

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4748 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful 1<sup>st</sup> respondent-plaintiff is directed against the orders, dated 31.08.2017, of the learned X Additional Chief Judge, City Civil Court, Hyderabad, passed in I.A.No.757 of 2017 in O.S.No.82 of 2004.

2. I have heard the submissions of the learned counsel for the revision petitioner-plaintiff at the stage of admission. I have perused the material record.

3. The facts which are required to be stated as a prelude to this order, in brief, are as follows:

The afore-said suit is filed by the plaintiff against the defendants for specific performance. The defendants are resisting the suit. The plaintiff is examined as PW1. Thereafter, the 1<sup>st</sup> defendant filed the afore-stated interlocutory application requesting to permit her GPA holder, I. Jayapal Reddy, to appear as a witness and give evidence in the suit on her side. The plaintiff filed a counter resisting the said application. The trial Court on merits and by the order impugned in this revision allowed the petition of the 1<sup>st</sup> defendant and permitted the GPA holder of the 1<sup>st</sup> defendant to depose in the suit as a witness on her side. Aggrieved thereof, the plaintiff filed this revision.

4. To begin with, it is to be noted that the case of the 1<sup>st</sup> defendant in support of her request, in brief, is this: 'The plaintiff filed the suit for specific performance. She is resisting the suit. The proposed witness is

her GPA holder. He acted as a middleman in the transaction between the plaintiff and the 1<sup>st</sup> defendant. He has personal knowledge about the facts of the case.' Per contra, the case of the plaintiff is that the GPA holder of the 1<sup>st</sup> defendant is the main culprit and that at his instance the plaintiff agreed to purchase the property from the 1<sup>st</sup> defendant and that in view of the said fact, he cannot be permitted to depose on behalf of the 1<sup>st</sup> defendant.

5. At the hearing, while reiterating the pleaded case of the plaintiff, learned counsel for the plaintiff contended *inter alia* that the proposed witness has no personal knowledge of the suit transaction and that in the written statement also no averments to that effect were made and that as per settled legal position in *Man Kaur (dead) by LRs v. Hartar Singh Sangha*<sup>1</sup> the power of attorney holder who has no personal knowledge of the matters is not a competent witness to depose on behalf of the principal and that in view of the facts of the case and the precedential guidance in the cited decision, the order impugned is unsustainable and that the plaintiff would suffer serious and irreparable loss, if the person who is having interest adverse to the plaintiff is permitted to be examined.

6. I have given earnest consideration to the facts and submissions. The 1<sup>st</sup> defendant is seeking permission to examine her GPA holder as witness on her side in the suit. She stated that he acted as a middleman between the parties to the transaction and that he has personal knowledge of and about the suit transaction. The main contention of the plaintiff is that the power of attorney holder of the 1<sup>st</sup> defendant is the main culprit; and, that on his instigation and at his instance, the plaintiff agreed to purchase the property from the 1<sup>st</sup> defendant and

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<sup>1</sup>(2010) 10 SCC 512

that there is no specific pleading in the written statement of the 1<sup>st</sup> defendant that the said GPA holder played the role of the 1<sup>st</sup> defendant in the entire transaction and that unless the 1<sup>st</sup> defendant appears before the Court as a witness and offers herself for cross examination at length the truth cannot be culled out.

7. It is well settled that a power of attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge. However, if the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved. In the well considered view of this court, in the instant case sufficient averments are made in the affidavit filed in support of the petition to *prima facie* indicate that the GPA holder of the 1<sup>st</sup> defendant is having personal knowledge of and about the transaction between the parties to the suit and it is also the case of the parties that the GPA holder of the 1<sup>st</sup> defendant acted as a middleman between the parties; further, the power of attorney holder also asserted in his affidavit that he has personal knowledge of the matter. Whether the GPA holder has personal knowledge of the matters or not cannot be pre judged, in the considered view of this Court; and a party to the suit cannot be denied an opportunity to examine a witness on an assumption that the proposed witness has no personal knowledge of the matter; when a party and a witness like GPA holder assert that the witness has personal knowledge, the Court shall permit examination of such a witness by relegating the

matter of appreciation of evidence to a later stage; and, it is for the party opposing the examination of a witness on the ground that the witness has no personal knowledge to elicit necessary answers about his personal knowledge or otherwise of the subject matter.

8. Dealing with the contention of the plaintiff that non appearance of the 1<sup>st</sup> defendant as witness for herself in the suit for specific performance would be fatal to her defence, it is beneficial to state that in the decision in Man Kaur's Case (supra) the Supreme Court summarised for convenience, the position as to who should give evidence in regard to matters involving personal knowledge.

(a) An attorney holder who has signed the plaint and instituted the suit, but has no personal knowledge of the transaction can only give formal evidence about the validity of the power of attorney and the filing of the suit.

(b) If the attorney holder has done any act or handled any transactions, in pursuance of the power of attorney granted by the principal, he may be examined as a witness to prove those acts or transactions. If the attorney holder alone has personal knowledge of such acts and transactions and not the principal, the attorney holder shall be examined, if those acts and transactions have to be proved.

(c) The attorney holder cannot depose or give evidence in place of his principal for the acts done by the principal or transactions or dealings of the principal, of which principal alone has personal knowledge.

(d) Where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and where the entire transaction has been handled by an attorney holder, necessarily the attorney holder alone can give evidence in regard to the transaction. This frequently happens in case of principals carrying on business through authorized managers/attorney holders or persons residing abroad managing their affairs through their attorney holders.

(e) Where the entire transaction has been conducted through a particular attorney holder, the principal has to examine that attorney holder to prove the transaction, and not a different or subsequent attorney holder.

(f) Where different attorney holders had dealt with the matter at different stages of the transaction, if evidence has to be led as to what transpired at those different stages, all the attorney holders will have to be examined.

(g) Where the law requires or contemplated the plaintiff or other party to a proceeding, to establish or prove something with reference to his 'state of mind' or 'conduct', normally the person concerned alone has to give evidence and not an attorney holder. A landlord who seeks eviction of his tenant, on the ground of his 'bona fide' need and a purchaser seeking specific performance who has to show his 'readiness and willingness' fall under this category. There is however a recognized exception to this requirement. Where all the affairs of a party are completely managed, transacted and looked after by an attorney (who may happen to be a close family member), it may be possible to accept the evidence of such attorney even with reference to bona fides or 'readiness and willingness'. Examples of such attorney holders are a husband/wife exclusively managing the affairs of his/her spouse, a son/daughter exclusively managing the affairs of an old and infirm parent, a father/mother exclusively managing the affairs of a son/daughter living abroad.

In view of the facts and the legal position obtaining, it is trite to observe that it is for the 1<sup>st</sup> defendant to take a call in the first place as to whether she would appear as a witness or not to substantiate the pleaded defence. And, if the 1<sup>st</sup> defendant having examined the GPA holder as a witness on her side chooses not to enter the witness box and state her defence on oath and does not offer her own self to be cross examined, the plaintiff can make use of the said aspect and can as well make a request to the Court to draw an adverse inference against the 1<sup>st</sup> defendant on that count. And it is for the Court to draw or not to draw an adverse inference against the 1<sup>st</sup> defendant for her failure to go into the witness box, as drawing an adverse inference depends upon the facts and circumstances of the case in view of the precedential guidance referred to supra.

9. Viewed thus, this Court finds that the revision is devoid of merit and is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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M. SEETHARAMA MURTI, J

13<sup>th</sup> September, 2017  
Vjl

