



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2017

CORAM:

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P (MD) No.1830 of 2016 (PD)

A.Peer Mytheen

.. Revision Petitioner/Petitioner/
Power Agent of defendant

Vs.

S.Maria Antony Subash

.. Respondent/Respondent/Plaintiff

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 15.03.2016 in I.A.No.21 of 2016 in O.S.No.233 of 2014 on the file of the learned Principal Subordinate Judge, Nagercoil by dismissing the above application.

For Petitioner : Mr.A.John Xavier

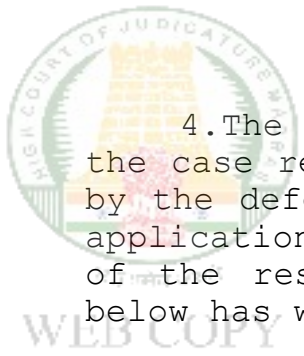
For Respondent : V.Muthukamatchi

O R D E R

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 15.03.2016 in I.A.No.21 of 2016 in O.S.No.233 of 2014 on the file of the learned Principal Subordinate Judge, Nagercoil by dismissing the above application.

2. Heard both sides.

3. Pending suit, the defendant in O.S.No.233 of 2014 has filed an application in I.A.No.21 of 2016 seeking the leave of the Court to appoint one Peer Mytheen as her power agent to appear, to file applications, adduce evidence and act on behalf of the defendant in the case. Since she was transferred from Nagercoil to Sengottai and she cannot be in a position to appear before the Court and conduct the case. The said application was opposed by the respondent/plaintiff on the ground that the power agent cannot depose matters which are not within his knowledge and hence the application is not maintainable. The Trial Court has accepted the plea of the respondent/plaintiff and has dismissed the Interlocutory Application.



4. The learned counsel for the petitioner submitted that the case relating to recovery of money, based on the cheques issued by the defendant, the Court below has not considered that the said application to permit the power of attorney is to appear on behalf of the respondent to give evidence only and therefore the Court below has wrongly dismissed the application.

5. No doubt that the power agent cannot depose something, which is not within his personal knowledge and the Hon'ble Supreme Court has summarised the circumstances under which a power agent can be appointed and deposed on behalf of the parties. The said summarising is found in *Man Kaur (D) by LRs. vs. Hartar Singh Sangha*, reported in 2010 (6) CTC 652. But here is the case not only to depose in the case, but also to continue the litigation. There cannot be a blanket ban of appointing a power of attorney to take care of the case by any of the litigant, when he comes to let in evidence. Naturally the restrictions stated in the above said judgment will come into force and it is always open to the plaintiff/respondent to object, if the power agent is going to examine himself as a witness and if he admits to say something beyond his personal knowledge, but preventing a litigant from contesting the case through power agent is not barred.

6. Order III Rule 2 of Civil Procedure Code permits parties to appear through their recognised agents. The restriction imposed by the Hon'ble Supreme Court is regarding deposing matters, which are not within the personal knowledge. Therefore I see error in the order of the Trial Court for not allowing the defendants to appoint power agent and conducting the case on her behalf.

7. Hence, the impugned order passed by the trial Court in I.A.No.21 of 2016 is set aside. However, it is made clear that when the power agent enters witness box to give evidence, the guidance of the Hon'ble Supreme Court rendered in 2010(6)SCC 652 shall scrupulously followed.

8. With these observations, this Civil Revision Petition is disposed of. The Trial court is requested to dispose of the case in O.S.No.233 of 2014 at the earliest. No Costs.

Sd/-

Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

The Principal Subordinate Judge, Nagercoil.

+One cc to M/s.V.Muthukamatchi, Advocate, SR.No.12811

PJL

RL/3C/2P/MR/24.3.2017

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