub-Rule (1) of Rule 32 of A.P. Civil Rules of Practice which contemplates the procedure. According to it when a party appears by an 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 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 authorized to make or do such appearance, application, or act.

06. In the present facts of the case, the petitioner filed a petition under Rule 32 of A.P. Civil Rules of Practice while complying with the requirement of filing a notarized power of attorney and an affidavit verifying that the authorization is subsisting as required under Rule 32(1) of A.P. Civil Rules of Practice. In such case, when the petitioner complied the requirement under Rule 32(1) of CRP, the court has to pass an appropriate order permitting the power of attorney holder to represent the petitioner herein, who is the defendant No.12 in O.S. No.314 of 2011 pending on the file of II Senior Civil Judge,

City Civil Court, Hyderabad. But, strangely the trial court rejected the permission on the ground that in the absence of original party an effective trial could not be conducted.

07. When the petitioner complied with the requirement under Rule 32(1) of A.P. Civil Rules of Practice and if for any reason the original party to the suit i.e. the defendant failed to appear to give evidence, it is for the Court to decide the suit in accordance with law for her failure to enter into the witness box and tendering herself for cross-examination. Therefore, at this stage, the conclusion arrived at by the trial court is premature and rejecting permission on that ground is erroneous. Therefore, by exercising power under Article 227 of the Constitution, I find that it is a fit case to set aside the Order under challenge.

08. Accordingly, the revision petition is allowed setting aside the Order dated 13.04.2016 in I.A. No.254 of 2015 in O.S. No.314 of 2011 passed by the II Senior Civil Judge, City Civil Court, Hyderabad, and directed the trial court to permit the power of attorney holder-Mohammed Shameem to represent the petitioner, who is defendant No.12 in O.S. No.311 of 2014, and to prosecute further proceedings.

09. Miscellaneous petitions, if any, pending in this revision petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 31.08.2016
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