

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.5025 and 5019 of 2015

ORDER:

These two revision petitions under Article 227 of the Constitution of India are filed by the respondents/defendants assailing the orders dated 13.10.2015 of the learned Senior Civil Judge, Razole passed in IA.nos.525 of 2015 & 524 of 2015 in OS.no.17 of 2010 filed by the plaintiff respectively to grant leave and receive on file the General Power of Attorney (for short 'the GPA') given by the plaintiff Bank to PW1 after condoning the delay in filing the same and recall him (PW1) to mark the said GPA.

2. I have heard the submissions of the learned counsel for the revision petitioners/defendants ('the defendants', for brevity). Though the respondent/plaintiff is served with the notice, none appears. I have perused the material record.

3. In the suit that was brought by the plaintiff Bank against the defendants on the foot of a mortgage, the plaintiff Bank had filed the aforementioned applications *inter alia* stating as follows: - 'The suit is coming for further evidence of the plaintiff Bank. Exhibits A1 to A12 were already marked. However, due to oversight, PW1 did not bring the GPA issued by the General Manager, Administration of the Head Office of the Bank at Chennai and, therefore, could not exhibit the same during the course of his evidence. Therefore, the petitions are filed for granting leave to file the said GPA and to recall PW1 for marking the same.'

4. The defendants having filed a counter resisted both the applications *inter alia* contending as follows: - 'The Photostat copy of the power of attorney, which is a notarised true copy, is inadmissible in evidence. It is the duty of PW1 to produce the original. PW1 is claiming that he is the agent of the plaintiff bank. No affidavit is filed, as required under Rule 32 of the Civil Rules of Practice stating that the said power of attorney is still subsisting. The petitions are devoid of merit. The petitions may be dismissed.'

5. As already noted, by the orders separately made in the two

applications, the trial Court had allowed both the applications *inter alia* accepting the explanation offered by PW1 that he could not bring the document by oversight when he was earlier examined before the Court and that the probative value of the document has to be examined at an appropriate later stage, but, not at the time of considering the instant applications. Aggrieved of the said orders, the defendants are before this Court.

6. The case of the aggrieved defendants as stated in the revisions and as per the submissions made before this Court is as follows:

The document being sought to be filed before the Court is a Photostat copy of the power of attorney notarised as a true copy by a notary public. PW1 is claiming as an agent of the Bank and, therefore, it is his duty to produce the original power of attorney. No petition or affidavit is filed as required under Rule 32 of the Civil Rules of Practice stating that the said power of attorney is subsisting. The Court below ought not to have allowed both the applications as no valid grounds are made out and as the petitions are devoid of merit.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions.

8. Before proceeding further, it is profitable to refer to the following provisions of law.

Order III Rule 2 of CPC:

2. Recognised 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.

Order XXIX Rule 1 of CPC:

1. Subscription and verification of pleading.- In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation- by the secretary or by any director or 'other principal officer of the corporation who is able to depose to the facts of the case.

Order VI Rule 14 of CPC:

14. Pleading to be signed.- Every pleading shall be signed by the party and his pleader (if any):

Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

Rule 32 of Civil Rules of Practice:

“32. (16) Party appearing by Agent:-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 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 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 recognized by the Court.”

9. I have gone through the pleadings. The defendants are resisting the applications of the plaintiff Bank on the ground that the original power of attorney has to be produced and that no affidavit is filed stating that the power of attorney is subsisting. The copy of the power of attorney filed into the Court is admittedly certified as a true copy by a notary public. Therefore, in the well considered view of this Court, it can be taken as a properly authenticated copy. In this case, PW1 is already examined. He deposed in the capacity of a power of attorney holder of the plaintiff Bank. Therefore, he had already asserted in his evidence that the power of attorney in his favour is subsisting. The plaintiff Bank is a company incorporated under the provisions of the Companies Act is not in dispute. Such a company can sue and be sued in its own name, it being a juristic entity. Order XXIX Rule 1 of the Code of Civil Procedure provides that in a suit by or against a Corporation, the Secretary or any Director or other Principal Officer of the Corporation, who is able to depose to the facts of the case might sign and verify on behalf of the company. When the provisions of law, which are extracted supra, are read together, it would appear that even in the absence of any formal letter of authority or a power of attorney having been executed, a person referred to in Rule 1 of Order XXIX can, by virtue of the Office which he holds, sign and verify the pleadings on behalf of the corporation and give evidence if he is

able to depose to the facts of the case. Further, *de hors* Order XXIX Rule 1 of the Code a company like the plaintiff Bank, which is a juristic entity, can duly authorise any person to sign the pleadings on its behalf and such authorisation would be regarded as sufficient compliance of the legal provisions. Even in a case where there is absence of a power of attorney or an authority, the plaintiff Bank, which is a Corporation, can ratify the said action of its Officer either expressly or impliedly. Therefore, on the basis of the evidence on record, and after taking into consideration all the circumstances of the case, especially with regard to the conduct of the trial, the Court can come to the conclusion as to whether the Bank had ratified the acts of the officer who had signed the pleadings and gave evidence. The views *supra*, expressed by this Court, find support from the ratio in the decision of the Supreme Court in **United Bank of India v. Naresh Kumar and others**^[1].

10. Having regard to the facts of the case and the settled legal position, which is stated *supra* by following the precedential guidance in the decision of the Supreme Court, this Court finds that the orders passed by the Court below, which are impugned in these two revisions, are justified and that they do not warrant any interference.

11. Accordingly, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

28th June 2016

Vjl

^[1] AIR 1997 SUPREME COURT 3