

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.4682 of 2016 (O&M)

Date of Decision: 17.12.2016

Mender Singh and another

...Appellants

Vs.

Raj Bansal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Rahul Sharma, Advocate
for the appellants.

Amol Rattan Singh, J (Oral)

Though notice had not been issued in this appeal and the respondents are also not on caveat, however, appearance of the learned counsel appearing for the persons impleaded as respondents, had been recorded by this Court in its orders dated 30.09.2016 and 18.10.2016, with the earlier order specifically noticing that though no notice had been issued, Mr. J.K. Kheterpal, Advocate, had appeared for the respondents, for the limited purpose of stating, along with the counsel for the appellants, that compromise proceedings as mentioned in the order dated 21.09.2016, may still be going on, though he was not certain with regard thereto.

That issue apart, it has been pointed out by Mr. Aman Bahri, Advocate, appearing today for the respondents, that in the power of attorney on the strength of which the present appeal has been filed, Clause 7 thereof specifically debars the attorney, i.e. Vijay Kumar Goel, from representing the appellants in relation to the agreement of sale dated 14.03.2005.

Mr. Sharma, learned counsel for the appellants, however,

submits that the construction of Clause 7 of the instrument of power of attorney and the entire document itself, would show that Vijay Kumar Goel had been granted all rights to deal with the property before any Court and office etc. and as such, the said exclusionary clause has no meaning.

He further points to the fact that even before the first appellate Court, though in the memo of parties the present appellants (defendants in the civil suit and respondents before the first appellate Court), are not seen to be represented through their attorney, but that fact has been specifically stated in paragraph 2 of the impugned judgment of the learned lower appellate Court.

He further submits that though before the trial Court, i.e. the Civil Judge (Sr. Divn.), Chandigarh, again the present appellants were not represented through Vijay Kumar Goel as their attorney, who himself was a defendant in the civil suit, he still appeared as DW-1 in his capacity as an attorney for the present appellants.

Having heard learned counsel on the above aspect, even taking the last statement of Mr. Sharma to be correct, yet, in the face of the exclusionary clause specifically included in para 7 of the instrument of power of attorney, I would hold that Shri Vijay Kumar Goel is not empowered to enter into any litigation on behalf of the present appellants, in relation to the agreement dated 14.03.2005.

It is to be noticed that the instrument power of attorney is executed by way of a notarised certificate issued in Selangor Darul Ehsan, Malaysia, and though there does not seem to be a dispute with regard to the validity of the said instrument, however, clause 7 needs to be reproduced, which reads as under:-

“7. To appear and at before any office/officers/Courts

whether civil, criminal, revenue or misc. in case of any disputes arising out of the said SCO and the building erected thereon but not relation to Sale agreement dated 14.3.2005, to give all such applications, forms, to make statements on oath in the Court, bonds, to file affidavits, indemnity bonds, agreements, deeds etc. and to submit them in the officer/s concerned, to compromise, compound and withdraw all such cases to refer the cases to arbitration, to engage or discharge any advocate/pleader for the proper conduct of such cases, to sign and verify all such complaints, suits, to file appeals, review, revisions, writ petitions against any order or decree up to the highest court of law in India, to get he obtain the copies of judicial/civil records and refund of the Curt fees and non-judicial stamps and complete all formalities, under his own signatures.”

Thus, despite the otherwise wide powers conferred on the attorney, he has specifically been debarred from taking any kind of action in respect of the agreement dated 14.03.2005.

Consequently, in view of the specific exclusionary clause debarring the attorney of the appellants to enter into any litigation in respect of the agreement dated 14.03.2005, this appeal is held to be not maintainable, having been filed through such attorney and the appeal is, therefore, dismissed as such.

Learned counsel for the appellants submits that if he is able to obtain a fresh power of attorney enabling Mr. Vijay Kumar Goel to appear as such attorney, even in respect of the said agreement, liberty may be granted to file a fresh appeal on the same cause of action.

The said contention is reasonable and therefore, if a valid instrument is executed in favour of Sh. Vijay Kumar Goel by the present appellants, entitling him to represent them and to file an appeal on their behalf against the judgments and decrees impugned in the present appeal, such liberty would be taken to have been granted. The issue of limitation would, naturally, be dealt with on its merits, in terms of any application

moved along with that appeal.

In view of the fact that the appeal has been dismissed on the ground of non-maintainability, the Court fee paid by the appellants be refunded to the appellants, as per prayer made by learned counsel appearing for them.

December 17, 2016
vcgarg

(AMOL RATTAN SINGH)
JUDGE

1. Whether speaking/reasoned?	Yes/No
2. Whether reportable?	Yes/No